

## IN THE MATTER OF

## QUICK WEIGHT LOSS CENTERS, INC., ET AL. (GEORGIA)

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

*Docket C-3518. Complaint, Aug. 11, 1994--Decision, Aug. 11, 1994*

This consent order prohibits, among other things, the Georgia commercial diet program company and its officer from misrepresenting the performance or safety of any diet program they offer in the future, and requires the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

*Appearances*

For the Commission: *Eric Bash, Matthew Daynard and Richard F. Kelly.*

For the respondents: *Gabriel Imperato, Broad & Cassell, Fort Lauderdale, FL.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Quick Weight Loss Centers, Inc., a Georgia corporation (hereinafter, "QWLC-Ga."), and Don K. Gearheart, individually and as an officer of said corporation, (hereinafter, collectively, "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. (a) Respondent QWLC-GA. is a Georgia corporation, formerly doing business, with its principal office and place of business located at 1401 Johnson Ferry Road, Suite 276, Marietta, Georgia.

(b) Respondent Don K. Gearheart is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts or practices of the corporate respondent, including the acts or practices alleged in this complaint. His principal

residence is located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona.

(c) Respondents have cooperated and acted together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents have advertised or otherwise promoted, offered for sale, and sold weight reduction and weight control programs and products, and have made them available to consumers at their weight loss centers. Respondents have offered for sale and sold diet programs of 800 to 1500 calories per day that include food, as “food” is defined in Section 15 of the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated or have caused to be disseminated advertisements for weight reduction and weight control programs and products. Respondents have placed these advertisements with various media for the purpose of inducing consumers to purchase their programs and products. Respondents have further advertised their weight loss programs through the use of promotional materials, including pamphlets and brochures, given to customers and prospective customers at individual weight loss center locations.

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

PAR. 5. Respondents’ advertisements and promotional materials include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A-E.

PAR. 6. The advertisements and promotional materials referred to in paragraph five, attached hereto as Exhibits A-C, contain the following statements:

- (a) “The only way to lose weight and keep it off.” (Exhibit A)
- (b) “WHAT MAKES A WEIGHT LOSS PROGRAM GREAT? ... Results should be long lasting & offer a lifetime solution to a weight problem ... GUESS WHAT! ... We just described the QUICK WEIGHT LOSS PROGRAM.” (Exhibit B)
- (c) ““Now that I have reached my goal I will be able to maintain my weight....” (Exhibit C)

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph six, and others in advertise-

ments or promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that:

- (a) QWLC-GA. customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently;
- (b) QWLC-GA. customers typically are successful in maintaining their weight loss achieved under the QWLC-GA. diet program; and
- (c) QWLC-GA. customers typically are successful in reaching their weight loss goals.

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraph six, and others in advertisements or promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 10. The advertisements referred to in paragraph five, attached hereto as Exhibits B-E, contain the following statements:

- (a) "SIX WEEKS \$66" (Exhibit B)
- (b) "\$12 PER WEEK" (Exhibits C, D)
- (c) "ONLY \$11 PER WEEK" (Exhibits E)

PAR. 11. Through the use of the statements contained in the advertisements referred to in paragraph ten, and others in advertisements or promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that the advertised price is the only cost associated with losing weight on the QWLC-GA. weight loss program.

PAR. 12. In truth and in fact, the advertised price is not the only cost associated with losing weight on the weight loss program. There are substantial, additional mandatory expenses associated with participation in the QWLC-GA. weight loss program. Therefore,

respondents' representation as set forth in paragraph eleven was and is false and misleading.

PAR. 13. In advertising the price of the QWLC-GA. weight loss program, respondents have failed to disclose to consumers the existence and amount of all mandatory expenses associated with participation in the QWLC-GA. weight loss program. This fact would be material to consumers in their purchase or use decisions regarding the weight loss program. In light of respondents' representation as set forth in paragraph eleven that the quoted price represents the only cost associated with the QWLC-GA. weight loss program, said failure to disclose was and is a deceptive practice.

PAR. 14. The advertisement referred to in paragraph five, attached hereto as Exhibit B, contains the following statements:

(a) **"LOSE UP TO 6 LBS PER WEEK"**

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, and others in advertisements or promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that an appreciable number of consumers following the QWLC-GA. weight loss program typically lose weight at an average rate of six pounds per week.

PAR. 16. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, and others in advertisements or promotional materials not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph fifteen, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 17. In truth and in fact, at the time respondents made the representation set forth in paragraph fifteen, they did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, respondents' representation as set forth in paragraph sixteen was and is false and misleading.

PAR. 18. In the routine course and conduct of their business, respondents have provided their customers with diet protocols that required said customers, *inter alia*, to come in to one of respondents' weight loss centers three to six times a week for monitoring of their progress, including weighing in. In the course of regularly

ascertaining weight loss progress, respondents, in some instances, have been presented with weight loss results indicating that customers have been losing weight significantly in excess of their projected goals, which is an indication that they may not have been consuming all of the food prescribed by their diet protocol. Such conduct could, if not corrected promptly, result in health complications.

PAR. 19. When presented with the weight loss results described in paragraph eighteen, respondents, on many occasions, have not disclosed to the customers that failing to follow the diet protocol and consume all of the calories prescribed could result in health complications. This fact would be material to customers in their purchase or use decisions regarding the weight loss program. In light of respondents' practice of monitoring customers, said failure to disclose was and is a deceptive practice.

PAR. 20. The acts and practices of respondents as alleged in this complaint constitute deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

320

Complaint

EXHIBIT A

1-20-91  
Sunday

**SPECIAL OFFER**  
ENROLL NOW  
**RECEIVE**  
**ONE MONTH**  
**FREE**  
MUST HAVE 20 LBS. TO LOSE  
OTHER SAVINGS  
FOR SMALLER LOSSES

**NO GIMMICKS!**

**WEIGHT LOSS**  
Eat at any restaurant you choose  
share home cooked meals  
with your family  
while losing all  
the weight you want  
the only way to  
lose weight and  
keep it off.

**QUICK WEIGHT  
LOSS CENTERS**

**CAROL LYLES**  
Lost 90 lbs.  
and 14 Dress  
Sizes

Before  
Size 24  
Now  
Size 10

BUCKHEAD/MIDTOWN 368-9827  
SANDY SPRINGS 288-7877  
DUNWOODY 988-8900  
EAST COBB 988-8900  
SOUTHLAKE 988-8900  
ROSWELL 988-8900  
STONE MOUNTAIN 288-7340  
MARIETTA 988-0131  
LILBURN/GWINNETT 278-1331

CALL FOR A FREE CONSULTATION

MAJOR CREDIT CARDS ACCEPTED  
MON-FRI 9 A.M.-7 P.M.  
SAT 9 A.M.-1 P.M.

Complaint

118 F.T.C.

EXHIBIT B

**WHAT MAKES A WEIGHT LOSS PROGRAM GREAT?\***

10/01/90

**"I LOST 43 LBS. IN JUST 15 WEEKS"**

"I needed HELP! I couldn't do it on my own. It was easy to follow and I wasn't hungry. The nice part was I could eat regular food & still lose!"

...JEAN HALL

**LOSE UP TO 6 LBS PER WEEK**

**BEFORE 167 LBS.**

**AFTER 124 LBS.**

\* Must be safe, easy and no special foods to buy  
 \* Must be flexible in all situations such as eating out in fast food outlets & restaurants  
 \* Results should be long lasting & offer a life time solution to a weight problem.  
 \* Must be affordable & Drug Free

**GUESS WHAT! . . . We just described the QUICK WEIGHT LOSS PROGRAM. Call now for your FREE consultation.**

**START TODAY SIX WEEKS \$66\***

**QUICK WEIGHT LOSS CENTERS**

|                  |          |                  |          |
|------------------|----------|------------------|----------|
| BUCKHEAD/MIDTOWN | 355-3627 | ROSWELL          | 998-6851 |
| SANDY SPRINGS    | 256-7877 | STONE MOUNTAIN   | 299-7349 |
| DUNWOODY         | 988-9300 | MARIETTA         | 858-0131 |
| EAST COBB        | 988-9300 | LILBURN/GWINNETT | 279-1331 |
| SOUTHLAKE        | 988-9266 |                  |          |

Hours: 9 a.m.-7 p.m. Daily, Sat. 9 a.m.-1 p.m.

\*New Enrollments Only Excludes Of Profiling & Supplements

10-3-90

*Tues 5-29-91*

*Roswell Neighbor*

*Roswell Neighbor 5-29-91*

# WEIGHT LOSS THAT WORKS

BETTY STRATTON  
Tipton, GA

**LOST  
30  
LBS.**

This program  
provides...

**GUIDANCE  
ATTENTION  
RESULTS**

MAJOR CREDIT CARDS  
ACCEPTED  
HOURS:  
MON.-FRI. 9a.m.-7p.m.  
SAT. 9a.m.-1p.m.



**BEFORE**

**AFTER**

**LOW, LOW  
SERVICE FEES  
\$12 PER  
WEEK\***  
on a program basis

"Now that I have  
reached my goal I will  
be able to maintain my  
weight because I have  
learned to prepare  
great dietary meals  
and how to order in  
restaurants."

## QUICK WEIGHT LOSS CENTERS

Roswell 998-5851  
Sandy Springs 258-7877  
Buckhead/Midtown 355-3627  
Marietta 859-0131

**For Other Locations  
Call 509-8400**

**CALL FOR A FREE CONSULTATION**

\*New Clients Only. Not Valid With Other Offer.  
Excludes of Supplements and Profitings.

## EXHIBIT D

**LOSING WEIGHT  
MAKES SENSE  
WHEN YOU KEEP  
IT OFF.**

Mother & Daughter  
Lost 99 Lbs in 15 Weeks  
"This weight loss program  
has changed  
our eating habits."



**LOSE ALL THE  
WEIGHT YOU CAN**

Low, Low Service Fees  
**Only \$12\* Per Week.**

On a program basis  
Call for a FREE consultation

**QUICK WEIGHT LOSS CENTERS**

Sandy Springs 256-7877  
5920 Roswell Rd.  
Parkside Center

Buckhead 355-3627  
2221 Peachtree Rd.

Roswell 998-5851  
1355 Old Alabama Road

*Atlanta Jewish Times*

\*Exclusive of supplements and profiling

**Holiday Inn**  
**BUCKHEAD**  
231-1234 3340 Peachtree Rd. N.E. Atlanta

**We're  
Kosher**

**Recycle  
this paper,  
please!**

22 ATLANTA JEWISH TIMES

320

Complaint

EXHIBIT E

PRESENT COUPON AT TIME OF SITTING

# LOSE WEIGHT

ONLY  
**\$11\*** *12-26-90*  
PER  
WEEK



**FINAL DAYS**

- NO GIMMICKS
- FABULOUS RESULTS
- ONE TO ONE SUPERVISION
- NO FASTING OR LIQUID PROTEIN PROGRAMS
- NO STRENUOUS EXERCISE
- FAST! SAFE! WEIGHT LOSS!

CALL FOR FREE CONSULTATION

**QUICK WEIGHT LOSS CENTERS**

|                           |                           |
|---------------------------|---------------------------|
| BUCKHEAD/MIDTOWN 355-3627 | ROSWELL 998-5851          |
| SANDY SPRINGS 256-7877    | STONE MOUNTAIN 298-7349   |
| DUNWOODY 988-9300         | MARIETTA 858-0131         |
| EAST COBB 988-9300        | LILBURN/GWINNETT 278-1331 |
| SOUTHLAKE 988-9266        |                           |

Hours: 9am-7pm Daily Sat. 9am-1pm.

\*New Enrollments only. 6 week minimum. Exclusive of prefilling & supplements.

*Tammie Cunningham  
BEFORE 184 LBS.*

*Tammie Cunningham  
AFTER 128 LBS.*

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents 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 QWLC-GA. is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Georgia, with its offices and principal place of business located at 1401 Johnson Ferry Road, Suite 276, Marietta, Georgia.

2. Respondent Don Gearheart is an individual with his principal residence located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona.

3. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondents, 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, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

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

C. A “*broadcast medium*” shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any order-required disclosure in print media 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. A “*short broadcast advertisement*” shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

## I.

*It is ordered,* That respondents QWLC-Ga., a corporation, its successors and assigns, and its officers, and Don K. Gearheart, individually and as an officer of said corporation, and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss 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, respondents possess and rely 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 respondents' 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 respondents' 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 respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' 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 on any weight loss program have successfully maintained weight loss, unless respondents disclose, 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 respondents' programs:

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

(b) The statement: "[Quick Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Quick Weight Loss Centers] program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents 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 respondents:

(1) Include, 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, comply 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 respondents:

(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 point bold), lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), 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  
hereXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX]

For many dieters, weight loss is temporary.

I have read this notice. \_\_\_\_\_  
(Client Signature) (Date)

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

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph; provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents 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;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this order if respondents include 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 respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, 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 QWLC-Ga. customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for QWLC-GA. customers 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 the 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:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: “Quick Weight Loss Centers, Inc. participants lose an average of \_\_\_\_ pounds over an average \_\_\_\_ - week treatment period”; and

(ii) 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 subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents’ 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 respondents disclose, clearly and prominently, either:

- (1) In close proximity to such representation, the existence and amount of all mandatory 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 services that participants must purchase at additional cost]”; or
- (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 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 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 and all mandatory costs or fees associated with participation in the program; provided, however, that respondents may satisfy this requirement by directing their 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 their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents’ weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. 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%) 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 food recommended may involve the risk of developing serious health complications.

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

II.

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

III.

*It is further ordered,* That respondent Don K. Gearheart shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

IV.

*It is further ordered,* That for three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

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

V.

*It is further ordered,* That respondents shall distribute a copy of this order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this order; and, for a period of three (3) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI.

*It is further ordered,* That respondents 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 they have complied with this order.

Commissioner Owen was recorded as voting in the affirmative, but dissenting as to the exception requiring full numerical disclosures involving quantitative weight loss maintenance claims in short radio and TV ads.

## IN THE MATTER OF

## EGGLAND'S BEST, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3520. Complaint, Aug. 15, 1994--Decision, Aug. 15, 1994*

This consent order prohibits, among other things, a Pennsylvania company from misrepresenting the amount of nutrients or other ingredients, such as cholesterol and fat, that is in its eggs or foods containing egg yolks, and requires the respondent to have competent and reliable scientific evidence to substantiate future health-benefit claims for such foods and, for one year, to label certain egg packages with a corrective notice stating that no studies show Eggland's eggs are different from other eggs in their effect on serum cholesterol.

*Appearances*

For the Commission: *Michelle K. Rusk, Anne V. Maher and Beth M. Grossman.*

For the respondent: *Eugene I. Lambert, Covington & Burling, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Eggland's Best, Inc. ("respondent"), a corporation, 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 is a Pennsylvania corporation with its offices and principal place of business at 842 First Street, King of Prussia, Pennsylvania.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Eggland's Best eggs and other egg products to consumers. These products are "foods" 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.