

IN THE MATTER OF

NUMEX CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3463. Complaint, Oct. 7, 1993--Decision, Oct. 7, 1993*

This consent order prohibits, among other things, a California-based corporation, that advertised and promoted "Therapy Plus," from misrepresenting: the efficacy of certain devices; the degree to which scientific proof demonstrates that any such device is effective in reducing, relieving, or eliminating pain; the degree to which such a device is a significant medical breakthrough; or the degree to which the device is used, recommended, or accepted by the relevant medical or scientific community as effective in reducing, relieving or eliminating pain. This consent order also requires the respondent to possess competent and reliable scientific evidence to substantiate future health and pain-relief claims. In addition, the order prohibits the respondent from misrepresenting the endorsement for any product or service or the connection between the endorser and any individual or company marketing the product or service.

Appearances

For the Commission: *Beth M. Grossman* and *Lesley Anne Fair*.

For the respondent: *Harold D. Murry, Howrey & Simon*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Numex Corporation, a corporation, hereinafter sometimes referred to as 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 Numex Corporation is a Delaware corporation, with its offices and principal place of business located at 12604 Hiddencreek Way, Suite C, Cerritos, California.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed a device, Therapy Plus, to the public. Therapy Plus is a hand-held, mechanical roller purported to be a pain-relieving device. This product is a "device" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Therapy Plus, including but not necessarily limited to the attached Exhibit A a transcription of the program-length television commercial or "infomercial" entitled "Freedom From Pain." The aforesaid advertisement contains the following statements and depictions:

A. THELMA NORA (Consumer Endorser): "My headaches are gone, my neck, the stiffness of my neck; I can move my neck and shoulders and everything. I feel great." (Exhibit A, p. 1)

B. ROGER BARKLEY (Announcer): "It's called Therapy Plus, the pain reliever and its effectiveness is backed by scientific proof and documented clinical use. You'll meet some of the people who have used it: the professional sports star, the weekend warrior, and the incredible testimony of pain sufferers; how it relieves acute pains, chronic pains, the pain of arthritis, bursitis, tendinitis, and many other muscle-related pains. You'll hear from doctors who have treated hundreds of patients with positive results, and you'll see the scientific proof that Therapy Plus really works." [Depiction: Therapy Plus being rolled on man in glass enclosure in laboratory] (Exhibit A, p.3)

C. BARKLEY: "I know it's hard to believe, but this little device can literally roll away pain. Stephanie Osnower knows. In addition to arthritic hands, she had terrible pain in her leg from standing too much."

STEPHANIE OSNOWER (Consumer Endorser): "And I suddenly had a swelling in this area behind my knee and it got larger and larger and larger."

BARKLEY: "Stephanie visited her doctor who rolled her leg with this therapeutic device back and forth for several minutes. She said that the pain went away."

OSNOWER: "And he said, 'Tell me when you feel better,' and it was almost immediate, almost immediate that I began to feel better and had some relief." (Exhibit A, p. 4)

D. MARGARET TANNEHILL (Consumer Endorser): "I've had rheumatoid arthritis for five years. And the past year it had gotten worse, to the point where I thought of giving up golf and also knitting, and those are my two favorites. So I thought, well, I'll borrow a roller from a friend for one week and see if it would work because I've heard so much about it. So I borrowed the roller, and the first night I thought, my God, it worked, because I slept all night. . . . So I used it for one week and went and purchased one. And since then, I hadn't worn my rings for one year, and I do wear them. And my knuckles were gnarled; you can still see probably a little, but you have no idea how pretty these hands look to me. And I do this watching television. Sometimes it runs seven minutes but five minutes is what I give myself on each hand. That's all I do, and I do it religiously every night and I love it." (Exhibit A, pp. 6-7)

E. BARKLEY: "Maurice Lindsay, a physicist and engineer, was told by bone surgeons that he would have to have operations on both knees in order to relieve his pain."

MAURICE LINDSAY (Consumer Endorser): "Well, I came in and said, 'Jim, I can't take it anymore. My knees are so bad that they hurt constantly, and I'd like to have you make arrangements to have them operated on -- they're just too painful.' So, he kind of chuckled and got the roller out and -- I'd never seen one, of course, before -- and he had me sit there while he rolled the knee. And it was hurting; it was hurting, that's why I came in. And I was hurting whether I was sitting, standing, walking, or whatever, and running was out of the question. And so he rolled it rather vigorously, oh, maybe three or four minutes, and said, 'Now get up and walk towards the door,' which I did, and he said, 'Do you feel anything?,' and I said, 'No, my knee does not hurt.' So, it was an immediate sale, no questions asked! I had to have one." [Superimposed Text: "Arthritic Knee Pain Relieved with Therapy Plus"] (Exhibit A, pp. 7-8)

F. GEORGE STEVENS (Consumer Endorser): "I rolled my elbow, and I was going to get a shot that day -- cortisone shot -- and I rolled it, about five minutes, and it worked. It was great. All the tendinitis and stuff -- it was excellent." (Exhibit A, p. 8)

G. VOICE-OVER: "Imagine what it would feel like to have your pain disappear. Therapy Plus is the breakthrough pain-relieving device that is completely safe and easy to use. It is recommended by medical doctors, chiropractors, and other health experts." [Depiction: Dr. Randolph Stern using Therapy Plus to point to anatomical charts of human body] (Exhibit A, pp. 10 and 18)

H. VOICE-OVER: "Its design is unique, and reports from scientists at a major university and research hospital have proven that it does work. (Depiction: Therapy Plus being rolled on man in glass enclosure in laboratory.) Its effectiveness has even been presented at the American Pain Society. Patients who have

been suffering with chronic pain for years, now relieve pain in minutes, with no effort, no exercise, and no drugs." (Exhibit A, pp. 10-11 and 18-19)

I. VOICE-OVER: "Just roll it gently but rapidly over the area where pain exists, such as arthritic hands, tight shoulder, sore knees, elbows, or the lower back, even muscles stressed during recreation. It works almost anywhere. Most people report their pain disappearing in just minutes." (Exhibit A, pp. 11 and 19-20)

J. BARKLEY: "Can there be anybody else who knows as much about pain as an NFL football player? Nolan Cromwell spent eleven years with the Los Angeles Rams, and is a four-time all-pro safety."

NOLAN CROMWELL: "The first time I saw the roller, I thought it was a joke. You know, here they're going to take something that you just roll lightly on the skin, and reduce the pain anywhere on your body. But after using it for the first time and finding out that it does work and the simplicity that is there -- it goes in your pocket; you carry it wherever you want to go -- and it works. I was totally surprised that it did relieve the pains actually in all parts of my body." [Superimposed Text: "Therapy Plus replaced expensive physiotherapy treatments"] (Exhibit A, pp. 15-16)

K TANNEHILL: "For every one of you that has arthritis: believe me, purchase this. It costs pennies compared to what your prescription costs. Two prescriptions and this is paid for. And I'll guarantee it will work. It worked on me." (Exhibit A, p. 17)

L. VOICE-OVER: "If there really is a way you can safely relieve your pain without drugs, without oils and balms, without frequent and costly doctor visits, and without effort or exercise, any time, any place in just minutes, shouldn't you try it yourself?" (Exhibit A, pp. 12 and 20)

M. DR. RANDOLPH STERN, CHIROPRACTOR: "The most remarkable thing is that everyone that I have recommended using Therapy Plus has benefited from it, across the board, so I feel very confident in recommending it to my patients." [Depiction: Dr. Randolph Stern using Therapy Plus to point to anatomical charts of human body] (Exhibit A, p. 5)

N. R. STERN: "When Therapy Plus was first presented to me, I reviewed the research, which made sense. It made sense on a scientific and practical level. And so it was very easy for me to utilize it in my practice and recommend it to my patients, and they've had great results with it as well." [Depiction: Dr. Randolph Stern in front of anatomical charts of human body] [Superimposed text: "Scientific evidence convinced him to use Therapy Plus"] (Exhibit A, p. 9)

O. VOICE-OVER: "There is a new breakthrough in pain relief, and it works without drugs, in minutes. It's recommended by doctors, and proven to work in scientific tests. [Depiction: Dr. Randolph Stern using Therapy Plus to point to anatomical charts of human body] It is Therapy Plus." (Exhibit A, p. 23)

P. OSNOWER: "This is like a magic wand. That I can go like this when my thumb gets real bad and if you've had experience with arthritis it doesn't let you

know when it's going to decide to flare up it just flares up. But to be able to pick up the roller and go like this a couple times a day and then suddenly the swelling goes down and the thumb moves -- it's like a magic wand, it really is." (Exhibit A, p. 25)

Q. JAMES L. MCELHANEY, M.D.: "Since being introduced to Therapy Plus we've used this almost exclusively for the treatment of pain with very great success. It's been an absolute godsend to my patients in pain." (Exhibit A, p. 1)

R. DR. MCELHANEY: "I've treated more than 250 patients with Therapy Plus. We've had a 95% success rate in relieving their pain, and this has occurred in minutes. I find Therapy Plus very successful in the treatment of all types of musculo-skeletal pain, including tendinitis, bursitis, sprains, strains, tight spastic muscles, and even arthritis." (Exhibit A, pp. 4-5)

S. BARKLEY: "Doctor, you've treated a lot of pain sufferers with Therapy Plus. Can you tell us what kind of results you've seen?"

DR. MCELHANEY: "I've treated over 250 patients. 95% have experienced relief within minutes. It's the greatest advance in the treatment of pain that I've seen in all of my medical years, and for my patients, it's a godsend."

BARKLEY: "How does this device work?"

DR. MCELHANEY: "At first we didn't know. But research was then done at a leading southern California university and a leading hospital research center. [Depiction: Woman under metal cap with electrodes inside apparatus in laboratory] The first study showed by objective criteria that the roller relaxes tense muscles and muscles in spasm. [Depiction: Medical monitoring device in process of collecting and recording data] It also improves circulation in the area where it is rolled. And it brings the sympathetic nerves to a high state of arousal. These effects are definitely physiology and not psychology. [Depiction: Woman under metal cap with electrodes inside apparatus in laboratory] The results of this study were presented at the Eighth Annual Scientific Meeting of the American Pain Society. The second study is now being reviewed and accepted for publication in a scientific journal." (Exhibit A, pp. 13-14)

T. BARKLEY: "So the medical community must be very excited about this."

DR. MCELHANEY: "Oh yes. Researchers, too - pain researchers. We think that this is a major breakthrough in the treatment in pain." (Exhibit A, p. 14)

U. BARKLEY: "How does this compare with other muscular pain relievers?"

DR. MCELHANEY: "Compared to analgesics, liniments, physical therapy, or oral medications there's just no comparison. This works as effective or more effectively than any of those products." (Exhibit A, p. 14)

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that:

A. Scientific proof, including research at a major university and a leading research hospital, demonstrates that Therapy Plus is effective in significantly reducing, relieving, or eliminating pain.

B. Therapy Plus is a major breakthrough in the treatment of pain.

C. A substantial number of medical doctors use Therapy Plus and recommend it as an effective way to significantly reduce, relieve, or eliminate pain.

D. The statements of James McElhaney, M.D., appearing in the infomercial "Freedom From Pain" were the endorsements of an individual who, at the time of providing his endorsements, was independent from the individuals and entities marketing the product.

E. The statements of Nolan Cromwell appearing in the infomercial "Freedom From Pain" were the endorsements of an individual who, at the time of providing his endorsements, was independent from the individuals and entities marketing the product.

PAR. 6. In truth and in fact:

A. Scientific proof does not demonstrate that Therapy Plus is effective in significantly reducing, relieving, or eliminating pain.

B. Therapy Plus is not a major breakthrough in the treatment of pain.

C. A substantial number of medical doctors neither use Therapy Plus nor recommend it as an effective way to significantly reduce, relieve, or eliminate pain.

D. The statements of James McElhaney, M.D., appearing in the advertisements were not the endorsements of an individual who, at the time of providing his endorsements, was independent from the individuals and entities marketing the product. At the time of providing his endorsements, James McElhaney, M.D., was an officer and director of Numex Corporation, was to receive payments from Numex Corporation for each unit of Therapy Plus sold, and owned stock in Delux Distributions International, Inc., a corporate shareholder of Numex Corporation.

E. The statements of Nolan Cromwell appearing in the advertisements were not the endorsements of an individual who, at the time of providing his endorsements, was independent from the individuals and entities marketing the product. At the time of providing his endorsements, Nolan Cromwell was Athletic Director of Numex Corporation, was to receive payments from Numex Corporation for each unit of Therapy Plus sold, and owned stock in Delux Distributions International, Inc., a corporate shareholder of Numex Corporation.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that:

A. Use of Therapy Plus will significantly reduce, relieve, or eliminate virtually all types of musculoskeletal pain, including acute pain, chronic pain, sprains, strains, tight spastic muscles, and the pain of arthritis, bursitis, and tendinitis.

B. Use of Therapy Plus will relieve headaches.

C. Therapy Plus can be safely used to relieve painful swelling in the legs.

D. Use of Therapy Plus will reduce, relieve, or eliminate swelling, gnarling, or deformities of the joints caused by rheumatoid arthritis.

E. Use of Therapy Plus will significantly reduce, relieve, or eliminate pain in minutes, even in individuals who have suffered from chronic pain for years.

F. For a substantial majority of people, Therapy Plus is effective in significantly reducing, relieving, or eliminating pain.

G. For the treatment of pain, Therapy Plus is as effective as, or more effective than, analgesics, liniments, physical therapy, or oral medications.

H. Therapy Plus is an effective substitute for surgery in relieving the pain of arthritic knees.

I. Therapy Plus will significantly reduce, relieve, or eliminate arthritis and other pain without the need for medication, including prescription medication.

J. For the treatment of pain, use of Therapy Plus will eliminate the need for treatment by a doctor.

PAR. 8. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraphs five and seven, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time it made the representations set forth in paragraphs five and seven, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the advertising and dissemination of the infomercial "Freedom From Pain," a transcription of which is attached hereto as Exhibit A, respondent has represented, directly or by implication, that the testimonials or endorsements from consumers appearing in advertisements for Therapy Plus reflect the typical or ordinary experience of members of the public who use Therapy Plus.

PAR. 11. Through the advertising and dissemination of the infomercial "Freedom From Pain," a transcription of which is attached hereto as Exhibit A, respondent has represented, directly or by implication, that, at the time it made the representation set forth in paragraph ten, it possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 12. In truth and in fact, at the time it made the representation set forth in paragraph ten, respondent did not possess and rely upon a reasonable basis that substantiated such representation.

Therefore, the representation set forth in paragraph eleven, was, and is, false and misleading.

PAR. 13. In its advertising and sale of Therapy Plus, respondent has represented that James McElhaney, M.D., and Nolan Cromwell are endorsers of Therapy Plus. Respondent has failed to disclose adequately that McElhaney and Cromwell each has a material connection with Therapy Plus in that, at the time of providing their endorsements, McElhaney and Cromwell owned stock in Delux Distributions International, Inc., a corporate shareholder of Numex Corporation; McElhaney and Cromwell were to receive payments for each unit of Therapy Plus sold; McElhaney was an officer and director of Numex Corporation; and Cromwell was Athletic Director of Numex Corporation. These facts would materially affect the weight and credibility given by consumers to the endorsements and would be material to consumers in their decisions to purchase the product. Therefore, the failure to disclose adequately these facts, in light of the representations made, was, and is, a deceptive practice.

PAR. 14. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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Complaint

EXHIBIT A

FREEDOM FROM PAIN

Graphic:
FREEDOM FROM PAIN
Graphic:
This is a paid commercial program for Therapy Plus
Imagine what it would feel like to have your pain disappearing.
Graphic:
Word "PAIN" becoming wavy, growing smaller, and fading away
Everybody has pain, whether they associate aches as pain or everyday living.
Graphic:
PAIN RELIEF
My headaches are gone, my neck, the stiffness of my neck; I can move my neck and shoulders and everything. I feel great.
Graphic:
PAIN RELIEF
Since being introduced to Therapy Plus, we've used this almost exclusively for the treatment of pain with very great success. It's been an absolute godsend to my patients in pain.
Graphic:
PAIN RELIEF
It's a miracle, as far as I'm concerned. Hey, this body is together because of that.
Graphic:
PAIN RELIEF
I've done everything. Every time I hear something for arthritis, I would use it. Nothing worked. Nothing worked until this
Graphic:
PAIN RELIEF
How do you explain having pain for three or four days or more and using an instrument like that, which is hard to even describe, and then have the pain go away? I mean, it's tough to even transmit to someone else.
Graphic:
PAIN RELIEF
Most of us suffer from pain, we just accept it as part of our life. But when pain becomes a problem, when pain interrupts our life-style, the things we like to do, we want to do something about it. Nobody wants to use drugs. But sometimes, in our desperation, we'll do anything to get rid of the pain. But many times these remedies don't work, and sometimes they have side effects.
Depiction:
Various drugs (including bottles typical of both prescription and nonprescription drugs), liniments, lotions, and syringe
What if there were another way to relieve pain?

ROGER BARKLEY
(Announcer):

NOLAN
CROMWELL,
Former Los Angeles
Ram:

THELMA NORA,
Electronics
Assembler:

JAMES L.
McELHANEY,
M.D.:

GEORGE
STEVENS,
Bartender:

MARGARET
TANNEHILL,
Bookkeeper:

THOMAS BELL,
Aerospace
Prod. Mgr.:

Superimposed Text:

WHAT IF THERE WERE ANOTHER WAY TO RELIEVE PAIN WITHOUT DRUGS?

These people did it, without drugs. What is their secret? Well, that's what this program is all about. If you know someone who suffers from chronic or acute pain call them now and urge them to join us. And get a pencil and paper ready. Now you can have freedom from pain without drugs.

VOICE-OVER: Freedom from pain is brought to you by Therapy Plus, the pain reliever of the future.

Graphic:

FREEDOM FROM PAIN

ROGER BARKLEY: Hi, I'm Roger Barkley. I'm excited to tell you about an important medical breakthrough with a promise: the break-through is that you can roll away pain without drugs. The promise is that it will work for you. In fact, it's guaranteed, or your money back. You might not believe it, but it's this little device. It's called Therapy Plus, the pain reliever, and its effectiveness is backed by scientific proof and documented clinical use. You'll meet some of the people who have used it: the professional sports star, the weekend warrior, and the incredible testimony of pain sufferers; how it relieves acute pains, chronic pains, the pain of arthritis, bursitis, tendinitis, and many other muscle-related pains. You'll hear from doctors who have treated hundreds of patients with positive results, and you'll see the scientific proof that Therapy Plus really works.

Depiction:

Therapy Plus being rolled on man in glass enclosure in laboratory
Superimposed Text:

Scientific proof that Therapy Plus really works!

And you'll be able to test this remarkable product for yourself, without risk, right in your own home.

I know it's hard to believe, but this little device can literally roll away pain. Stephanie Osnower knows. In addition to arthritic hands, she had terrible pain in her leg from standing too much.

STEPHANIE OSNOWER, Sales Clerk:

And I suddenly had a swelling in this area behind my knee and it got larger and larger and larger.

ROGER BARKLEY: Stephanie visited her doctor who rolled her leg with this therapeutic device back and forth for several minutes. She said that the pain went away.

STEPHANIE OSNOWER: And he said, "Tell me when you feel better," and it was almost immediate, almost immediate that I began to feel better and had some relief.

ROGER BARKLEY: The Therapy Plus roller has a series of wheels with tiny, specially designed spokes. Pain relief treatment is simply a matter of gently rolling Therapy Plus back and forth across the skin for three to eight minutes.

Dr. James McElhaney has used Therapy Plus on hundreds of patients.

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JAMES L.
McELHANEY,
M.D.:

I've treated more than 250 patients with Therapy Plus. We've had a 95% success rate in relieving their pain, and this has occurred in minutes.

Superimposed Text:

For unexplained pain, or if pain persists after proper application of Therapy Plus, consult your physician

I find Therapy Plus very successful in the treatment of all types of musculo-skeletal pain, including tendinitis, bursitis,

Superimposed Text:

For temporary relief of minor aches and pains due to fatigue and overexertion

sprains, strains,

Superimposed Text:

To ease and relax tired muscles

tight spastic muscles, and even arthritis.

Superimposed Text:

For the temporary increase of local blood circulation in the area where applied

ROGER BARKLEY:

Thelma Nora has a new appreciation for Therapy Plus. She was in a car accident and received treatment for whiplash.

THELMA NORA:

I didn't know if it would work, but I would be in such pain I was willing to try anything. And, this was like my last resort, so to speak, whatever you want to call it. But this I will not do without. I love it.

ROGER BARKLEY:

Dr. Randolph Stern, a chiropractor, treats all types of muscle and joint pain.

DR. RANDOLPH
STERN,
Chiropractor:

The most remarkable thing is that everyone that I have recommended using Therapy Plus has benefited from it, across the board, so I feel very confident in recommending it to my patients.

Depiction:

Dr. Randolph Stern using Therapy Plus to point to anatomical chart of human body

ROGER BARKLEY:

Scientific research was conducted which confirmed that the roller actually causes a physiological response rather than being simply psychological.

Depiction:

Woman under metal cap with electrodes inside apparatus in laboratory

After years of successful use by doctors, Therapy Plus is now available to us all, for pain relief at home.

Depiction:

Therapy Plus being rolled on man in glass enclosure in laboratory

In a minute, you'll meet a physician who will explain why it works. See the scientific proof, and hear what sports stars like former L.A. Rams Nolan Cromwell and Washington Bullet's Bernard King have to say. But first, here's Margaret Tannehill. Therapy Plus literally changed her life.

MARGARET
TANNEHILL:

I've had rheumatoid arthritis for five years. And the past year it had gotten worse, to the point where I thought about giving up golf and also knitting, and those are my two favorites.

So I thought, well, I'll borrow a roller from a friend for one week and see if it would work, because I've heard so much about it. So I borrowed the roller, and the first night I thought, my God, it worked, because I slept all night. I didn't say anything to my husband because I know he wouldn't have believed that. So I used it for one week and went and purchased one.

And since then, I hadn't worn my rings for one year, and I do wear them. And my knuckles were gnarled; you can still see probably a little, but you have no idea how pretty these hands look to me.

And I do this watching television. Sometimes it runs seven minutes but five minutes is what I give myself on each hand. That's all I do, and I do it religiously every night and I love it.

Now I visit friends. I have visited friends, and they have known what my hands looked like prior to using this, and invariably, they take my roller, I come home and purchase another and I've done that eleven times. I recommend it.

Superimposed Text:

Has Rheumatoid Arthritis

Relieves pain with Therapy Plus

ROGER BARKLEY:

Maurice Lindsay, a physicist and engineer, was told by bone surgeons that he would have to have operations on both knees in order to relieve his pain.

MAURICE
LINDSAY,
Physicist, Engineer:

Well, I came in and said, "Jim, I can't take it anymore. My knees are so bad that they hurt constantly, and I'd like to have you make arrangements to have them operated on -- they're just too painful."

So, he kind of chuckled and got the roller out and -- I'd never seen one, of course, before -- and he had me sit there while he rolled the knee.

And it was hurting; it was hurting, that's why I came in. And I was hurting whether I was sitting, standing, walking, or whatever, and running was out of the question. And so he rolled it rather vigorously, oh, maybe three or four minutes, and said, "Now get up and walk towards the door," which I did, and he said, "Do you feel anything?," and I said "No, my knee does not hurt."

So, it was an immediate sale, no questions asked! I had to have one. You know, the old saying, seeing is believing. If you don't see it you don't believe it. This thing works. And if a person tries it, and gives it a chance -- it doesn't make any difference whether he believes it or not -- if it eases the pain, then he has to believe it. And the darn thing does ease pain.

Superimposed Text:

Arthritic Knee

Pain Relieved with Therapy Plus

It isn't just me.

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Complaint

GEORGE STEVENS: I rolled my elbow, and I was going to get a shot that day -- cortisone shot -- and I rolled it, about five minutes, and it worked. It was great. All the tendinitis and stuff -- it was excellent.

TED TOKUNOW, Businessman: So the next time my ankle became sore or irritated, I went back and bought one and used it myself. And it does work. And I've used it on my elbow, or my neck, or whatever hurts, and it really works.

THOMAS BELL: The main thing was it did work. I came in, and I couldn't lift my arm and, I walked out, and it was fine, and all I cared about was the results.

STEPHANIE OSNOWER: It's a pain reliever, a 100% pain reliever, and it works!
Superimposed Text:
Individual results may vary

MAURICE LINDSAY: I couldn't see how anything as simple as this could relieve any pain. To me, it just didn't make sense. But you know, when the pain goes away, you have to believe it. That's not theory, that's fact. And if you're an engineer or a physicist, that's what you work with. You work with facts, not theory. And the thing works.

DR. RANDOLPH STERN: When Therapy Plus was first presented to me, I reviewed the research, which made sense. It made sense on a scientific and practical level.
Depiction:
Dr. Randolph Stern in front of anatomical charts of human body
Superimposed Text:
Scientific evidence convinced him to use Therapy Plus
 And so it was very easy for me to utilize it in my practice and recommend it to my patients, and they've had great results with it as well.

ROGER BARKLEY: Next, the doctor who tested it on hundreds, the scientific proof and sports pros Nolan Cromwell and Bernard King's story. And now, for those of you who have pain, here is your opportunity to test Therapy Plus for yourself. Even if you've tried everything else, or were told you couldn't be helped, try Therapy Plus at home without risk. Here's how:
Superimposed Text:
Upcoming...Scientific Proof...Nolan Cromwell...Bernard King's story

["COMMERCIAL INSERT"]:
Graphic:
 PAIN
Graphic:
 This is a paid advertisement for Therapy Plus

VOICE-OVER: Imagine what it would feel like to have your pain disappear.
Graphic:
 Word "PAIN" becoming wavy, growing smaller, and fading away
 Therapy Plus is the breakthrough pain-relieving device that is completely safe and easy to use. It is recommended by medical doctors, chiropractors, and other health experts.
Depiction:
Dr. Randolph Stern using Therapy Plus to point to anatomical charts of human body

Complaint

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In most cases, it delivers immediate relief with no effort, and no smelly lotions, no costly drugs.

Depiction:

Various drugs (including bottles typical of both prescription and nonprescription drugs), liniments, and lotions

JAMES L.
McELHANEY,
M.D.:

I've treated more than 250 patients with Therapy Plus. We've had a 95% success rate in relieving their pain, and this has occurred in minutes.

VOICE-OVER:

Don't let its simple appearance deceive you. Its design is unique, and reports from scientists at a major university and research hospital have proven that it does work.

Depiction:

Therapy Plus being rolled on man in glass enclosure in laboratory

Superimposed Text:

Improves Circulation

Relaxes Tense Muscles

Relieves Pain in Areas Applied

Its effectiveness has even been presented at the American Pain Society. Patients who have been suffering with chronic pain for years now relieve pain in minutes, with no effort, no exercise, and no drugs.

MARGARET
TANNEHILL:

Every time I hear something for arthritis, I would use it. Nothing worked; nothing worked until this.

Superimposed Text:

Living a Pain-Free Lifestyle

VOICE-OVER:

Of course, individual results will vary.

Superimposed Text:

Individual results may vary

But this is a tested, proven, safe device that takes no effort to use.

Superimposed Text:

Tested, Proven & Safe

Relieves Pain in Minutes (in most cases)

And for thousands of people, it does deliver relief from many kinds of pain in minutes. In fact, thousands of these therapeutic devices were sold by medical distributors, physicians, and therapists, for up to \$119 each. Right now, through this television offer, you can get Therapy Plus for just \$49.95. Your satisfaction is completely guaranteed for a one-month trial period.

The Therapy Plus pain reliever fits comfortably in your hand. Just roll it gently but rapidly over the area where pain exists, such as arthritic hands, tight shoulder, sore knee, elbows, or the lower back, even muscles stressed during recreation. It works almost anywhere. Most people report their pain disappearing in just minutes.

Graphic:

Phrase "PAIN RELIEF IN MINUTES" fading away

If there really is a way you can safely relieve your pain without drugs, without oils and balms, without frequent and costly doctor visits, and without effort or exercise, any time, any place in just minutes, shouldn't you try it yourself?

You'll be convinced the very first time you use it.

1078

Complaint

STEPHANIE
OSNOWER:
VOICE-OVER:

It works. I know, it looks, it's hard to believe, but it works.

You can't get a guarantee from your hospital or clinic, but you can with Therapy Plus. We give you a full thirty-day guarantee. Pick up the phone right now and order. And you'll also receive this instructional video tape showing exactly how to use Therapy Plus most effectively.

In addition, you'll receive this informative audio cassette: "Secrets of a Pain-Free Lifestyle," which also tells the correct use of the roller, plus gives valuable information on health, energy, and pain research. These bonus gifts are yours to keep free, even if you choose to return Therapy Plus within thirty days for a refund.

You receive Therapy Plus, the Pain Reliever, a \$119 value. The how-to video tape, and the remarkable "Secrets" audio tape, all for just \$49.95 when you call now.

You take no risk; you try it at our risk. You simply have nothing to lose but your unwanted pain. Call now.

Screen Text:

Therapy Plus

The Pain Reliever

\$119 Value

Give the Gift of Pain Relief

1-800-767-9300 OR send Check or

Money Order to Therapy Plus,

18000 Studebaker Rd. #275,

Cerritos, CA 90701

Now only \$49.95 Plus \$5.95 S&H

CA residents add sales tax

Mastercard/Visa

30-Day Money Back Guarantee

[END OF COMMERCIAL INSERT]

ROGER BARKLEY:

With me in the studio is Dr. James McElhaney, who's the medical director for Therapy Plus. Doctor, you've treated a lot of pain sufferers with Therapy Plus. Can you tell us what kind of results you've seen?

JAMES L.
McELHANEY,
M.D.:

I've treated over 250 patients. 95% have experienced relief within minutes. It's the greatest advance in the treatment of pain that I've seen in all of my medical years, and for my patients, it's a godsend.

ROGER BARKLEY:

How does this device work?

JAMES L.
McELHANEY,
M.D.:

At first we didn't know. But research was then done at a leading southern California university and a leading hospital research center.

Depiction:

Woman under metal cap with electrodes inside apparatus in laboratory

The first study showed by objective criteria that the roller relaxes tense muscles and muscles in spasm.

Depiction:

Medical monitoring device in process of collecting and recording data

Complaint

116 F.T.C.

It also improves circulation in the area where it is rolled. And it brings the sympathetic nerves to a high state of arousal. These effects are definitely physiology and not psychology.

Superimposed Text:

Effects are physiological

Depiction:

Woman under metal cap with electrodes inside apparatus in laboratory

The results of this study were presented at the Eighth Annual Scientific Meeting of the American Pain Society. The second study is now being reviewed and accepted for publication in a scientific journal.

ROGER BARKLEY:

So the medical community must be very excited about this.

JAMES L.

Oh yes. Researchers, too -- pain researchers. We think this is a major breakthrough in the treatment of pain.

McELHANEY,

M.D.:

ROGER BARKLEY:

Now, why did you decide to use Therapy Plus in your medical practice?

JAMES L.

The principal reason was that it did not require drugs. Other reasons were it's economical, it can be used at home, saving trips to the doctor's office. It's not electric, and you can take it with you anywhere.

McELHANEY,

M.D.:

ROGER BARKLEY:

How does this compare with other muscular pain relievers?

JAMES L.

Compared to analgesics, liniments, physical therapy, or oral medications there's just no comparison. This works as effective or more effectively than any of those products.

McELHANEY,

M.D.:

Superimposed Text:

Individual results may vary

ROGER BARKLEY:

Tell me, when you first saw this, did you believe it would work?

JAMES L.

I was skeptical, very skeptical. But when I started using it on my patients and saw what a great success. I became a true believer.

McELHANEY,

M.D.:

ROGER BARKLEY:

We asked people about their first impression with Therapy Plus. They were skeptical, too.

TED TOKUNOW:

Well when I first heard about it, it sounded too good to be true. It was kind of like your magic potions and everything else. It didn't sound like it would do all the things it would claim to do, but for the aches that I've had -- it's worked.

MARLENE

I looked at it and I thought: That is the goofiest looking thing I have ever seen.

THORSON,

Businesswoman:

JUDY

I figured it was just a joke; I really did. I didn't know what to expect.

HERRMANN,

I never saw anything like it. I thought at first it was a curling iron.

Musician:

So, yeah, I was extremely curious on what he was doing. But it didn't hurt, and it felt kind of strange, and it really did take the pain away.

ROGER BARKLEY:

Sports can also be associated with pain. Injury or muscle problems can keep you out of the game. Can there be anybody else who knows as much about pain as an NFL football player? Nolan Cromwell spent eleven years with the Los Angeles Rams, and is a four-time all-pro safety.

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Complaint

NOLAN
CROMWELL:

The first time I saw the roller, I thought it was a joke. You know, here they're going to take something that you just roll lightly on the skin, and reduce the pain anywhere on your body. But after using it for the first time and finding out that it does work and the simplicity that is there -- it goes in your pocket; you carry it wherever you want to go -- and it works. I was totally surprised that it did relieve the pains actually on all parts of my body.

Superimposed Text:

Therapy Plus replaced expensive physiotherapy treatments

BRIAN LAKE,
Lifetime Member,
PGA:

The first time that I was introduced to the roller was on a golf cruise we went to in Florida, and on the morning of our arrival I woke up with bursitis in my right elbow, and here we were planning to play golf for ten days in a row, and I had bursitis in my right elbow where I could hardly lift a coffee cup. One of our friends introduced us to the roller -- they had one with them on the cruise -- and even though I was skeptical to begin with in what it might do I tried it, and it worked and it saved our vacation.

ROGER BARKLEY:

Here's one of the hundreds of thank-you letters from satisfied users. This one's from Bernard King of Washington Bullets fame.

JAMES L.
McELHANEY,
M.D.:

Last season Bernard King called us in panic. He'd lost his luggage during the season. He knew he could replace the luggage but he couldn't replace Therapy Plus, so we air-expressed him one so he'd have it for the next game.

Depiction (text of letter):

"I've used it on pain or stiffness from playing professional basketball . . . It has been a tremendous aid bringing nothing but positive results. -- Bernard King"

MARLENE
THORSON:

It's there, it's handy. You can carry it in your golf bag, or you carry it in your tennis satchel or whatever. It is just absolutely the greatest thing that was ever invented. And bless whoever it was.

JOHN SHUKI,
Head Golf Pro:

Golfers have the pain in the, the shoulder pain, especially the back pain, and you go to chiropractors and stuff like that, and this right here, when they show how to use, and it doesn't take long to show how to use, they use it and come back and say it's remarkable how. They can't believe it.

BRIAN LAKE:

It was really, really an amazing thing that happened to me, to have this work.

ROGER BARKLEY:

Next we'll hear from a couple who had whiplash, a doctor who has run more than eighty marathons, and a chiropractor who believes that Therapy Plus will be the holistic pain treatment of the future.

Superimposed Text:

Upcoming...Treating Whiplash...

A Marathon Doctor... A Chiropractor's View

MARGARET
TANNEHILL:

For every one of you that has arthritis: believe me, purchase this. It costs pennies compared to what your prescription costs. Two prescriptions and this is paid for. And I'll guarantee you it will work. It worked on me.

Superimposed Text:

Individual results may vary

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Even though my husband didn't believe it, it worked. And it worked the first night. I slept the first night and only did it five minutes on each hand.

MAURICE LINDSAY: With the guarantee and the warranty like they have, how could you lose anything? There's only one thing you can lose, and that's pain. All you have to do is try it.

Depiction (text of letter):
"I have used it before my concerts very effectively. Many thanks. - Roger Williams, Pianist"

["COMMERCIAL INSERT"]:
Graphic:
This is a paid advertisement for Therapy Plus
Graphic:
Word "PAIN" becoming wavy, growing smaller, and fading away

VOICE-OVER: Imagine what it would feel like to have your pain disappear. Therapy Plus is the breakthrough pain-relieving device that is completely safe and easy to use. It is recommended by medical doctors, chiropractors, and other health experts.

Depiction:
Dr. Randolph Stern using Therapy Plus to point to anatomical chart of human body

In most cases, it delivers immediate relief with no effort, and no smelly lotions, no costly drugs.

Depiction:
Various drugs (including bottles typical of both prescription and nonprescription drugs), liniments, and lotions

JAMES L. McELHANEY, M.D.: I've treated more than 250 patients with Therapy Plus. We've had a 95% success rate in relieving their pain, and this has occurred in minutes.

VOICE-OVER: Don't let its simple appearance deceive you. Its design is unique.

Depiction:
Therapy Plus being rolled on man in glass enclosure in laboratory

And reports from scientists at a major university and research hospital have proven that it does work. Its effectiveness has even been presented at the American Pain Society. Patients who have been suffering with chronic pain for years now relieve pain in minutes, with no effort, no exercise, and no drugs.

MARGARET TANNEHILL: Every time I hear something for arthritis, I would use it. Nothing worked; nothing worked until this.

Superimposed Text:
Living a Pain-Free Lifestyle

Superimposed Text:
Individual Results may vary

VOICE-OVER: Of course, individual results will vary, but this is a tested, proven, safe device that takes no effort to use.

Superimposed Text:
Tested, Proven & Safe; Relieves Pain in Minutes (in most cases)

And for thousands of people, it does deliver relief from many kinds of pain in minutes. In fact, thousands of these therapeutic devices were sold by medical distributors, physicians, and therapists, for up

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Complaint

to \$119 each. Right now, through this television offer, you can get Therapy Plus for just \$49.95. Your satisfaction is completely guaranteed for a one-month trial period.

The Therapy Plus pain reliever fits comfortably in your hand. Just roll it gently but rapidly over the area where pain exists, such as arthritic hands, a tight shoulder, sore knees, elbows, or the lower back, even muscles stressed during recreation. It works almost anywhere. Most people report their pain disappearing in just minutes.

If there really is a way you can safely relieve your pain without drugs, without oils and balms, without frequent and costly doctor visits, and without effort or exercise, any time, any place in just minutes, shouldn't you try it yourself?

You'll be convinced the very first time you use it.

It works. I know it's hard to believe, but it works.

STEPHANIE
OSNOWER:
VOICE-OVER:

You can't get a guarantee from your hospital or clinic, but you can with Therapy Plus. We give you a full thirty-day guarantee. Pick up the phone right now and order. And you'll also receive this instructional video tape, showing exactly how to use Therapy Plus most effectively.

In addition, you'll receive this informative audio cassette: "Secrets of a Pain-Free Lifestyle," which also tells the correct use of the roller, plus gives valuable information on health, energy, and pain research. These bonus gifts are yours to keep free, even if you choose to return Therapy Plus within thirty days for a refund.

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You take no risk; you try it at our risk. You simply have nothing to lose but your unwanted pain. Call now.

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\$119 Value

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CA residents add sales tax

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30-Day Money Back Guarantee

Graphic:

FREEDOM FROM PAIN

VOICE-OVER:

Freedom from pain is brought to you by Therapy Plus, the pain reliever of the future.

Complaint

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[END OF "COMMERCIAL INSERT"]

- ROGER BARKLEY: Alonzo Monk is an eighty-four time marathon runner. As a doctor, he has selected Therapy Plus as his method of self-therapy.
- ALONZO MONK, M.D., Obstetrician and Gynecologist: The perception of the decrease in the spasm and discomfort is within one to two minutes of starting to use the roller. And it's almost immediate.
- DR. RANDOLPH STERN: I do get the maximum benefit from it if I use it for at least five minutes. And so that's been my habit, and it works for me all the time so I haven't altered the regimen in any way.
- It's just the way of the future. People are becoming far more aware of the need, the necessity to take the responsibility for their own health.
- Superimposed Text:*
Sees Therapy Plus as a holistic pain treatment
- ROGER BARKLEY: Steve and Debbie Hale were diagnosed as having whiplash from a car accident. When it was time for treatment, their doctor recommended Therapy Plus.
- STEVE AND DEBBIE HALE
Landscape/Sales Representative:
- DEBBIE HALE: And when I first saw it, my immediate reaction was "what's this thing going to do for me. I don't understand how this is going to work. If this is that simple and that easy, why didn't somebody come up with it a long time ago."
- And so he showed me how to use it, then he gave me a tape that explained how the roller was used, sent me home with it, and my husband and I helped each other out. We rolled each others backs and necks. And we found we could do it in the evening before we went to bed, anytime during the day.
- Superimposed Text:*
Successfully used Therapy Plus to treat whiplash
- STEVE HALE: It felt like you'd been massaged. It was kind of nice to have something that in five minutes you could feel better, with some relief.
- Superimposed Text:*
Successfully used Therapy Plus to treat whiplash
- DEBBIE HALE: It saves you money, it saves you time. And who doesn't need to save money and time?
- Superimposed Text:*
Successfully used Therapy Plus to treat whiplash
- MARGARET TANNEHILL: The reason I like this is: I can play golf, I can knit, I can do anything that I did when I was twenty, thirty, forty, fifty, sixty-five -- I could do things. I love that. I'm living a normal life with my hands.
- I know I still have rheumatoid arthritis -- I guess there's no cure for it. But I don't know that. I mean, they're fine, they're just fine.
- BRIAN LAKE: From our experience, anyone would benefit from having a Therapy Plus roller.

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ROGER BARKLEY: If you want to have freedom from pain, now is your opportunity to test this remarkable product for yourself, at home, without risk. We guarantee that it will relieve your pain or you will receive a full refund. Here's how to order your very own Therapy Plus.

["COMMERCIAL
INSERT"]:

Graphic:

Word "PAIN" becoming wavy, growing smaller, and fading away

Graphic:

This is a paid advertisement for Therapy Plus

VOICE-OVER: Yes, it's really true. There is a new breakthrough in pain relief, and it works without drugs, in minutes. It's recommended by doctors, and proven to work in scientific tests.

Depiction:

Dr. Randolph Stern using Therapy Plus to point to anatomical chart of human body.

It is Therapy Plus. If you can safely relieve your pain without effort or exercise, any time, any place, in just minutes, shouldn't you try it yourself? Use it at home without risk for thirty days. You must be completely satisfied, or you'll get an instant refund. Pick up the phone right now and order. And you'll also receive this instructional video tape, showing exactly how to use Therapy Plus.

In addition, you'll receive this informative audio cassette: "Secrets of a Pain-Free Lifestyle." You receive Therapy Plus the Pain-Reliever, a \$119 value, the how-to video tape, and the remarkable "Secrets" audio tape. All for just \$49.95 when you call now.

You take no risk; you try it at our risk. You simply have nothing to lose but your unwanted pain. Call now.

Screen Text:

Therapy Plus

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Give the Gift of Pain Relief

1-800-767-9300 Or send Check or

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18000 Studebaker Rd. #275

Cerritos, CA 90701

Now only \$49.95 Plus \$5.95 S & H

CA residents add sales tax

Mastercard/Visa

30-Day Money Back Guarantee

[END OF "COMMERCIAL INSERT"]

DEBBIE HALE:

I think that the biggest drawback to this device is going to be that people aren't really going to believe that it does what it does. And I'm here to tell you it does do it.

Go out and buy it. It's worth the money, it's worth the time. It's an investment for the future, especially if you are involved with pain. As my husband said, it's definitely worth it.

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STEPHANIE
OSNOWER:

This is like a magic wand. That I can go like this when my thumb gets real bad and if you've had experience with arthritis it doesn't let you know when it's going to decide to flare up it just flares up. But to be able to pick up the roller and go like this a couple times a day and then suddenly the swelling goes down and the thumb moves -- it's like a magic wand, it really is.

*Superimposed Text:**Give the Gift of Pain Relief 1-800-767-9300*

[CREDITS]:

Executive Producer
GISELA E. FLICK

Producer/Director
RODNEY H. BUCHSER

Associate Producer/Writer
LLOYD RICHMOND

Production Facilities
FWS/IMPACT Video Services
Santa Monica, California

Therapy Plus
is a product of
NUMEX Corporation,
a publicly traded company

Because of their strong belief
In Therapy Plus, Roger Barkley,
James McElhaney, and Nolan
Cromwell are shareholders
of NUMEX Corporation
Copyright 1991
NUMEX Corporation

[END OF CREDITS]

VOICE-OVER:

Freedom From Pain is brought to you by Therapy Plus, the pain-reliever of the future.

*Graphic:**FREEDOM FROM PAIN**Graphic:**This is a paid commercial program for Therapy Plus*

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 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 violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 comment filed thereafter by an interested party 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 Numex Corporation is a corporation organized, existing and doing business under and by the virtue of the laws of the State of Delaware, with its office and principal place of business located at 12604 Hiddencreek Way, Suite C, Cerritos, California.

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

I.

It is ordered, That, respondent Numex Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Therapy Plus or any other device, as "device" is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, in any manner, directly or by implication, the degree to which scientific proof demonstrates that any such device is effective in reducing, relieving, or eliminating pain; or

B. Misrepresenting, in any manner, directly or by implication, the degree to which any such device is a significant medical breakthrough or a significant scientific advance; or

C. Misrepresenting, in any manner, directly or by implication, the degree to which any such device is used, recommended, or accepted by the relevant medical or scientific community as effective in reducing, relieving, or eliminating pain.

II.

It is further ordered, That, respondent Numex Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any device, as "device" is defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

A. The efficacy or relative efficacy of the device in reducing, relieving, or eliminating pain from any source; or

B. The efficacy or relative efficacy of the device in reducing, relieving, or eliminating pain or other symptoms of any musculo-skeletal disease or disorder, such as arthritis, tendinitis, and bursitis, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean adequate and well-controlled clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing.

Provided that, for any representation that any device is effective for

- 1) The temporary relief of minor aches and pains due to fatigue and overexertion, or
- 2) Easing and relaxing of tired muscles, or
- 3) The temporary increase of local blood circulation in the area where applied,

"competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That respondent Numex Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the health or medical benefits of any such product or service unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV.

It is further ordered, That, respondent Numex Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

V.

It is further ordered, That, respondent Numex Corporation, a corporation, its successors and assigns, and its officers agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from repre-

senting, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of such product or service represents the typical or ordinary experience of members of the public who use such product or service, unless respondent, at the time of making such representation, possesses and relies upon competent and reliable evidence that substantiates the representation. For purposes of this provision, if such evidence consists of any test, analysis, research, study, survey or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

VI.

It is further ordered, That, respondent Numex Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, where one exists, between an endorser of any such product or service and respondent or any other individual or entity manufacturing, advertising, promoting, offering for sale, selling, or distributing such product or services. For purposes of this order, a "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

VII.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondent Numex Corporation, a corporation, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII.

It is further ordered, That, for a period of ten (10) years from the date of entry of this order, respondent Numex Corporation shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

IX.

It is further ordered, That respondent Numex Corporation shall:

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

B. For a period of five (5) years from the date of entry of this order, provide a copy of this order to each of its principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with it or any subsidiary, successor, or assign, within three (3) business days after the person assumes his or her position.

X.

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

Complaint

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IN THE MATTER OF

GISELA E. FLICK

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

Docket C-3464. Complaint, Oct. 7, 1993--Decision, Oct. 7, 1993

This consent order prohibits, among other things, the former Executive Vice President of Numex, a California-based corporation that advertised and promoted "Therapy Plus," from misrepresenting: the efficacy of certain devices; the degree to which scientific proof demonstrates that any such device is effective in reducing, relieving, or eliminating pain; the degree to which such a device is a significant medical breakthrough; or the degree to which the device is used, recommended, or accepted by the relevant medical or scientific community as effective in reducing, relieving or eliminating pain. This consent order also requires the respondent to possess competent and reliable scientific evidence to substantiate future health and pain-relief claims. In addition, the order prohibits the respondent from misrepresenting the endorsement for any product or service or the connection between the endorser and any individual or company marketing the product or service.

Appearances

For the Commission: *Beth M. Grossman* and *Lesley Anne Fair*.
For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gisela E. Flick, individually and as a former director and officer of Numex Corporation, hereinafter sometimes referred to as 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 Gisela E. Flick is or was at relevant times an officer and director of Numex Corporation, and a