

IN THE MATTER OF

SYNCHRONAL CORPORATION, ET AL.

Docket 9251. Interlocutory Order, Oct. 8, 1993

ORDER AMENDING COMPLAINT

It is hereby ordered, That the September 9, 1993, Order Amending Complaint is superseded by the issuance of this order.

Pursuant to the Commission's Order dated August 6, 1993, and complaint counsel's subsequent Motion to Amend Complaint,

It is further ordered, That the amended complaint attached hereto should issue.

It is further ordered, That respondent shall answer the amended complaint within thirty days of service on him.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; and Ana Blau a/k/a Anushka, and Steven Victor, M.D., individually, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Synchronal Corporation is a Delaware corporation, with its offices and principal place of business at 1035 Camphill Road, Fort Washington, Pennsylvania. Synchronal produces, distributes, and provides various services for numerous program-length television advertisements, or “infomercials,” on its own behalf or for third-party sellers of products and services. These infomercials include “Cellulite Free: Straight Talk with Erin Gray” for the Anushka Bio-Response Body Contouring Program (“the Anushka products”), a purported cellulite treatment; and “Can You Beat Baldness?” for Omexin, a purported treatment for hair loss. Synchronal has also sold various products through telephone solicitations, including Chae Basics, a purported skin treatment. Synchronal Corporation is a wholly-owned subsidiary of Regal Group, Inc.

Respondent Synchronal Group, Inc. (“Synchronal Group”), is a Delaware corporation, with its offices and principal place of business at 1035 Camphill Road, Fort Washington, Pennsylvania. Synchronal Group is now known as Regal Group, Inc.

Respondent Smoothline Corporation is a Delaware corporation, with its offices and principal place of business at 1035 Camphill Road, Fort Washington, Pennsylvania. It has advertised, offered for sale, and sold the Anushka products.

Respondent Omexin Corporation is a Delaware corporation, with its offices and principal place of business at 1035 Camphill Road, Fort Washington, Pennsylvania. It has advertised, offered for sale, and sold Omexin.

Respondent Ira Smolev (“Smolev”) is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of Synchronal Corporation and Synchronal Group. His home address is 120 Meadow Lane, Southampton, New York.

Respondent Richard E. Kaylor (“Kaylor”) is or was at relevant times herein an officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of Synchronal Corpo-

ration, Synchronal Group, Smoothline Corporation, and Omexin Corporation. His home address is 2 Woodside Lane, Rye, New York.

Respondent Thomas L. Fenton ("Fenton") is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group. Individually or in concert with others, he has formulated, directed, and controlled the acts and practices of Synchronal Corporation and Synchronal Group. His home address is 160 East 38th Street, New York, New York.

Respondent Ana Blau a/k/a Anushka ("Blau") is or was at relevant times herein the founder and co-owner of the Anushka Institute. Blau's business address is 241 East 60th Street, New York, New York. Blau aided in the promotion of the Anushka products by providing an expert endorsement of the product on the "Cellulite Free: Straight Talk with Erin Gray" infomercial. In return for her role in marketing the Anushka products, Blau has received remuneration from the manufacturer and/or distributor of the product.

Respondent Steven Victor, M.D. ("Victor") is or was at relevant times herein a medical doctor licensed to practice by the State of New York, with a specialty in dermatology. Victor's business address is 30 East 76th Street, New York, New York. Victor aided in the promotion of Omexin by providing an expert endorsement of the product on the "Can You Beat Baldness?" infomercial. In return for his role in marketing Omexin, Victor has received remuneration from the manufacturer and/or distributor of the product.

The aforementioned respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed the Anushka products, Omexin, and Chae Basics. These products are foods, cosmetics, and/or drugs, as the terms "food," "cosmetic" and "drug" are defined in Sections 5, 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 45, 52 and 55.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is

defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

The Anushka Products

PAR. 4. Respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have disseminated or have caused to be disseminated advertisements and promotional materials for the Anushka products, including but not necessarily limited to the attached Exhibit A, a transcription of the informational entitled "Cellulite Free: Straight Talk with Erin Gray." The aforesaid advertisement contains the following statements:

1. Narrator: "The skin is massaged with our body contouring gel which has ingredients like our specially processed French seaweed formula with its unique beneficial properties that really penetrates the skin into the cellulite layer. You can actually feel the gel working as it penetrates into the cellulite. And in days our clients are on their way to being cellulite-free, even after years of living with cellulite." [Exhibit A, p. 8]

2. Vicki: "After the first treatment I was hooked. I really saw a difference immediately. So I did exactly what Anushka told me to do and the cellulite came off rapidly. Each week my hips and thighs looked better. Within six weeks it was all gone...You know, I should also mention that I lost nine pounds and a couple of inches off my hips and thighs." [Exhibit A, p. 10]

3. Gray: "Many doctors and others in the medical profession are enthusiastic about the Anushka program. . . ." [Exhibit A, p. 13]

4. Woman: "Within four weeks I lost inches off my thighs and my thighs looked smoother and firmer. Within six weeks the cellulite was gone." [Exhibit A, p. 30]

5. Woman: "Well, within three months I had not only lost all of my cellulite but I also lost about four inches from my hips and thighs. I lost fifteen pounds and a full dress size." [Exhibit A, p. 29]

6. Announcer: "Now, here's how you can order the really proven way to get rid of cellulite. Just pick up your phone, dial this number and order Anushka's five-and-a-half-minute bio-response body contouring program right now. Imagine opening your package from Anushka and realizing you are on your way to ridding your body of ugly cellulite. In only minutes a day a few days a week. . . . After the first treatment you'll begin to see a difference. You'll be well on your way to a cellulite-free body." [Exhibit A, pp. 18-19, 30-31]

Announcer: "Step one, you massage the unique body contour and seaweed gel which penetrates the open pores of the skin to start attacking those ugly cellulite pockets from the very first treatment. In minutes you'll feel the seaweed

at work. The second step is to take cellulase enzymes to help your body metabolize carbohydrates and help you with your body contouring program. The third step is to apply your Anushka body firming lotion to firm the skin with its deep penetrating action. . . . Call now so you can start the Anushka body contouring program working for you. Get rid of those ugly cellulite pockets once and for all." [Exhibit A, pp. 19-20, 31-32]

7. Marie: "I was very impressed by Anushka's clients because they verified the claims. Also the extensive client charts that showed the proof with numbers, with statistics. And the experts, medical and otherwise that backed up what she was saying. And one thing that is very surprising and I was very, very impressed by it is that one of the key ingredients in her treatment is something as simple as seaweed."

Gray: "Well, tell us, Anushka, is this ordinary seaweed?"

Anushka: "Absolutely not. We use a very special seaweed. And one of the people we turned to for this seaweed is a leading researcher in marine biology. And he is here with us today to help explain how seaweed works to help get rid of cellulite. . . ."

Gray: "Now tell us, how is it that seaweed effects cellulite?"

Fryda: "Well, I think this diagram will help make it clear. These are cellulite cells with their trapped toxins surrounded by tough connective tissue. Now with cellulite cells the hardened connective tissue won't let these nutrients get to the cells so the trapped toxins cannot be neutralized and taken away. . . . There are other effective ingredients in Anushka's anti-cellulite gel. But seaweed is a key to its success. It's one reason why it's the most powerful anti-cellulite program ever developed." [Exhibit A, pp. 25-27]

8. Anushka: "Well, let me tell you that in the course of my research I finally found the combination which worked to make my cellulite disappear. And I was the happiest woman on earth. Needless to say. So that is what made me decide to start with the Anushka Institute so other women could benefit from our discovery." [Exhibit A, p. 6]

9. Anushka: "Many of our clients wanted to share the treatments with friends who lived outside New York . . . They urged us to develop a program that could be used at home. We insisted it be both easy to use and at the same time completely effective so their friends could get the same results." [Exhibit A, p. 9]

10. Anushka: "I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied." [Exhibit A, pp. 21, 32-33]

11. Anushka: "And remember you did not do anything to make cellulite appear, but now you can make it disappear." [Exhibit A p. 21]

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph

four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have represented, directly or by implication, that:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets contain ingredients that substantially reduce or eliminate cellulite from the body.

B. Users of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will achieve a visible reduction in cellulite after a single or a few treatments.

C. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will cause a substantial reduction in the size of the hips and thighs.

D. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will cause the loss of a substantial amount of weight.

E. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have substantially reduced or eliminated cellulite from the body.

PAR. 6. In truth and in fact:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets do not contain ingredients that substantially reduce or eliminate cellulite from the body.

B. Users of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not achieve a visible reduction in cellulite after a single or a few treatments.

C. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not cause a substantial reduction in the size of the hips and thighs.

D. Use of the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream and Cellulean tablets will not cause the loss of a substantial amount of weight.

E. For thousands of women, Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have not substantially reduced or eliminated cellulite from the body.

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

PAR. 7. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, they possessed and relied upon a reasonable basis for such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor did not possess and rely upon a reasonable basis for such representations. Therefore, respondents' representation as set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Respondent Blau has made statements as an expert endorser in advertisements and promotional materials for the Anushka products, including but not necessarily limited to the attached Exhibit A. These statements include the following:

1. Anushka: "Well, let me tell you that in the course of my research I finally found the combination which worked to make my cellulite disappear. And I was the happiest woman on earth. Needless to say. So that is what made me decide to start with the Anushka Institute so other women could benefit from our discovery." [Exhibit A, p. 6]

2. Anushka: "Many of our clients wanted to share the treatments with friends who lived outside New York . . . They urged us to develop a program that could be used at home. We insisted it be both easy to use and at the same time completely effective so their friends could get the same results." [Exhibit A, p. 9]

3. Anushka: "I am so certain that my anti-cellulite program will work for you as well as it has for thousands of my clients that I will return to you every penny you spend for the program if you're not completely satisfied." [Exhibit A, pp. 21, 32-33]

4. Anushka: "And remember you did not do anything to make cellulite appear, but now you can make it disappear." [Exhibit A, p. 21]

5. Anushka: "We use a very special seaweed. And one of the people we turned to for this seaweed is a leading researcher in marine biology. And he is here with us today to help explain how seaweed works to help get rid of cellulite." [Exhibit A, p. 26]

6. Anushka: "Remember, it's not your fault you have cellulite. Just say to yourself, I don't have to put up with it anymore because now I know what to do. I did it. You can do it too." [Exhibit A, p. 34]

PAR. 10. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nine, including but not necessarily limited to the advertisement attached as Exhibit A, respondent Blau has represented, directly or by implication, that:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets contain ingredients that substantially reduce or eliminate cellulite from the body.

B. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have substantially reduced or eliminated cellulite from the body.

PAR. 11. In truth and in fact:

A. The Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets do not contain ingredients that substantially reduce or eliminate cellulite from the body.

B. For thousands of women, the Anushka Bio-Response Body Contouring Gel, Firming Lotion, Multi-Revitalizing Cream, and Cellulean tablets have not substantially reduced or eliminated cellulite from the body.

Therefore, the representations set forth in paragraph ten were, and are, false and misleading, and respondent Blau knew or should have known that said representations were, and are, false and misleading.

PAR. 12. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nine, including but not necessarily limited to the advertisement attached as Exhibit A, respondent Blau has represented, directly or by implication, that at the time she made the representations set forth in paragraph ten, she possessed and relied upon a reasonable basis for such representations, consisting of an actual exercise of her represented expertise in cellulite reduction, in the form of an examination or testing of the Anushka products at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement.

PAR. 13. In truth and in fact, at the time she made the representations set forth in paragraph ten, respondent Blau did not possess and rely upon a reasonable basis for such representations. Therefore, respondent Blau's representation as set forth in paragraph twelve was, and is, false and misleading.

Omexin

PAR. 14. Respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have disseminated or have caused to be disseminated advertisements and promotional materials for Omexin, including but not necessarily limited to the attached Exhibit B, a transcription of the infomercial entitled "Can You Beat Baldness?". The aforesaid advertisement contains the following statements and depictions:

1. Announcer: "The following program will give you news of a product unlike anything else available anywhere for stopping hair loss and actually reversing balding by growing new hair." [Exhibit B, p. 2]

2. John Hylan: "Well, our research is still going on, but, it has gone far enough to show that Omexin works. We know that Omexin really does stop hair loss and does grow hair back." [Exhibit B, p. 7]

3. Announcer: "Omexin has been scrupulously tested by dermatologists, and clinicians, and by thousands of grateful individuals. The test results and the personal stories speak for themselves." [Exhibit B, p. 14]

4. Announcer: "The answer couldn't have been simpler. The Omexin System is based on the Omexin Active Treatment, a fine white cream which you simply massage into the affected areas daily." [Exhibit B, p. 15]

5. Announcer: "Omexin works for the vast majority of people." [Exhibit B, p. 16]

6. Campanella: "It reportedly has stopped the balding process in a high percentage of test subjects and even re-grown healthy new hair for a large number of men and women of all ages." [Exhibit B, p. 17]

7. Campanella: "What are your initial impressions of Omexin?"

Dr. Victor: "[In] Omexin, we have for men and women a new safe product that they can apply that will stop the hair from falling out, and in a fair number of patients, probably up to 70%, will start growing some new hair." [Exhibit B, p. 9]

8. Campanella: "Dr. Wexler, what about your research?"

Dr. Wexler: "We have patients in both a double-blind study and using what we consider to be a very active ingredient, and what we've seen is that patients are ceasing to lose their hair very quickly within starting Omexin and then within a short time after, they start seeing new hair appear. It's not just a fuzz, we're seeing actual pigmented terminal hair, which is very exciting for the patient as well as the doctor." [Exhibit B, p. 10]

9. Hylan: "Now, we don't know if that's the reason Omexin grows hair, but we sure do know that it does."

Campanella: "And can you prove that?"

Hylan: "Absolutely! To prove that Omexin works, we've done thorough, extensive testing using medically sound methods and applying the highest scientific standards." [Exhibit B, p. 7]

PAR. 15. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that:

A. Omexin contains an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin contains an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

E. Omexin has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

PAR. 16. In truth and in fact:

A. Omexin does not contain an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin does not contain an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin does not contain an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin does not contain an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost.

E. Omexin has not successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

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

PAR. 17. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph

fourteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented directly or by implication, that at the time they made the representations set forth in paragraph fifteen, they possessed and relied upon a reasonable basis for such representations.

PAR. 18. In truth and in fact, at the time they made the representations set forth in paragraph fifteen, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton did not possess and rely upon a reasonable basis for such representations. Therefore, respondents' representation as set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. Respondent Victor has made statements as an expert endorser in advertisements and promotional materials for Omexin, including but not necessarily limited to the attached Exhibit B. These statements include the following:

1. Dr. Victor: "Then, on the other side of the coin, we have very controlled scientific studies. We have 2 groups. We actually take the men who are bald. We tattoo their scalp and we have them apply the Omexin in the balding area every day, twice a day. Now, every month they come back and we count the number of hairs that grow in the area where we tattooed their scalp . . . So far the studies have shown that these men are growing new hair." [Exhibit B, pp. 8-9]

2. Dr. Victor: ". . . basically, the majority of patients get a good result within 3 weeks." [Exhibit B, p. 11]

3. Dr. Victor: "Now, Omexin is a product that can stop hair loss and grow hair for a vast majority of people." [Exhibit B, p. 19]

4. Dr. Victor: "What is particularly good about Omexin, for a man or a woman in their 30's or 20's, with just beginning to thin. If they start using the product religiously, they can stop the hair from falling out. And they can retain the hair they have and remain that way for the rest of their lives." [Exhibit B, p. 20]

5. Dr. Victor: "I think in Omexin, we have for men and women, a new safe product they can apply that will stop the hair from falling out, and in a fair number of patients, probably up to 70%, will start growing some new hair." [Exhibit B, p. 20]

PAR. 20. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph

nineteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondent Victor has represented, directly or by implication, that:

A. Omexin contains an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin contains an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost in a large majority of balding men and women.

PAR. 21. In truth and in fact:

A. Omexin does not contain an ingredient that curtails hair loss for a large majority of balding men and women.

B. Omexin does not contain an ingredient that promotes the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

C. Omexin does not contain an ingredient that has been scientifically proven to curtail hair loss for a large majority of balding men and women.

D. Omexin does not contain an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of balding men and women.

Therefore, the representations set forth in paragraph twenty were, and are, false and misleading, and respondent Victor knew or

should have known that said representations were, and are, false and misleading.

PAR. 22. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph nineteen, including but not necessarily limited to the advertisement attached as Exhibit B, respondent Victor has represented, directly or by implication, that at the time he made the representations set forth in paragraph twenty, he possessed and relied upon a reasonable basis for such representations, consisting of an actual exercise of his represented expertise in the treatment of hair loss, in the form of an examination or testing of Omexin at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement.

PAR. 23. In truth and in fact, at the time he made the representations set forth in paragraph twenty, respondent Victor did not possess and rely upon a reasonable basis for such representations. Therefore, respondent Victor's representation as set forth in paragraph twenty-two was, and is, false and misleading.

Deceptive Format

PAR. 24. Through the advertising and dissemination of "Cellulite Free: Straight Talk with Erin Gray," respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have represented, directly or by implication, that "Cellulite Free: Straight Talk with Erin Gray" is an independent television program and is not paid commercial advertising.

PAR. 25. In truth and in fact, "Cellulite Free: Straight Talk with Erin Gray" is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph twenty-four was, and is, false and misleading.

PAR. 26. Through the advertising and dissemination of "Can You Beat Baldness?" respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton have represented, directly or by implication, that "Can You Beat Bald-

ness?" is an independent television program and is not paid commercial advertising.

PAR. 27. In truth and in fact, "Can You Beat Baldness?" is not an independent television program and is paid commercial advertising. Therefore, the representation set forth in paragraph twenty-six was, and is, false and misleading.

Consumer Testimonials

PAR. 28. Through the advertising and dissemination of "Cellulite Free: Straight Talk with Erin Gray," respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor, in numerous instances have represented, directly or by implication, that testimonials from consumers appearing in advertisements for the Anushka products reflect the typical or ordinary experience of members of the public who have used the products.

PAR. 29. In truth and in fact, in numerous instances, testimonials from consumers appearing in advertisements for the Anushka products do not reflect the typical or ordinary experience of members of the public who have used the products. Therefore, the representation set forth in paragraph twenty-eight was, and is, false and misleading.

PAR. 30. Through the advertising and dissemination of "Can You Beat Baldness?" respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, Kaylor, and Fenton, in numerous instances have represented, directly or by implication, that testimonials from consumers appearing in advertisements for Omexin reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 31. In truth and in fact, in numerous instances, testimonials from consumers appearing in advertisements for Omexin do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph thirty was, and is, false and misleading.

Automatic Shipment and Unordered Merchandise

PAR. 32. In the advertising and sale of the Anushka products, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have in numerous instances shipped without consumers' express consent additional supplies of these products to consumers who ordered an initial supply, and have billed consumers' credit card accounts for these additional shipments without the consumers' knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor did not adequately disclose to those consumers prior to their initial purchase that additional products would be shipped to them and that the consumers would be billed for them. Respondents practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts and practices.

PAR. 33. By and through the acts and practices alleged in paragraph thirty-two, respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, Smolev, and Kaylor have mailed or caused to be mailed supplies of the Anushka products to consumers without the expressed request or consent of the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 34. In the advertising and sale of Omexin, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, and Kaylor have in numerous instances shipped without consumers' express consent additional supplies of these products to consumers who ordered an initial supply, and have billed con-

sumers' credit card accounts for these additional shipments without the consumers' knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, and Kaylor did not adequately disclose to those consumers prior to their initial purchase that additional products would be shipped to them and that the consumers would be billed for them. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts and practices.

PAR. 35. By and through the acts and practices alleged in paragraph thirty-four, respondents Synchronal Corporation, Synchronal Group, Omexin Corporation, Smolev, and Kaylor have mailed or caused to be mailed supplies of Omexin to consumers without the expressed request or consent of the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 36. Respondents Synchronal Corporation, Synchronal Group, Smolev, and Kaylor have promoted, offered for sale, and sold Chae Basics through telephone solicitations of consumers identified from their purchases of other products sold through advertisements produced or disseminated by Synchronal Corporation or Synchronal Group. In numerous instances in the course of these telephone solicitations, respondents' agents have represented, directly or by implication, that consumers would be sent a free supply of Chae Basics.

PAR. 37. In truth and in fact, in numerous instances the supply of Chae Basics sent to consumers as described in paragraph thirty-six was not free, in that consumers' credit card accounts were billed

a charge for the product. Therefore, the representations set forth in paragraph thirty-six were, and are, false and misleading.

PAR. 38: In the solicitation of orders by telephone of Chae Basics, respondents Synchronal Corporation, Synchronal Group, Smolev, and Kaylor have in numerous instances billed the credit card accounts of consumers who agreed to the receipt of a supply of the product that was represented as free, have automatically shipped additional supplies of the product to consumers without their express consent, and have automatically billed consumers' credit card accounts for these latter shipments without the consumers' express knowledge and authorization. Respondents Synchronal Corporation, Synchronal Group, Smolev, and Kaylor as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

PAR. 39. By and through the acts and practices alleged in paragraph thirty-eight, respondents Synchronal Corporation, Synchronal Group, Smolev, and Kaylor have mailed or caused to be mailed supplies of Chae Basics to consumers without the expressed request or consent of the recipient without having attached to the products a clear and conspicuous statement that the recipient may treat the products as a gift and has the right to retain, use, discard, or dispose of them in any manner the recipient sees fit without any obligation to the respondent. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers and constitute unfair and deceptive acts or practices.

PAR. 40. By and through the acts and practices alleged in this complaint, respondents have violated Sections 5(a) and 12 of the Federal Trade Commission Act and the provisions of the Postal Reorganization Act, 39 U.S.C. 3009, by directly or indirectly engaging in unfair or deceptive acts or practices, by disseminating false advertisements in or affecting commerce, and by acting in concert with other, or knowingly and substantially assisting others to employ

the violations set forth above by providing the means and instrumentalities for the commission of such unfair or deceptive acts or practices.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the _____ day of _____, A.D. 19__, at _____ a.m. o'clock is hereby fixed as the time and the Federal Trade Commission Offices, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place the respondent remaining in adjudication (hereinafter "respondent Thomas L. Fenton" or "Thomas L. Fenton")¹ will have the right under said Act to appear and show cause why an order should not be entered requiring him to cease and desist from the violations of law charged in the complaint.

Respondent Thomas L. Fenton is hereby notified that the opportunity is afforded him to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon him. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if respondent Thomas L. Fenton is without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If respondent Thomas L. Fenton elects not to contest these allegations of fact set forth in the complaint, the answer shall consist of a statement that he admits all of the material allegations to be

¹ This matter has been withdrawn from adjudication as to respondents Synchronal Corporation; Synchronal Group, Inc.; Smoothline Corporation; Omexin Corporation; Ira Smolev; Richard E. Kaylor; Ana Blau, a/k/a Anushka; and Steven Victor, M.D. On October 1, 1993, the Commission accorded final approval to a consent order with these respondents. This matter remains in adjudication only as to respondent Thomas L. Fenton.

true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of the right of respondent Thomas L. Fenton to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to respondent Thomas L. Fenton, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission had reason to believe should issue if the facts were found to be as alleged in the original complaint,² and includes provisions which the Commission has reason to believe should issue against respondent Thomas L. Fenton if the facts are found to be as alleged in this amended complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceeding in this matter as to respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., that the order might be inadequate to fully protect the consuming public, the Commission may order such relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships, and corporations, in the form of restitution and refunds for past, present, and future consumers and such other types of relief as are set forth in Section

² In addition, the Commission had reason to believe that, as to respondent Ira Smolev, if the facts were found to be as alleged in the complaint, it would have been appropriate to include in the final order additional provisions that would require respondent Smolev, as a condition of doing business, to obtain a bond in such circumstances and under such conditions as the Commission shall determine.

19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

For the purposes of this order:

1. “*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 by others in the profession to yield accurate and reliable results.

2. “*Shipping*” shall mean sending, or causing to be sent, any product or products by mail, by carrier, or by any other means.

3. “*Continuity program*” shall mean any plan, arrangement, or system by which a consumer is periodically shipped a product or products, and is charged by credit card or otherwise billed for each shipment.

4. “*Expressed consent*” shall mean the affirmative agreement of the consumer to the terms and conditions of a continuity program obtained only after a description of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, have been clearly and prominently provided to the subscriber, and shall not be construed to allow the interpretation of a consumer’s silence as affirmative agreement to the material terms and conditions of any continuity program.

5. “*Subscriber*” shall mean any person who has given his or her expressed consent to receive the benefits of and assume the obligations entailed in any continuity program.

6. “*Video advertisement*” shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I.

It is ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Ana Blau a/k/a Anushka, and Steven Victor, M.D., individually; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The program-length television advertisement for the Anushka Bio-Response Body Contouring Program described and identified in the complaint as "Cellulite Free: Straight Talk with Erin Gray;" or

B. The program-length television advertisement for Omexin described and identified in the complaint as "Can You Beat Baldness?"

II.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Inc., and Smoothline Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation

and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body;
2. Users of such product or service can or will achieve a visible reduction in cellulite after a single or a few treatments;
3. Use of such product or service can or will cause a substantial reduction in the size of the hips and thighs;
4. The use of such product or service can or will cause the loss of a substantial amount of weight; or
5. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

For purposes of this order a "substantially similar cellulite treatment product or service" shall be defined as any product or service that is advertised to treat, reduce, or eliminate cellulite from the body through the application of ingredients to the skin and that contains or purportedly contains seaweed or any extract thereof as an ingredient.

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

1. The use of such product or service can or will reduce or eliminate cellulite from the body;
2. The use of such product or service can or will cause a reduction in the size of the hips or thighs;
3. The use of such product or service can or will enable users to lose weight; or
4. The use of such product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments, unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent Ana Blau a/k/a Anushka and her agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service, as that term is defined in part II.A herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body; or
2. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

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

1. The use of the product or service can or will reduce or eliminate cellulite from the body;
2. The use of the product or service can or will cause a reduction in the size of the hips or thighs;
3. The use of the product or service can or will enable users to lose weight; or
4. The use of the product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments, unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For the purposes of part III of this order, “competent and reliable scientific evidence” shall mean for any expert endorsement an actual exercise of the endorser’s represented expertise in cellulite reduction, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

IV.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal

Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

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

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;
2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women;
3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;
4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or
5. Such product or service has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

For purposes of this order a "substantially similar hair loss treatment product or service" shall be defined as any product or service that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which contains omentum or any extract thereof.

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

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce loss of hair;
2. The use of the product or service can or will promote the growth of hair where hair has already been lost;
3. The product or service is an effective remedy for hair loss in a substantial number of cases; or
4. Any test or study establishes that the product or service relieves, cures, prevents or reverses hair loss, unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, *provided that*, this subpart shall not limit the requirements of part IV.A and B herein.

V.

It is further ordered, That respondent Steven Victor, M.D., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service, as that term is defined in part IV.A herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;
2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a significant number of balding men and women;
3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;
4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or
5. Such product or service has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

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

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce loss of hair;
2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents, or reverses hair loss,

unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For the purposes of part V of this order, "competent and reliable scientific evidence" shall mean for an expert endorsement an actual exercise of the endorser's represented expertise in the treatment of hair loss, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

C. Endorsing, advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, provided that, this subpart shall not limit the requirements of part V.A and B herein.

VI.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation

and Synchronal Group, Inc.; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VII.

It is further ordered, That respondents Ana Blau a/k/a Anushka, and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VIII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership,

corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under part VIII.A herein), unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation, and that respondent Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; and his agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any food, drug or device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless, at the time of making such representation, respondent Thomas L. Fenton possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IX.

It is further ordered, That respondents Ana Blau a/k/a Anushka, and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under part IX.A herein), unless at the time of making such representation respondents possess and rely upon a reasonable basis consisting of competent and reliable evidence that substantiates the representation.

X.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director

of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

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

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

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

XI.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service through a continuity program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing or causing to be sold or distributed any product by means of a continuity program without first obtaining the expressed consent of the consumer. Prior to obtaining the consumer's expressed consent, respondents shall convey to the consumer, in the manner set forth in part XI.B herein, all material terms and conditions of the program, including but not limited to:

1. The fact that periodic shipments of the product will be made without further action by the consumer;
2. A description of each product included in each shipment;
3. The approximate interval between each shipment;
4. A description of the billing procedure to be employed, including the total cost to be charged to the subscriber's credit card, or otherwise billed to the subscriber, for each shipment;
5. The minimum number of purchases required under the program, if any; and

6. A description of the terms and conditions under which and the procedures by which a subscriber may cancel further shipments, as set forth in part XI.D herein.

B. Failing to convey the terms and conditions of the continuity program to the consumer in the following manner:

1. For any solicitation initiated or completed by telephone, the terms and conditions set forth in part XI.A.1-6 herein shall be disclosed during that conversation in clear and understandable language;

2. For any solicitation by a print advertisement or direct mail, the terms and conditions set forth in part XI.A.1-6 herein shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, provided that, if the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon;

3. For any solicitation by a video advertisement, the following information shall be disclosed in a clear and prominent superscript with a simultaneous voice-over recitation of the superscript, during the presentation of ordering instructions for the product:

A. That the products must be purchased through a continuity program and that periodic shipments of the product will be made without further action by the consumer, if such is the case; and

B. The minimum number of purchases required under the continuity program, if any

C. Once the subscriber has been sent an initial shipment of the product pursuant to a continuity program, failing to send to the subscriber, at least twenty (20) days prior to the mailing date of the next shipment a written statement of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, including but not limited to those

described in parts XI.A.1-6 herein. The statement shall be sent by first class mail to each subscriber.

D. Failing to provide in conjunction with each shipment made pursuant to any continuity program a clear and prominent description of the terms and conditions under which and the procedures by which the subscriber may cancel further shipments. Such description shall include either a toll-free "800" telephone number the subscriber may call or a postage-paid mailing the subscriber may return to notify respondents of the subscriber's cancellation of further shipments. *Provided that*, the requirements of this subpart shall not apply to those shipments coming within a minimum purchase requirement to which the subscriber has given expressed consent, except that this subpart shall apply to the last shipment of any minimum purchase requirement.

E. Shipping any product or products to, mailing any bill or dunning communication to, or billing the credit card of any subscriber who, having once subscribed to a continuity program and having fulfilled any minimum purchase requirement to which the subscriber has given expressed consent, notifies respondents by the means described in part XI.D herein, or by any other reasonable means, of the subscriber's cancellation of further shipments.

F. Shipping any products to any consumer who receives the Anushka Bio-Response Body Contouring Program or the Omexin System for Hair pursuant to the terms of any continuity program, without first informing the consumer in writing of the Commission's determination in this case and providing an opportunity to cancel further shipments.

XII.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and

director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Shipping products or causing products to be shipped without the expressed, informed request of the recipient unless such merchandise shall have attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and that the consumer has the right to retain, use, discard, or dispose of it in any manner that he or she sees fit without any obligation whatsoever to the sender;

B. Representing that any person can or will receive a "free sample," "free trial," or other receipt of product at no cost, unless such is the fact.

XIII.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., and respondents' agents, representa-

tives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the fact.

XIV.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; Thomas L. Fenton, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; and Ana Blau a/k/a Anushka, and Dr. Steven Victor, individually, shall, for three (3) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any representation covered by this order; and

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

XV.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation shall:

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

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of respondents' 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 respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

XVI.

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

XVII.

It is further ordered, That respondents Ira Smolev, Richard E. Kaylor, and Thomas L. Fenton shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this part XVII shall not affect any other obligation arising under this order.

XVIII.

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

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, Oct. 18, 1993

ORDER

On September 24, 1993, counsel for Krajenke Buick Sales, Inc. filed "Respondent's Unopposed Motion to Reconsider Decision as to a Certain Out-of-business Dealership Respondent" requesting that the complaint against Krajenke Buick Sales, Inc. be dismissed and that name be removed from the order of February 22, 1989. The assets of Krajenke Buick Sales, Inc. were sold to a corporation owned by another respondent, and the dealership franchise was terminated. The dealership is no longer in business. Complaint counsel do not oppose the motion.

The Commission has considered the motion and determined to grant it. Accordingly,

It is ordered, That that the complaint against Krajenke Buick Sales, Inc. be and hereby is dismissed.

It is further ordered, That the order of February 22, 1989, of the Commission be and hereby is modified to delete the name of Krajenke Buick Sales, Inc.