

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

makes them available to consumers at its numerous franchised "Diet Center" outlets nationwide. These products include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for the Diet Center Program, including but not necessarily limited to the attached Exhibits A through J.

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

- a) "Temporary weight loss is usually followed by weight gain. The only effective weight-loss program is one that produces a safe and permanent result. The Diet Center Program provides the perfect solution." (Exhibit A)
- b) "The Diet Center Program is much more than just a diet. It is truly the last weight-control program an individual will ever need." (Exhibit B)
- c) "Peggy Duman lost 53 pounds and has kept it off for six years." (Exhibit C)
- d) "Diet Center has worked for millions. It's one of the most successful weight loss programs in the world." (Exhibit D)
- e) "Your own success will motivate you all the way to your ideal weight." (Exhibit E)

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 through E, respondent has represented, directly or by implication, that:

- a) Diet Center customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently.
- b) Diet Center customers typically are successful in maintaining their weight loss achieved under the Diet Center Program; and

c) Diet Center 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 through E, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph six, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph six, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation 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 A and F through I, contain the following statements:

a) "Average female dieters lose 10 pounds in two weeks and 17 to 25 pounds in just six weeks. This rate of weight loss can be safely continued indefinitely." (Exhibit A)

b) "What is Diet Center? An individually supervised weight loss program where you eat foods you buy at a supermarket and yet lose 3 to 7 lbs. per week." (Exhibit F)

c) "Candy Capek took off 143 pounds in 30 weeks." (Exhibit G)

d) "Kris McKenzie Clarke can't believe she lost 28 pounds in just 5 weeks." (Exhibit H)

e) "'I lost 55 pounds in two months at Diet Center. I was never hungry - I actually ate more than usual while I was losing weight.' Bryan Clarke." (Exhibit I)

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 A and F through I, respondent has represented, directly or by implication, that:

- a) The average rate of weight loss for female participants in the Diet Center Program is ten pounds in two weeks; and
- b) Consumers following the Diet Center Program typically lose weight at a rate of three to seven pounds per week.

PAR. 11. 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 A and F through I, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph ten, respondent possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 13. In the course and conduct of its business, respondent provides its customers with diet protocols that require these customers, *inter alia*, to come in to a Diet Center franchise regularly for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, Diet Center franchises, in some instances, are presented with weight loss results indicating that customers may not be adhering to their diet protocol in that they fail to eat all of the food prescribed by their diet protocol. As a result, some customers may be losing weight at a rate faster than called for under the diet protocol, which, if it continued, may, under certain circumstances, impact their health.

PAR. 14. When presented with the weight loss results described in paragraph thirteen, Diet Center franchises, in some instances, have not disclosed to customers that failure to adhere to the diet protocol by not eating all of the food prescribed by their diet protocol and losing weight at a rate faster than called for under the diet protocol may, if it continued, under certain circumstances, impact their health. This fact would be material to such customers in their food consumption decisions while on respondent's pro-

gram. In light of respondent's practice of requiring Diet Center franchises to monitor customers on the program, said failure to disclose was, and is, a deceptive practice.

PAR. 15. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit I, contain the following statement:

"Lose fat, not muscle." (Exhibit I)

PAR. 16. Through the use of the statement contained in the advertisements referred to in paragraph fifteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit I, respondent has represented, directly or by implication, that consumers who follow the Diet Center Program lose only fat and no muscle.

PAR. 17. In truth and in fact, consumers who follow the Diet Center Program do not lose only fat and no muscle. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit J, contain the following statement:

"Lose fat, not muscle. Research shows 92% of the weight lost on the Diet Center program is excess fat, not water or lean body mass." (Exhibit J)

PAR. 19. Through the use of the statement contained in the advertisements referred to in paragraph eighteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit J, respondent has represented, directly or by implication, that competent and reliable evidence shows that 92% of weight lost on the Diet Center Program is fat, not water or lean body mass.

PAR. 20. In truth and in fact, competent and reliable evidence does not show that 92% of weight lost on the Diet Center Program is fat, not water or lean body mass. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. 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 four through twenty.

PAR. 22. 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.

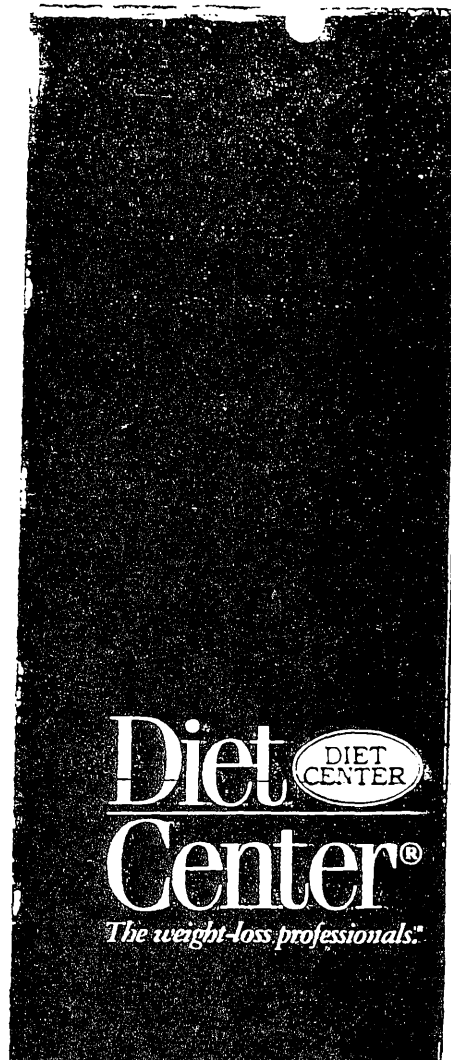
DIET CENTER, INC.

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1453

Complaint

EXHIBIT A



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EXHIBIT A

The Diet Center Program

The conditions of overweight and obesity have detrimental physical, psychological and social effects. "Fad" dieting, often perceived as an easy solution, simply aggravates these problems. Temporary weight loss is usually followed by weight gain. The only effective weight-loss program is one that produces a safe and permanent result.

The Diet Center Program provides the perfect solution. Combining the principles of sound nutrition, the motivation of private, daily counseling and the effects of long-term behavior modification into a five-phase program, Diet Center offers the most complete approach to weight management available today.

Losing weight is only part of the emphasis at Diet Center. Dieters learn to look beyond their immediate goal, weight reduction, to a permanent long-term objective, lifelong weight maintenance. Each dieter is individually guided through all five phases by a professionally trained Diet Center counselor.

EXHIBIT A

Working With The Medical Community

Diet Center counselors are typically not medical doctors; and what is more important, they do not profess to be. They concentrate on maintaining a close working relationship with dieters' physicians and rely on their recommendations. It is this relationship that makes Diet Center unique. With involvement from the dieter's personal physician, counselors can adjust the program to meet dieters' individual health needs.

Diet Center offers the overweight or obese individual rapid, yet safe and permanent weight loss. Average female dieters lose 10 pounds in two weeks and 17 to 25 pounds in just six weeks. This rate of weight loss can be safely continued indefinitely. Male dieters can lose up to one pound per day. Diet Center surveys show that all dieters experience an inch-loss (overall body measurement) of one inch per pound lost. Documented case histories demonstrate additional health benefits such as reductions in serum cholesterol, triglycerides and blood pressure levels, and also improvements in diabetics.

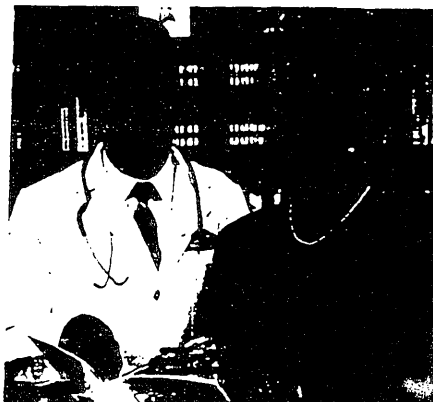


EXHIBIT B

Diet Center® Life Management Program™**Overview****Introduction**

Since its inception in 1971, the Diet Center Program has helped over four million men, women and children to lose weight; and more important, they have learned how to keep it off. As a result of this phenomenal success, Diet Center has grown to over 2300 locations across the United States and Canada.

The Diet Center Program is both safe and effective. Consisting of five phases, it combines the principles of sound nutrition, the motivation of private, daily counseling, and the effects of long-term behavior modification.

The Diet Center Program is much more than just a diet. It is truly the last weight-control program an individual will ever need.

Safe Weight Loss

When dieters take full advantage of the Diet Center Program, they lose an average of 17 to 25 pounds in just six weeks. This rate of weight loss can be continued safely until ideal weight is reached.

Documented case histories indicate additional health benefits beyond those of weight loss. High serum cholesterol, serum triglyceride and blood pressure levels have been

lowered. And among diabetic dieters, insulin needs have been reduced or eliminated.

Private, Daily Counseling

The Diet Center counselor's primary role is to offer support and encouragement to dieters while guiding them through a structured, nutritionally balanced weight-loss program. During the Reducing Phase, counselors meet with dieters privately as often as six days per week. During these consultations, dieters are weighed, losses are charted, the previous day's progress is reviewed, and individual goals are established.

Diet Center counselors never diagnose health conditions or prescribe treatment. Should any questions arise concerning dieters' health, Diet Center counselors refer them immediately to the dieters' personal physicians.

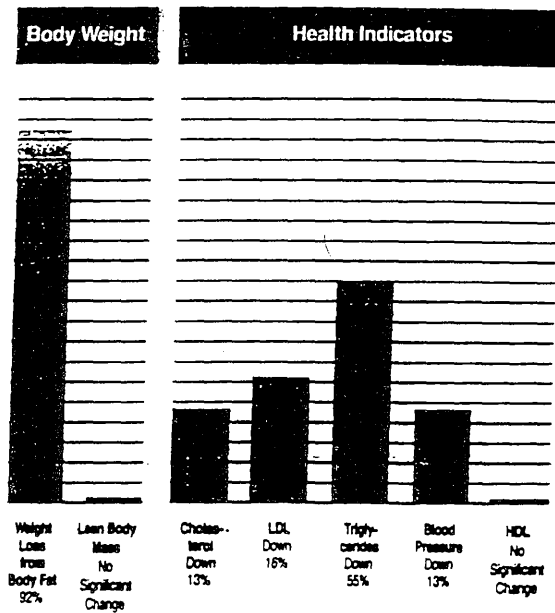
Physician Involvement

Diet Center counselors work closely with each dieter's personal physician. If a dieter needs to lose 50 pounds or more, or if there are any preexisting health conditions, a doctor's approval is required before the Program can be started. At each 40-pound weight-loss interval, the doctor's permission is required before the Program can be continued.

EXHIBIT B

Overview

A recent evaluation study of the Diet Center Program shows the dramatic effects the Reducing Program has on decreasing several health risks associated with obesity. In just eight weeks, 15 dieters not only lost body fat, but they also saw overall health improvements when they participated in a study conducted by the Utah Valley Regional Medical Center.



A copy of the complete study reports may be obtained from your local Diet Center.

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EXHIBIT C



**Get serious.
Call Diet Center
NOW!**

■ **Get fast results.** Lose 10 pounds in 2 weeks, up to 25 pounds in just 6 weeks

■ **A diet breakthrough.** Research shows 92% of weight lost at Diet Center is fat, not water or muscle.

■ **More choices.** Unlike other diets, packaged foods are not required.

Diet Center
The weight loss professionals

© 1995 Diet Center, Inc. Weight loss and speed of loss may vary with each individual.

Name & location
go here

Name & location
go here

Name & location
go here

Name & location
go here

Name & location
go here

"I'll never be fat again."

Learn how you can lose weight — and keep it off — without prepackaged foods, gimmicks or contracts. Diet Center has worked for millions. It's one of the largest, most successful weight loss programs in the world.




"Diet Center changed the way I think about food. I lost 28 pounds in five weeks, and I'll keep it off forever!"

Kris McKenzie

(YOUR SPECIAL OFFER HERE)

Diet DIET CENTER
Center®

The weight-loss professionals.™

Weight loss and speed of loss will vary with individual.

© 1992 Diet Center, Inc.

EXHIBIT E

LOSE WEIGHT FAST

and *Energize* your body



AT DIET CENTER

Unlike some of the other weight-loss programs, research shows that 92 percent of the weight lost on the Diet Center Program is from excess fat . . . not water or lean body mass. You'll lose pounds and inches right where you want to!

- LOSE FAT, NOT MUSCLE
- EAT REAL FOOD
- SIGN NO CONTRACTS

You won't be obligated by contract to stick with the Diet Center Program; you'll want to because it works! Your own success will motivate you all the way to your ideal weight.



Call today for a free introductory consultation!

NOW THRU JANUARY 31st

50% OFF

PROGRAM REGISTRATION FEES

Diet Center®

The weight-loss professionals.



Exhibit E

WHAT IS DIET CENTER?

An individually supervised weight loss program where you eat foods you buy at supermarket and yet lose from 3 to 7 lbs. per week.

"For years my thinking was restricted to losing weight. I never used to think about the hardest part — keeping it off. Thank you Diet Center for teaching me new eating habits. I have now kept my weight off for over a year."

Lillie Acimovic

BEFORE

Lillie lost 37 lbs. in first 9 weeks. On program

FREE CONSULTATION,

WE QUOTE PRICE ON THE PHONE

AFTER

Lillie lost a total of 55 1/2 lbs.

LYNDHURST
5001
Maple Rd.
381-1800

ROCKY RIVER
7245
Center Ridge Rd.
398-7546

MAPLE HTS.
Scoutman Medical Bldg.
2100 Scoutman Park Blvd.
475-7211

EUCLID
26300
Euclid Ave.
281-3180

PARMA
5510
Pleasant Rd.
845-8805

OLON
1200
S.O.M. Center Rd.
349-4836

Over 19 years in business,
over 2,000 Centers nationwide.

Diet Center
The weight-loss professionals

As people vary so
does their weight
loss

SEPTEMBER 16, 1990

THE PLAIN DEALER TV WEEK

Complaint

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EXHIBIT G

20TH ANNIV. NEWSPAPER

CANDY CAPEK, 143 LBS. -
30 WKS.

The Diet Center Difference



Candy Capek took off 143 pounds in 30 weeks.

See the difference for yourself!

You'll be amazed at how easily the pounds melt off at Diet Center®. With our healthy diet of real food choices and the personal support of your counselor, you'll discover how to achieve the lasting results that make Diet Center truly different. Call us today!

\$00

Your Offer and Disclaimer Here...

Diet Center®
The complete professional®

© 1999 Diet Center, Inc. Weight loss speed of 1000 pounds per year is not guaranteed. All rights reserved.

The Diet Center Difference



Candy Capek took off 143 pounds in 30 weeks.

See the difference for yourself!

You'll be amazed at how easily the pounds melt off at Diet Center®. With our healthy diet of real food choices and the personal support of your counselor, you'll discover how to achieve the lasting results that make Diet Center truly different. Call us today!

The difference is real.

Diet Center®
The complete professional®

© 1999 Diet Center, Inc. Weight loss speed of 1000 pounds per year is not guaranteed. All rights reserved.

To set your own type, use these specifications:

- 2 col. x 6 7/8"
 - Heads/26 point Clearface Bold Cond. (20%)
 - Body copy/10 point Clearface Reg.
- 1 col. x 6 1/4"
 - Heads/19 point Clearface Bold Cond. (20%)
 - Body copy/11 point Clearface Reg.

Exhibit G

DCC0657

EXHIBIT H

**"I recommend
Diet Center
to all my friends."**

Susan Saint James
Susan Saint James, actress, mother
and Diet Center success story.



When I needed to lose weight, I didn't have time to fly off to a fancy spa. Between my TV show and two small children, I needed something close to home. That's why I went to Diet Center. Their program works fast and it fits my busy lifestyle. There are a lot of diets out there, but here's why I think Diet Center's the best:

- **Lose fat, not muscle.** Research shows 92% of the weight lost on the Diet Center program is excess fat, not water or lean body mass.
- **Eat real food.** No expensive prepackaged meals required.
- **No contracts.** You'll stick with Diet Center because it works.

You'll feel the difference."

Diet Center®
The weight-loss professionals.

Special Offer



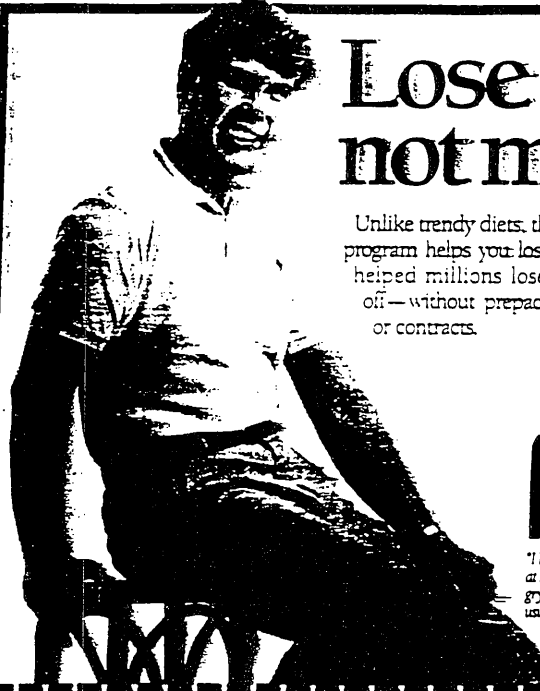
Dr. McKenzie Clatter can't believe she lost 28 pounds in just 5 weeks.

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Complaint

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EXHIBIT I



Lose fat, not muscle.

Unlike trendy diets, the nutritious Diet Center program helps you lose fat, not muscle. We've helped millions lose weight—and keep it off—without prepackaged foods, gimmicks or contracts.



"I lost 55 pounds in two months at Diet Center. I was never hungry—I actually ate more than usual while I was losing weight."
Bryan Clarke

(YOUR SPECIAL OFFER HERE)

Diet DIE I CENTER Center®

The weight-loss professionals.

Weight loss and percent fat loss will vary with individual.

© 1999 Diet Center, Inc.

EXHIBIT J



**"Turn extra pounds
into extra energy
at Diet Center."**

*Susan Saint James, actress, mother
and Diet Center success story.*

The most amazing thing to me about the Diet Center program is the tremendous energy you have while you're losing weight. You feel like you can do anything.

Lose fat, not muscle.
Research shows 92% of the

weight lost on the Diet Center program is excess fat, not water or lean body mass.

Eat real food. No expensive prepackaged meals required.

Get fast results. Energize your body while pounds and inches melt away.

*Patricia Johnson lost 60 pounds
and has kept it off for three years.*



Diet DIET CENTER

Center®

The weight-loss professionals.®

Special Offer

Weight loss and speed of loss vary with each individual. © 1999 Diet Center, Inc.

Name & location
goes here

Name & location
goes here

Name & location
goes here

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 Diet Center, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Idaho, with its offices and principal place of business at 921 Penn Avenue, Pittsburgh, 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 purposes of this order, the following definitions shall apply:

A. “*Competent and reliable scientific evidence*” shall mean 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. “*Broadcast medium*” shall mean any radio or television broadcast, cablecast, home video or theatrical release.

D. 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.

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

I.

It is ordered, That respondent Diet Center, 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., 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 on 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., and except through endorsements or testimonials referred to in paragraph I.E., that participants on 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: "Diet Center makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Center 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 the 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 outlets 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 customer, but in any event before such person has entered into any agreement with respondent:

a) Gives 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
hereXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX]
For many dieters, weight loss is temporary.

I have read this notice

(Client Signature)

(Date)

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

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 customer's 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 paragraphs I.D. and 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.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on 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 on 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 Diet Center customers in losing weight or maintaining achieved weight loss; *provided, however*, in determining the generally expected success for Diet Center 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 I.E. 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: "Diet Center 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, the typical rate or speed at which any participant on any weight loss program has experienced or will experience weight loss unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

G. Failing to disclose, clearly and prominently, either:

(1) To each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2.0%) of said participant's initial body weight, or three pounds (whichever is less), for at least two consecutive weeks; or

(2) In writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the

varieties and amounts of food recommended may involve the risk of developing serious health complications.

H. Representing, directly or by implication, that participants on respondent's weight loss program will lose only fat and no lean body tissue.

I. Making any representation, directly or by implication, about the loss of fat or the loss of lean body tissue that participants on respondent's weight loss program will experience unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

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

K. 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 from the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations arising out of this order; *provided, however,* that nothing in this order shall be interpreted to require respondent to notify the Commission regarding the addition or termination of franchisees or licensees.

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 contradicts, qualifies or calls into question any such representation, including complaints from consumers.

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;

provided, however, that respondent's compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondent's franchisees or licensees that violates this order where respondent: a) has not authorized, approved or ratified that conduct; b) has reported that conduct promptly to the Federal Trade Commission under this part; and c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, has diligently pursued 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)

Complaint

116 F.T.C.

IN THE MATTER OF

PHYSICIANS WEIGHT LOSS CENTERS
OF AMERICA, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3476. Complaint, Dec. 22, 1993--Decision, Dec. 22, 1993*

This consent order prohibits, among other things, the Ohio diet-program companies from misrepresenting the performance or safety of any weight-loss program they offer in the future, and requires them to have scientific data to substantiate future claims they make regarding weight loss and maintenance. In addition, the consent order requires certain disclosures regarding safety and health risks.

Appearances

For the Commission: *Michael Milgrom and Richard Kelly.*

For the respondents: *Thomas R. Brule*, in-house counsel,
Akron, OH.

COMPLAINT

The Federal Trade Commission having reason to believe that Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., (referred to collectively herein 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 Physicians Weight Loss Centers of America, Inc. (PWLCA) is an Ohio corporation with its office and principal place of business located at 395 Springside Drive, Akron, Ohio. Respondent Physicians Weight Loss Centers, Inc.