

IN THE MATTER OF

NUTRI/SYSTEM, INC.

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

Docket C-3474. Complaint, Dec. 22, 1993--Decision, Dec. 22, 1993

This consent order prohibits, among other things, a Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; requires it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; requires it to include, in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary"; requires it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk; requires it to disclose, if it makes price representations, either all mandatory fees or a list of the additional products or services consumers will need to purchase; and requires it to disclose all material connections between its program and any entity that endorses or evaluates it.

Appearances

For the Commission: *Richard Kelly and Matthew Daynard.*

For the respondent: *Judith L. Oldham, Collier, Shannon, Scott & Rill, Washington, D.C. Margaret S. Woodruff, Philadelphia, PA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutri/System, Inc., a corporation ("Nutri/System" or "respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Nutri/System, Inc., is a Pennsylvania corporation, with its office and principal place of business located at 380 Sentry Parkway, Blue Bell, Pennsylvania.

PAR. 2. Respondent advertises, offers for sale, sells, and otherwise promotes throughout the United States weight loss and weight maintenance services, and products, and makes them available to consumers at its numerous "Nutri/System Weight Loss Centers" nationwide. These products include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Through franchised and company-owned centers, respondent is engaged, and has been engaged, in the sale and offering for sale of 1000 to 1500 calorie-a-day weight loss programs to consumers.

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 for the Nutri/System Weight Loss Program, including but not necessarily limited to the attached Exhibits A through V.

PAR. 5. The advertisements referred to in paragraph four, including but not necessarily limited to attached Exhibits A-K, contain the following statements:

A. "With Nutri/System I lost 88 lbs. and maintained it." (Exhibit A)

B. "When I lost 64 lbs. with Nutri/System I started wearing a size 10. Two years later, I still do." (Exhibit B)

C. "With Nutri/System, I permanently lowered my weight 126 lbs." (Exhibit C)

D. "With Nutri/System, I said goodbye to 50 lbs. forever." (Exhibit D)

E. "I lost 110 lbs., and I really feel good about myself. I will stay this way the rest of my life. Thanks to Nutri/System, thanks to everybody who has supported me." (Exhibit E)

F. "FOR THE FIRST TIME IN MY LIFE I WAS ABLE TO LOSE WEIGHT AND KEEP IT OFF. THEY DIDN'T PUT ME ON A DIET, THEY CHANGED MY WAY OF EATING FOR LIFE. NOW I'M 50 POUNDS LIGHTER, AND I FEEL REAL GOOD. NUTRI SYSTEM[.] WE SUCCEED WHERE DIETS FAIL YA." (Exhibit F)

G. "AND I'LL TELL YOU WHAT, TAKE YOUR TEN POUNDS, YOUR TWENTY, YOUR THIRTY, FORTY, FIFTY, WHATEVER IT IS, AND GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. THEY'LL PICK 'EM UP AND CARRY 'EM FOR YA, AND YOU'LL NEVER SEE 'EM AGAIN." (Exhibit G)

H. "THE NUTRI/SYSTEM Program Helps You Succeed! You can succeed on the NUTRI/SYSTEM Weight Loss Program even if diets have failed you in the past - because we know what you need to succeed!...YOU'LL KEEP THE WEIGHT OFF -- FOR GOOD! We'll help you lose weight and keep it off with our Maintenance Program." (Exhibit H)

I. "If you've ever tried to lose weight, you know what it's like to be frustrated and discouraged. Our commitment here at Nutri/System is to help you eliminate these feelings and keep you on the road to successful, permanent weight loss. You're about to see for yourself why we proudly say, 'We Succeed Where Diets Fail You'." (Exhibit I)

J. "Since losing 45 lbs. with Nutri/System, staying thin is as easy as getting thin. At Nutri/System, I learned that being active not only helps you lose weight faster, it helps you keep the weight off. Nutri/ System should know. They've got an activity program designed especially for people who want to lose weight -- permanently." (Exhibit J)

K. "I lost 30 lbs. in 3 months and I feel fabulous. I'm going to stay like this the rest of my life. If there is a way I can help one person or a million of people, I want to tell them try Nutri/System because it does work." (Exhibit K)

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-K, respondent has represented, directly or by implication, that:

A. Nutri/System customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently

B. Nutri/System customers typically are successful in maintaining their weight loss achieved under the Nutri/System diet program.

C. Nutri/System customers typically are successful in reaching their weight loss goals.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-K, respondent has represented, directly or by implication, that at the time it made the representations set forth in para-

graph six, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time respondent made the representations set forth in paragraph six, it did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, respondent's representation as set forth in paragraph seven was and is false and misleading.

PAR. 9. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits L-N and U, contain the following statements:

- A. "Lose All The Weight You Can For Only \$79." (Exhibit L)
- B. Announcer: "Now, lose all the weight you can at Nutri/System for only \$199. Don't wait, call now." (Exhibit M)
- C. "Lose all the weight you can at Nutri/System and pay only \$1 per pound." (Exhibit N)
- D. "3 BIG DAYS...Right now you've got three big days to save big on the best weight loss program around...ONLY \$19.50...½ OFF OUR INTRODUCTORY PROGRAM." (Exhibit U)

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements in the advertisements attached as Exhibits L-N and U, respondent has represented, directly or by implication, that the advertised price is the only cost associated with losing weight on the Nutri/System Weight Loss Program.

PAR. 11. In truth and in fact, the advertised price is not the only cost associated with losing weight on the Nutri/System Weight Loss Program. There are substantial additional mandatory expenses associated with participation in the Nutri/System program that far exceed the advertised price. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. In its advertising and sale of the Nutri/System Weight Loss Program, respondent has represented that the advertised price is the only cost associated with losing weight on the Nutri/System Weight Loss Program. Respondent has failed to disclose adequately to consumers the existence and amount of all mandatory expenses

es associated with participation in the Nutri/System program. This fact would be material to consumers in their purchase decisions regarding the program. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

PAR. 13. In the routine course and conduct of its business, respondent states during initial sales presentations that consumers will typically reach their desired weight loss goal within the time frame set by respondent's "Nutri/Data" computer program .

PAR. 14. Through the use of the statements described in paragraph thirteen, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph thirteen, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 15. In truth and in fact, at the time respondent made the representation set forth in paragraph thirteen, it did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits O and P, contain the following statements:

A. "Now, results from a national survey of 2,000 dieters proves Nutri/System is your best choice for weight-loss success. Nutri/System clients report an average weight-loss of 29% more than dieters on other weight-loss programs." (Exhibit O)

B. "Results. Nutri/System. Nutri/System clients report they lose 29% more weight than dieters in other weight-loss programs." (Exhibit P)

PAR. 17. Through the use of the statements contained in the advertisements referred to in paragraph sixteen, including but not necessarily limited to the statements in the advertisements attached as Exhibits O and P, respondent has represented, directly or by implication, that competent and reliable studies or surveys show that Nutri/System customers lose at least 29% more weight than dieters on other weight loss programs.

PAR. 18. In truth and in fact, competent and reliable studies or surveys do not show that Nutri/System customers lose at least 29% more weight than dieters on other weight loss programs. Therefore, the representation set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit Q, contain the following statements:

A. "Nutri/System Professionals Have What It Takes To Help You Succeed!...A specially trained and certified Nutri/System Nutritional Specialist will give you the one-on-one personal attention you need. She'll listen to your weight loss problems...help you understand them...and give you the assistance you need to reach your weight loss goal." (Exhibit Q)

PAR. 20. In the routine course and conduct of its business, respondent provides or causes to be provided certain employees of Nutri/System Weight Loss Centers with credentials including badges to place on their uniforms that identify them to customers and potential customers as "Certified Nutritional Specialists."

PAR. 21. Through the use of the statements contained in the advertisement referred to in paragraph nineteen, including but not necessarily limited to the statements in the advertisements attached as Exhibit Q, and by the conduct described in paragraph twenty, respondent has represented, directly or by implication, that Nutri/System "Nutritional Specialists" have been certified as specialists in nutrition through an objective determination of their competence in the field of nutrition.

PAR. 22. In truth and in fact, the "certification" procedure used by respondent fails to test or evaluate the Nutri/System "Nutritional Specialist's" competence in applying the basic principles of nutrition. Accordingly, Nutri/System "Nutritional Specialists" have not undergone an objective determination of their competence in the field of nutrition. Therefore, respondent's representation as set forth in paragraph twenty-one was and is false and misleading.

PAR. 23. In the course and conduct of its business, respondent provides its customers with diet protocols that require said custom-

ers, *inter alia*, to come in to one of respondent's weight-loss centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. Such conduct could, if not corrected promptly, result in health complications.

PAR. 24. When presented with the weight loss results described in paragraph twenty-three, respondent on many occasions has not disclosed to the customers that failing to follow the diet protocol and consume all of the food prescribed could result in health complications. This fact would be material to consumers in their purchase and use decisions regarding the diet program. In light of respondent's practice of monitoring people on the program, said failure to disclose was, and is, a deceptive practice.

PAR. 25. The advertisements referred to in paragraph four, including but not necessarily limited to attached Exhibits R and S, contain the following statements:

A. "The Nutri/System Weight Loss Program IS a comprehensive program that has all the essential elements as suggested by the American Medical Association's Council on Scientific Affairs...." (Exhibit R)

B. "Nutri/System includes a 1,000-1500 calories per day eat plan, and provides a comprehensive approach to weight loss that meets the guidelines of the American Medical Association and the Nutritional Standards of the American Heart Association, as well as the principles of the American Dietetic Association...." (Exhibit S)

PAR. 26. Through the use of the statements set forth in paragraph twenty-five, including but not necessarily limited to the statements in the advertisements attached as Exhibits R and S, respondent has represented, directly or by implication, that the Nutri/System Weight Loss Program complies with guidelines for a comprehensive weight loss program issued by the American

Medical Association, the American Heart Association, and the American Dietetic Association.

PAR. 27. In truth and in fact, the Nutri/System Weight Loss Program does not comply with all of the specific elements of a comprehensive weight loss program issued by the American Medical Association, the American Heart Association and the American Dietetic Association. Therefore, respondent's representation set forth in paragraph twenty-six was and is false and misleading.

PAR. 28. The advertisements referred to in paragraph four, including but not necessarily limited to Exhibits T, U and V, contain the following statements:

A. "As seen in *Healthline* Magazine - STANFORD FACULTY MEMBERS RATE NUTRI/SYSTEM #1. Faculty members at Stanford University evaluated America's most popular diets on ten essential components." (Exhibit T)

B. "3 BIG DAYS. Right now you've got three big days to save big on the best weight loss program around. Says who? Says Healthline, a magazine written in collaboration with Stanford Center for Research in Disease Prevention." (Exhibit U)

C. "NUTRI/SYSTEM RATED #1. 100%. A perfect score. Number 1. In a recent comparison of 16 popular diets, that's how Healthline Magazine saw Nutri/System...and only Nutri/System." (Exhibit V)

PAR. 29. Through the use of the statements set forth in paragraphs twenty-eight A and B, including but not necessarily limited to the statements in the advertisements attached as Exhibits T, U and V, respondent has represented, directly or by implication, that the evaluation any rating of the diet programs appearing in the May 1991 issue of *Healthline* Magazine, in the article entitled "Rating the Diets," were conducted or written in collaboration with, and the results thereof approved by, Stanford University, the faculty of Stanford University, and the Center for Research in Disease Prevention of the Stanford University School of Medicine.

PAR. 30. In truth and in fact, the evaluation and rating appearing in the *Healthline* "Rating the Diets" article were not conducted or written in collaboration with, or the results thereof approved by, Stanford University, its faculty, or its Center for Research in Dis-

ease Prevention. Therefore, respondent's representation as set forth in paragraph twenty-nine was and is false and misleading.

PAR. 31. Through the use of the statements set forth in paragraph twenty-eight, including but not necessarily limited to the statements in the advertisements attached as Exhibits T, U and V, respondent has represented, directly or by implication, that respondent had no material connection with the publication of the rating of the diet programs appearing in the May 1991 issue of Healthline Magazine, in the article entitled "Rating the Diets."

PAR. 32. In truth and in fact, respondent did have a connection with the publication of the rating of the diet programs appearing in the May 1991 issue of Healthline Magazine. Prior to publication of the article, respondent paid a sponsorship fee to Healthline for promotion and distribution of the magazine, and received and exercised a right of prior review of the article evaluating diet programs. In advertising the article and rating referred to in paragraph twenty-nine, respondent failed to disclose these facts. These facts would be material to consumers in their purchase decisions regarding the diet program. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

PAR. 33. In providing advertisements and promotional materials referred to in paragraph four to its individual franchised stores for the purpose of inducing consumers to purchase its weight loss services and products, respondent has furnished the means and instrumentalities to those stores to engage in the acts and practices alleged in paragraphs five through thirty-two.

PAR. 34. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

"With Nutri/System I lost 88 lbs. and maintained it."



"For the first time in my life I was able to maintain my weight loss. I couldn't have done it without Nutri/System. In fact, without them I couldn't have lost weight at all. They showed me why I had trouble in the past: Social situations always upset me — as soon as I was under pressure, I binged. Once I understood the problem, I was able to lose weight easily. And I've kept it off for 6 months now. Now I'm confident and comfortable around people I go out at the time I'm a regular social butterfly."

Sharon Dehn

The Nutri/System Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

**Don't Wait,
Call Today.**

Our client
Sharon Dehn
lost 88 lbs.



**We Succeed
Where Diets Fail You.**



nutri/system

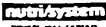
weight loss centers



nutri/system

weight loss centers

EXHIBIT A



nutri/system

weight loss centers

ONE-QUARTER PAGE 3 COL. X 10 1/2" 10/16 X 10/12
USAGE OF THIS AD EXPIRES MARCH 1, 1991

Complaint

116 F.T.C.

EXHIBIT B

**I started wearing a size 40.
Two years later, I still do."**



"I'd be back in oversized dresses if it wasn't for the wonderful maintenance program at Nutri/System. The counselors were like family to me. Caring and supportive. Always there when I needed them. Thanks to them I'm a perfect 10 now. And I'm staying one."

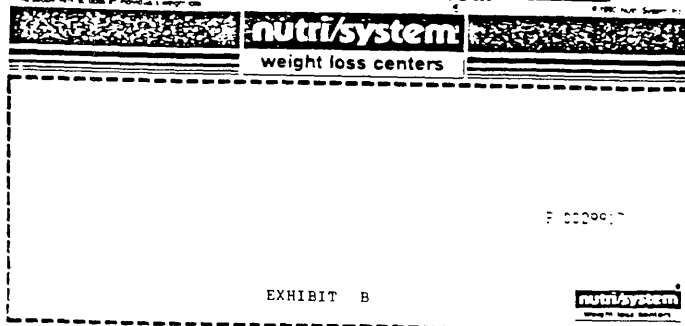
Barbara J. Lewis

Try the Nutri/System®
Crave-Free® Weight Loss
Program that includes a
variety of delicious meals
and Crave-Free® control
snacks, nutritional and
behavioral counseling,
light activity, and weight
maintenance.

**Don't Wait,
Call Today.**

Circle 10
Toll-free 800-555-1234
1051 64 103

**We Succeed
Where Diets Fail You.**



ONE QUARTER EXPIRES JUNE 1, 1991

1408

Complaint

EXHIBIT C

**I permanently lowered my weight 126 lbs.
I lowered my cholesterol, too."**



The great thing about Nutri/System is its emphasis on good nutrition and maintenance. They taught me to eat right, so I not only lost weight, I've been able to maintain my weight loss for a year now. Dishes like Chicken Polynesian, Beef Tacos and Thick Crust Pizza... aren't just delicious, they're low in cholesterol, as well. Now I feel better. And my doctor says my cholesterol has never been lower. I feel it's added years to my life.

Tom Lindenmeyer

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

**Don't Wait,
Call Today.**

Our client,
Tom Lindenmeyer
lost 126 lbs.

**We Succeed
Where Diets
Fail You.®**

nutri/system
weight loss centers

EXHIBIT C

nutri/system
weight loss centers

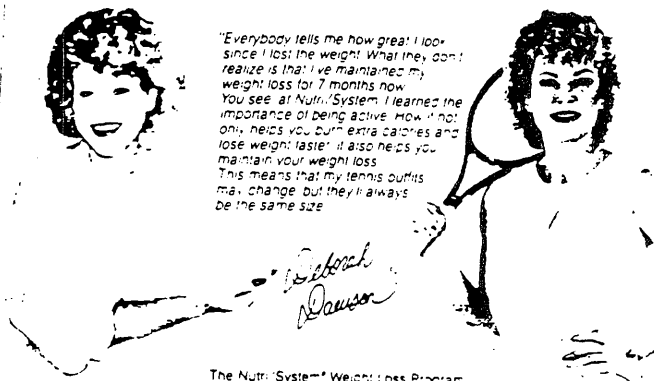
ONE GUARANTEED PAGE
USAGE OF THIS AD EXPIRES MARCH 1, 1991

Complaint

116 F.T.C.

EXHIBIT D

**"With Nutri/System,
goodbye to 50 lbs. forever."**



"Everybody tells me how great I look since I lost the weight. What they don't realize is that I've maintained my weight loss for 7 months now. You see at Nutri/System, I learned the importance of being active. Now it not only helps you burn extra calories and lose weight faster, it also helps you maintain your weight loss. This means that my tennis outfits may change, but they'll always be the same size."

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity and weight maintenance.

**Don't Wait,
Call Today.**

Out client:
Deborah Dawson
lost 50 lbs.

**We Succeed
Where Diets
Fail You.**

nutri/system
weight loss centers

EXHIBIT D

nutri/system
weight loss centers

ONE-QUARTER 1/4
USAGE OF THIS AD
PIRES MARCH 1, 1991

1408

Complaint

EXHIBIT E

nutri/system Nancy/Candid "THANKS" - 30 SEC. TV



VO
This is me, Nancy Mecozzi, before Nutri/System.



LIVE
And this is me now. I lost 110 lbs., and I really feel good about myself.



I will stay this way the rest of my life.



Thanks to Nutri/System, thanks to everybody who has supported me.



I promise that.



TIME AVAILABLE FOR LOCAL TAG 7 seconds

EXHIBIT E

P 002998

COPIES OF THIS COMMERCIAL EXPIRES JUNE 1, 1991

Complaint

116 F.T.C.

EXHIBIT F

"Live-On-Tape" Spring 1990

Starring Rita Bodine



Rita Bodine adds a new flare to Nutri/System radio. Her humorous charm moves people to the phone by creating visual real life pictures.

Rita Bodine is currently a DJ in the Richmond, Virginia area. She has successfully generated leads for corporate markets for over 2 years.

Ideal for country music formats or for a new twist for current live-on-tape stations.

Here's a sample spot:

RTA BODINE - SPOT #21

HI, THIS IS RITA BODINE FOR NUTRI/SYSTEM. EVERYBODY NEEDS A NICE VACATION AND WE ARE NO EXCEPTION, SO EVERY SUMMER WE TAKE THE FAMILY TO THE LAKE. THIS WILL BE THE FIRST YEAR WE'LL HAVE TO TAKE A BEACH UMBRELLA WITH US. SEE, MY BABIES ARE FAIR SKINNED SO I NEED A PLACE TO KEEP 'EM OUT OF THE SUN? UP UNTIL THIS YEAR, I'D JUST LAY ON MY SIDE AND THE ENTIRE FAMILY COULD USE MY SHADE. COURSE MY BACK ALWAYS LOOKED LIKE A LOBSTER AFTER. BUT THAT'S JUST ONE OF LIFE'S LITTLE SACRIFICES MOM'S MAKE. THIS YEAR, I'M NOT EVEN THROWIN ENOUGH SHADE FOR THE SAND FLEAS TO TAKE A FIESTA IN. NOT ONLY THAT, I MADE A BEACH BAG OUT OF MY OLE BATHIN SUIT WITH A SKIRT, AND GOT ONE THAT'S CUT UP REAL HIGH? AND I LOOK GOOD IN IT, I TAKE THAT BACK, I LOOK GREAT IN IT. AND I OWE IT ALL TO NUTRI/SYSTEM. FOR THE FIRST TIME IN MY LIFE I WAS ABLE TO LOSE WEIGHT AND KEEP IT OFF. THEY DIDNT PUT ME ON A DIET, THEY CHANGED MY WAY OF EATING FOR LIFE. NOW I'M 50 POUNDS LIGHTER, AND I FEEL REAL GOOD. NUTRI SYSTEM WE SUCCEED WHERE DIETS FAIL YA.

P 00000000

EXHIBIT F

CONFIDENTIAL
© Nutri/System, Inc. 1992

1408

Complaint

EXHIBIT G

"Live-On-Tape" Spring 1990

Starring Harve Allen



Harve Allen has been working with Nutri/System radio for over four years. First as an account executive for a leading Seattle radio station, and then as an on-air spokesman.

Harve knows what it takes to make the phones ring — and keep in on those elements with every spot.

Here's a sample spot:

HARVE ALLEN - SPOT #36

THIS IS HARVE ALLEN WITH A NUTRI/SYSTEM UPDATE FOR YOU. NOW PICTURE THIS. YOU'RE IN THE STORE BUYING GROCERIES. RIGHT? YOU GET OUT INTO THE PARKING LOT AND YOU'RE CARRYING A 20 POUND SACK OF POTATOES AND YOU'RE GOING. GEEZ. THIS THING'S VERY HEAVY. SOMEBODY COMES UP AND SAYS, "HERE, LET ME CARRY THOSE FOR YOU". YOU GO WOW. THANKS. AND YOU FEEL A LOT BETTER. DON'T YA? YOU BET. NOW, IF YOU WANT TO LOSE 20 POUNDS OFF YOUR BODY. YOU GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. AND THEY'RE GONNA SAY, "HERE, WE'LL TAKE THOSE FOR YA". AND YOU'RE GONNA GO. GEEZ. THANKS. I FEEL A LOT BETTER. YOU WILL. IN SIX WEEKS. I LOST 25 POUNDS ON THE NUTRI/SYSTEM WEIGHT LOSS PROGRAM. OH. AND I LOOK BETTER. I FEEL BETTER. IT GIVES YOU A WHOLE NEW OUTLOOK ON LIFE. AND I'LL TELL YOU WHAT, TAKE YOUR TEN POUNDS. YOUR TWENTY. YOUR THIRTY. FORTY. FIFTY. WHATEVER IT IS. AND GO TO A NUTRI/SYSTEM WEIGHT LOSS CENTER. THEY'LL PICK 'EM UP AND CARRY 'EM FOR YA. AND YOU'LL NEVER SEE 'EM AGAIN.

P 00000005

EXHIBIT G

CONFIDENTIAL
© Nutri/System, Inc. 1991

Complaint

116 F.T.C.

EXHIBIT H

since I lost 92 lbs. with Nutri/System."

THE NUTRI/SYSTEM[®]

Program Helps You Succeed!
You can succeed on the NUTRI/SYSTEM[®] Weight Loss Program even if diets have failed you in the past - because we know what you need to succeed! We offer you a comprehensive program of professionally supervised, calorie-controlled meals, personalized counseling and support, and mild activity - plus a maintenance plan to help you keep the weight off for good.

You'll Receive Nutrition and Behavior Counseling

Do you overeat when you're angry and depressed? The NUTRI/SYSTEM[®] Program features Behavior Breakthrough classes that provide continuing encouragement and support to combat overeating. Our Behavior Breakthrough Counselors will help you identify bad eating habits and learn healthier new ones.

You'll Enjoy Delicious, Slimming Meals

The NUTRI/SYSTEM[®] high-flavor meal plan offers you foods that are high in flavor and texture and nutritionally balanced. You'll enjoy three full meals a day, plus three snacks—including dishes like Lasagna, Thick-Crust Pizza,



Our client, Terry Turner, lost 92 lbs.

"I never thought I could wear tight jeans, show off my sexy or exciting smile. But thanks to Nutri/System I can! They did more than help me lose weight—they helped me develop a positive attitude. They gave me good advice. Now I not only have the body I want, but I have the confidence."

Terry Turner

Beef Stroganoff and many other desserts! You'll never feel hungry or deprived.

You'll Benefit From Easy Light Activity

Light activity helps you firm and tone your body, lose weight faster and maintain your weight.

You'll Keep The Weight Off For Good!

We'll help you lose weight - and keep it off with our Maintenance Program.

Get A Free, No-Obligation Weight Loss Analysis Today

Stop by today for your free, no-obligation weight loss consultation. Bring this coupon below and receive a free NUTRI/DATA[®] Computerized Weight Loss Analysis. Find out your ideal weight - and how soon you can expect to reach it. And ask how the NUTRI/SYSTEM[®] Weight Loss Program can help you lose weight now - for good!

We Succeed**Where Diets Fail You**

As people say, we do an individual's weight loss.

© 1990 Nutri/System, Inc.

nutri/system
weight loss center

EXHIBIT H

CONFIDENTIAL
POC407E7

nutri/system
weight loss center

1408

NUTRI/SYSTEM, INC.

Complaint

EXHIBIT I-1

1425

nutri/system

*Welcome
to the
Nutri/System
Program*



CONFIDENTIAL
POC23602

"We Succeed Where Diets Fail You."

Complaint

116 F.T.C.

EXHIBIT I-2

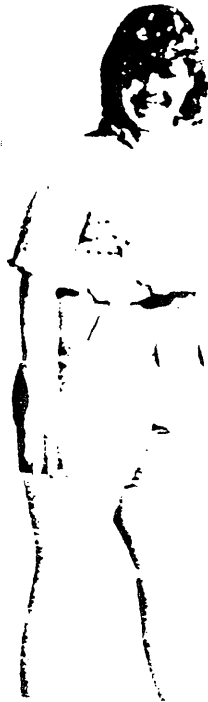
them off and lead a happier, healthier life. If you've ever tried to lose weight, you know what it's like to be frustrated and discouraged. Our commitment here at Nutri System is to help you eliminate these feelings and keep you on the road to successful, permanent weight loss. You're about to see for yourself why we proudly say, "We Succeed Where Diets Fail You."

Welcome to the Nutri System family, the largest, most successful professionally supervised weight loss program in the world. We know that losing weight isn't easy. But you couldn't have picked a more understanding partner to help you achieve success. Since 1971, Nutri System has helped millions like you to lose unwanted pounds. And we'll stay with you to help you keep



EXHIBIT J

**"Since losing 45 lbs. with Nutri/System,
staying thin is as easy as getting thin."**



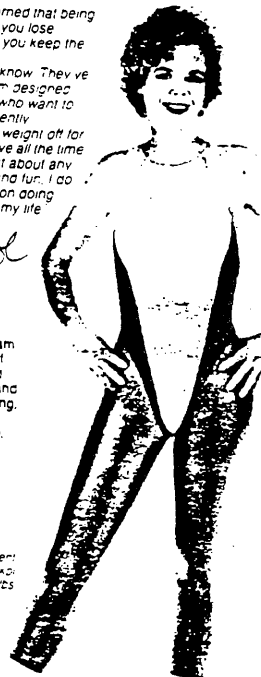
"At Nutri/System, I learned that being active not only helps you lose weight faster, it helps you keep the weight off. Nutri/System should know. They've got an activity program designed especially for people who want to lose weight — permanently. Because I've kept the weight off for 7 months now, I'm active all the time walking, swimming, just about any activity that's healthy and fun. I do. And I'm going to keep on doing them for the rest of my life."

Lynn Sokol

The Nutri/System® Weight Loss Program includes a variety of delicious meals and snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

**Don't Wait,
Call Today.**

Our client
Lynn Sokol
lost 45 lbs.



**We Succeed
Where Diets
Fail You.®**

USAGE OF THIS AD EXPIRES MARCH 1, 1991

nutri/system

weight loss centers

© 1989 Nutri/System, Inc.

EXHIBIT J

P 0009832

nutri/system

weight loss centers

Complaint

116 F.T.C.

EXHIBIT K

nutri/system. Cindy/Candid "MILLION" 30 SEC. TV



VO
This is me Cindy Attvan before Nutri/System.

LIVE
And this is me now I lost 30 lbs in 3 months and I feel fabulous.



I'm going to stay like this the rest of my life.



If there is a way I can help one person or a million people I want to tell them try Nutri/System because it does work.



VO
Don't Wait-Call Today.
VO
NUTRI/SYSTEM.
WE SUCCEED WHERE DIETS FAIL YOU.

USAGE OF THIS COMMERCIAL EXPIRES AUGUST 31, 1990

EXHIBIT K

EXHIBIT L

to lose weight. I lost 83 lbs. and feel 10 years younger.*



I knew from my first visit to Nutri/System that the program would be effective. Everything about it made sense—great food, caring people I could lean on, light activity, even a maintenance program. They had everything I needed to lose weight and keep it off. Now, I feel younger than I have in years. If ever there was a sure thing, it was Nutri/System.

Rebecca Jermigan

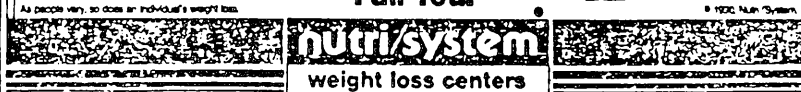
Try the Nutri/System® Crave-Free™ Weight Loss Program that includes a variety of delicious meals and Craving Control® snacks, nutritional and behavioral counseling, light activity, and weight maintenance.

**Don't Wait,
Call Today.**

Our client,
Rebecca Jermigan,
lost 83 lbs.

**We Succeed
Where Diets
Fail You.***

All people vary, so does an individual's weight loss.



**LOSE ALL THE WEIGHT
YOU CAN FOR ONLY \$79***

*Within the time frame set by the Nutri/System® computer program for your weight loss goal. Special offer does not include the cost of NUTRI/SYSTEM foods, maintenance or Body Breakthrough® Activity Plan and cannot be combined with other offers. Valid only with the purchase of a program by new clients at a participating center. One discount per person.

BEAVERTON 643-6800	GRESHAM 669-7516	LAKE OSWEGO 639-0313	MCMINNVILLE 434-7266	TUALATIN 691-1220
CLACKAMAS 653-8424	HILLSBORO 693-1144	LLOYD 238-5585	TOWER 295-2908	VANCOUVER 254-2010

Coupon expires 8/15/99
Over 1700 Centers Internationally.

EXHIBIT L

Complaint

116 F.T.C.

EXHIBIT M

3408 WISCONSIN AVE E. N.W. WASHINGTON, D. C. 20007 244-1901	
PROGRAM	DATE
(COMMERCIAL)	MARCH 14, 1990
STATION OR NETWORK	TIME
WRC TELEVISION	9:45 AM, EDT

NUTRI/SYSTEM COMMERCIAL

(FILM SHOWN)

(VOICEOVER): This is me, Rene Griffith before Nutri/System. And this is me now. I lost 65 pounds, and it feels great to wear a bathing suit.

I feel like Cinderella at the ball; it's like, I've got a new hairdo, I can wear the clothes I want to wear now. It's just wonderful. There's no way that I'll ever go back to where I was before. The clock is never going to strike twelve and Cinderella will never turn into a pumpkin again.

(END OF FILM)

(ANNOUNCER): Now, lose all the weight you can at Nutri/System for only \$199. Don't wait, call now.

(END)

CONFIDENTIAL

G000841

NOW!

Lose All the Weight You Can with Nutri/System Only

\$1 per pound*

Lose 10 lbs., Pay \$10 Lose 30 lbs., Pay \$30.

*Within the time frame set by the NutriData® computer program for your weight loss goal. Special program for NUTRI/SYSTEM program services only. Does not include the cost of NUTRI/SYSTEM foods, maintenance or Body Breakthrough® Active Plan, and cannot be combined with other offers. Valid only with in purchase of a program by new clients at a participating center. One discount per person. Offer expires 12/15/90.

"I lost 80 lbs. with Nutri/System. I looked so good, 15 of my friends signed up!"



*Our client
lost 80 lbs.*

"They say actors speak louder than words. That's certainly true in my case. When my friends all won't say how I looked after I went to Nutri/System they signed up! 100% I feel good about that. I also feel good about the fact that I've been able to keep the weight off for over a year now. My friends can't wait to try it. Great BS! 100. And I'm loving it."

James Feltz

**Don't Wait, Call Today.
There's A Right Way To Lose Weight.™**

nutri/system
weight loss centers

1-800-344-THIN

BROWARD
Carol Serrano • D
R. Lubertson • Ho
Lakeland • Palm
Pompano Beach
Tampa

DADE

PALM BEACH
Sarasota Beach
Boca Raton • Fort
Lauderdale • Ft.
Palm • Pompano
Boca Raton • West
Boca Raton • West
Boca Raton • West
Boca Raton • West

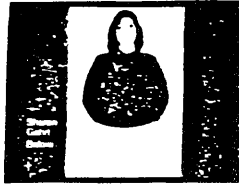
EXHIBIT N

Complaint

116 F.T.C.

EXHIBIT O

nutri/system Carmen Flowers "RESULTS-SHARON GEHRT" - 30 SEC. TV



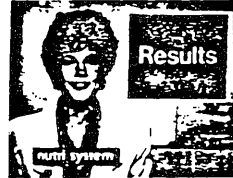
SHARON
This is me, Sharon Gehrt, before
Nutri/System.



And this is me now. I lost 88 lbs., and I feel
terrific.



CARMEN
You already know Nutri/System works.



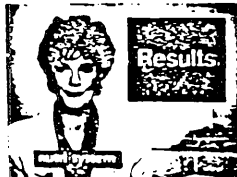
Now, results from a national survey of
2,000 dieters proves Nutri/System is your



best choice for weight-loss success.
Nutri/System clients report an average
weight-loss of



29% more than dieters on other weight-
loss programs.



You get results with Nutri/System.



Don't Wait, Call Today. Nutri/System.
We Succeed Where Diets Fail You.

TIME AVAILABLE FOR LOCAL TAG.

EXHIBIT O

p 0030010

USAGE OF THIS COMMERCIAL EXPIRES MARCH 1, 1991

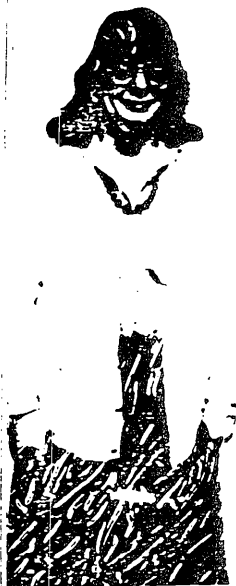
1408

Complaint

EXHIBIT P

Results. Nutri/System.

Nutri/System clients report
they **lose 29% more weight** than dieters
in other weight-loss programs.



"I lost 103 lbs. with Nutri/System.
That's more than I've ever lost on any
other program.
Since my weight loss, I'm full of energy
and in terrific shape. I can walk up
hills now without getting out of breath.
And I feel so good about myself
I'm ready to take on any
challenge that comes my way.
I've never been happier
or healthier."

Peggy Zoner

The Nutri/System®
Weight Loss Program
includes a variety of
delicious meals
and snacks, nutritional
and behavioral
counseling, light activity,
and weight maintenance.

**Don't Wait,
Call Today.**

Our client
Peggy Zoner
lost 103 lbs.

**We Succeed
Where Diets
Fail You.**



*Based on results of a 2 year independent survey of 2,100 adults
ages 25-55 who reported they were 20 lbs. or more overweight,
and currently trying to lose weight. Results are per 1000 subjects.

As people vary, so does our experience. © 1990 Nutri/System, Inc.

nutri/system
weight loss centers

ONE QUARTER PAGE 3 COL. x 10 1/2" (6 7/16" x 19 1/2")
USAGE OF THIS AD EXPIRES AUGUST 31, 1990

CONFIDENTIAL
P0027755

EXHIBIT P

nutri/system
weight loss centers

Complaint

116 F.T.C.

EXHIBIT Q

Nutri/System Professionals Have What It Takes To Help You Succeed!

What makes the Nutri/System® Program different from all the other weight loss programs? An important part is the personal attention you get from the professionals in your local Nutri/System Center. Each is dedicated to helping you reach your weight loss goal.

Nutritional Specialists

A specially trained and certified Nutri/System Nutritional Specialist will give you the one-on-one personal attention you need. She'll listen to your weight loss problems... help you understand them... and give you the assistance you need to reach your weight loss goal.



Behavior Breakthrough Counselors

Losing weight isn't easy, so our Behavior Breakthrough™ Counselors provide continuing encouragement and support. From our exclusive Personalized Weight Loss Profile questionnaire, our counselors identify bad eating habits and help you establish healthy new ones.

A whole team of professionals is waiting to help you now... at your local Nutri/System Center.



Nobody Helps You Take Weight Off Like Nutri/System!

Every day, 160,000 Americans look to the Nutri/System Weight Loss Program for weight loss success. We recently opened our 1,400th center. And we've been helping people lose weight for over 18 years.

The reason is simple. The Nutri/System Weight Loss Program works. Because it includes everything you need to reach your weight loss goal.

Delicious, Low-Calorie Meals

Low-calorie Nu System Cuisine® foods are delicious, high in flavor and texture and nutritionally-balanced. You'll get three meals a day and three snacks - including dishes like Bee'Stroganoff, Thick-Crust Pizza, pates, yogurts, and tempting desserts.

Light Activity

Our new Body Breakthrough™ Activity Plan is the dramatically plan designed exclusively for people losing weight. It's a three-part program that helps you lose up to 85% more weight by being more active.*

Weight Maintenance

We'll help you lose weight - and keep it off with our Maintenance Program. With the support of Nutri/System professionals, you will begin your healthy new life confident of permanent weight control.

Free Consultation

Don't wait. There's a Nutri/System Center near you. Call now for a free no-obligation consultation, to learn how our professionals can help you meet your weight loss goal. You'll find out your ideal weight... how quickly you'll reach it... and how the Nutri/System Program will work for you.

Don't Wait. Call Today!



Our client Cherry Miller lost 115 pounds.

**We Succeed
Where Diets Fail You***

*The success of Nutri/System is based on the fact that we have a proven, scientifically-based weight loss program. We have helped over 1,400,000 people lose weight. Our success is proven by the fact that we have a 100% success rate in helping people lose weight.

© 1998 Nutri/System, Inc.



EXHIBIT R

LET'S CLEAR THE AIR ABOUT THE NUTRI/SYSTEM WEIGHT LOSS PROGRAM.

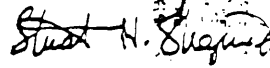
It's important to understand exactly what the Nutri/System Program is—and what it is NOT:

The Nutri/System Program is **NOT** a liquid diet...and it is **NOT** a quick weight loss* scheme.

The Nutri/System Weight Loss Program **IS** a comprehensive program that has all the essential elements as suggested by the American Medical Association's Council on Scientific Affairs:

- Behavior education
- Nutritional instruction
- An exercise program—the only exercise program designed specifically for the overweight adult in the process of losing weight
- A nutritionally-balanced, calorie-controlled meal plan
- Weight maintenance for one year after achieving your goal weight

The Nutri/System Weight Loss Program is safe, effective, and of the highest quality!



Stuart H. Shapiro, M.D., M.P.H.
Vice-President, Health Care Systems,
National Medical Director

*The Nutri/System Program is designed to provide a healthy and safe average weight loss of from 10 to 2 pounds per week.

**The Nutri/System Meal Plan offers daily calorie levels of from 1,000 to 1,500 calories as individually determined to meet each client's personal needs.

nutri/system

EXHIBIT S

**WHAT YOU SHOULD KNOW ABOUT
GALL BLADDER DISEASE AND OBESITY...**

A lot of conflicting information has been in the news recently regarding gall bladder disease and its link to obesity and weight loss.

Obesity is a serious national health problem that is a contributing factor to coronary heart disease, diabetes, increased cholesterol levels, high blood pressure, strokes, some types of cancer — and gall bladder disease. In fact, if you are obese (20% or more above your ideal weight) your risk for coronary disease and heart attacks increases 40%, ... your risk for diabetes increases 10 times, ... your risk for hypercholesterolemia is 2-3 times higher, ... your risk for hypertension is as much as 6 times greater, ... and your risk for gall stone formation is 3-4 times greater than in non-obese individuals.

There is absolutely no question that healthy weight loss and weight control will improve your health and well-being.

Extraordinarily rapid weight loss on very low-calorie (500 calories per day) high-protein liquid diets, however, has been associated with an increased risk of gall stones and other health problems. The Nutri/System Weight Loss Program is not classified as a very low-calorie high-protein liquid diet. Nutri/System includes a 1,000 - 1,500 calories per day meal plan, and provides a comprehensive approach to weight loss that meets the guidelines of the American Medical Association and the nutritional standards of the American Heart Association, as well as the stated principles of the American Dietetic Association and the National Cancer Institute.

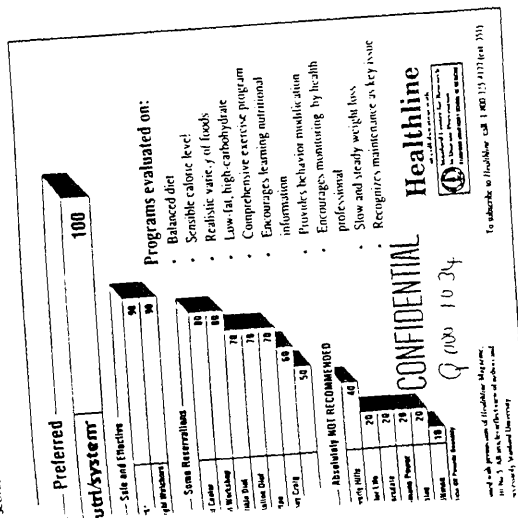
News reports regarding gall bladder disease and weight loss frequently fail to mention the following important facts:

1. Obesity is a major health problem in the United States, with some 68 million adults being over weight (10% or more above their ideal weight).
2. Ten percent of all adult Americans — approximately 18 million people — have cholesterol gall stones.
3. The incidence of gall bladder disease in obese adults (20% or more over the ideal weight) is as high as four in every 10 individuals.
4. In 1989, a report in the New England Journal of Medicine based on a study of 88,000 women concluded that even moderately overweight individuals have a risk of gall bladder disease.

Nutri/System is interested in only one thing: Your Health. Any concerns you have about gall bladder disease should be discussed with your physician.

TANFORD FACULTY MEMBERS RATE NUTRI/SYSTEM #1

Faculty members at Stanford University evaluated America's most popular diets on ten essential components. Only one weight-loss program scores 100% — Nutri/System. It's the preferred weight-loss program.



THE RIGHT WAY TO LOSE WEIGHT™

1408

CONFIDENTIAL
Q103 1034-5

Share the News

You deserve only the best — that's why you chose Nutri/System®. You know that Nutri/System offers the most comprehensive, thorough approach to weight loss. And faculty members at the Stanford University School of Medicine support your decision by rating Nutri/System the number one weight-loss program in the May issue of *Healthline* magazine. Nutri/System is the preferred way to lose weight.

Share these facts with your friends and family. Help make a difference in the lives of people you love. Show them There's A Right Way To Lose Weight™ with Nutri/System.

Ask us about our referral program!

nutri/system

NUTRI/SYSTEM, INC.

Complaint

EXHIBIT T

EXHIBIT T

1437

Complaint

116 F.T.C.

EXHIBIT U

3 BIG DAYS

Right now you've got three big days to save big on the best weight loss program around.

Says Who? Says *Healthline*, a magazine written in collaboration with Stanford Center for Research in Disease Prevention.

Of the 16 popular diets rated, only Nutri/System received 100%. A perfect score. The others? Well, Weight Watchers didn't do that well. And Jenny Craig only got a 60.

What can we tell you. . . other than to call now!

Healthline Magazine is published in collaboration with Stanford University Center for Research and Disease Prevention. All articles reflect views of authors and not necessarily Stanford University. * Healthline Magazine, Vol. 10, No. 5.

© 1991 NUTRI/SYSTEM INC.

MONDAY

TUESDAY

WEDNESDAY

ONLY \$19⁵⁰

1/2 OFF OUR INTRODUCTORY PROGRAM

Does not include the cost of foods, maintenance or activity plan. Cannot be combined with other offers. Valid only for new programs at participating centers. One offer per person. Offer valid: 6/3/91 - 6/5/91 only.

1-800-321-THIN™

nutri/system

EXHIBIT V

100%. A perfect score. Number 1.

In a recent comparison of 16 popular diets, that's how Healthline Magazine saw Nutri/System... and only Nutri/System.

The other most popular diets? Well, Weight Watchers didn't do that well, and Jenny Craig only got a 60.

You be the judge. But if Healthline calls us #1, shouldn't you just call us?

RATING THE DIETS

Programs evaluated on:

- Balanced diet
- Suitable caloric level
- Realistic variety of foods
- Low fat, high carbohydrate
- Comprehensive exercise program
- Extensive learning material/information
- Proven behavior modification
- Encourages maintaining by healthy motivation
- Slow and steady weight loss
- Recognizes maintenance as key issue

Healthline MAGAZINE
The Authority on Diet & Nutrition

Deborah Dawson
lost 50 lbs. 18 months ago.

As people vary so does weight loss and maintenance

© 1991 NUTRI/SYSTEM INC.

INTRODUCING OUR NEWEST CENTER—CRYSTAL CITY

50% OFF

OUR FULL SERVICE PROGRAM

Special offer does not include the cost of Nutri/System foods and initial evaluation fee, and cannot be combined with other offers. Valid only with the purchase of a new program at a participating center. One discount per person. See center for details. Offer expires 6/22/91.

1-800-321-THIN™

RATED #1: HEALTHLINE MAGAZINE

nutri/system

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nutri/System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Pennsylvania, with its offices and principal place of business at 380 Sentry Parkway, Blue Bell, Pennsylvania.

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

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

A. “*Competent and reliable scientific evidence*” shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. “*Weight loss program*” shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. “*Material connection*” shall mean any relationship between the respondent and a third party, which relationship might materially affect the weight or credibility of any endorsement, evaluation or test and which relationship would not reasonably be expected by consumers;

D. “*Broadcast medium*” shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

E. For any order-required disclosure in a print medium to be made “clearly and prominently,” or in a “clear and prominent” manner, it must be given both in the same type style and in: (1) twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any order-required disclosure given orally in a broadcast medium to be made “clearly and prominently,” or in a “clear and prominent” manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

F. “*Short broadcast advertisement*” shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered, That respondent Nutri/System, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation, *provided, further*, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *provided, however*, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their

completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *provided, further*, that respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *provided, however*, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

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

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Nutri/System makes no claim that this [these] result[s] is [are] representative of all participants in the Nutri/System program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)-(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; *provided, further* that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX]
 For many dieters, weight loss is temporary.

I have read this notice.

(Client Signature)

(Date)

- (b) Requires each potential client to sign such document; and
- (c) Gives each client a copy of such document; and

provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that: (1) compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraph I.D. and paragraph I.C. of this order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as “most of our customers maintain their weight loss long-term”;

provided, however, that the provisions of paragraph I.D shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent’s weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondent’s weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser’s statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Nutri/System customers in losing weight or maintaining achieved weight loss; *provided, however*, that in determining the generally expected success for Nutri/System customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

- (a) “You should not expect to experience these results.”
- (b) “This result is not typical. You may not do as well.”
- (c) “This result is not typical. You may be less successful.”

- (d) “_____’s success is not typical. You may not do as well.”
- (e) “_____’s experience is not typical. You may achieve less.”
- (f) “Results not typical.”
- (g) “Results not typical of program participants.”

provided, further, that if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

provided, however, that:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: “Nutri/System clients lose an average of _____ pounds over an average _____ - week treatment period”; and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E.(1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent’s customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or service that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required."

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; *provided, however*, that respondent may satisfy this requirement by directing its weight loss centers to, disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondent's weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Making comparisons between the efficacy of respondent's weight loss program and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such represen-

tation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

K. Representing, directly or by implication, that any of respondent's employees or any of the employees of any of respondent's franchisees, has been certified or trained as a specialist in nutrition or nutrition science unless respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline, or otherwise misrepresenting the competence, skill, training, credentials or expertise of any of respondent's employees or any of the employees of respondent's franchisees.

L. Failing to disclose, clearly and prominently, in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

M. Representing, directly or by implication, that any weight loss program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental organization or association, unless such is the case.

N. Making any representation, directly or by implication that any organization, institution or publication has conducted or collaborated in, or endorsed the results of, any evaluation, survey, study, or report concerning any diet program unless such is the case.

O. Failing to disclose, clearly and prominently, the nature of any material connection, where one exists, between an endorser, evaluator, or tester of any diet program and the respondent, or otherwise misrepresenting the nature of any material relationship between respondent and any third party endorser, evaluator or tester.

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

Q. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II.

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

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this order, and all test reports, studies, surveys or other information in its possession or control that contradict, qualify or call into question any such representation.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this order; and, for a period of five (5) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V.

It is further ordered, That :

A. Respondent shall distribute a copy of this order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this order; respondent may satisfy this contractual requirement by incorporating such order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the order provisions; respondent may satisfy this requirement by: (1) taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI.

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

Commissioner Owen dissenting as to the exception requiring full numerical disclosures involving quantitative weight loss maintenance claims in short radio and television advertisements.

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

The Commission's decision to approve and issue consent orders with these three major marketers of low calories diets represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on one aspect of the remedies in these matters.

In the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.¹ I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The relief in the present three matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in these consent orders.

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

IN THE MATTER OF

DIET CENTER, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3475. Complaint, Dec. 22, 1993--Decision, Dec. 22, 1993*

This consent order prohibits, among other things, a Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; requires it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; requires it to include in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary"; and requires it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk.

Appearances

For the Commission: *Kathryn C. Nielsen* and *Richard Kelly*.

For the respondent: *Christopher Smith* and *Lewis Rose, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission having reason to believe that Diet Center, Inc., a corporation ("Diet Center" or "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Diet Center, Inc., is an Idaho corporation with its principal office or place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent has advertised, offered for sale, and sold weight loss and weight maintenance services and products, including 950 to 1200 calorie-a-day weight loss programs, and