

IN THE MATTER OF

FORMU-3 INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3568. Complaint, April 11, 1995--Decision, April 11, 1995*

This consent order prohibits, among other things, the Ohio weight-loss centers from misrepresenting the performance, efficacy or safety of any weight-loss program they offer, or the competence or training of their personnel, in the future. The consent order requires the respondents to possess scientific evidence to substantiate future claims, and, in addition, to make certain disclosures in conjunction with weight-loss and safety maintenance claims in the future.

Appearances

For the Commission: *Brenda Doubrava, Phillip Broyles and Christian White.*

For the respondents: *Robert J. Newbold, Canton, OH.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Formu-3 International, Inc., a corporation, Formu-3 of Northern Ohio, Inc., a corporation, and Formu-3 of Southern Ohio, Inc., a corporation (referred to collectively herein as respondents or Formu-3) 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 Formu-3 International, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

Respondent Formu-3 of Northern Ohio, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

Respondent Formu-3 of Southern Ohio, Inc., is an Ohio corporation with its office and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

PAR. 2. Respondents advertise, offer for sale, sell, and otherwise promote throughout much of the United States weight loss and weight maintenance services and products, which respondents make available to consumers at respondents' numerous "Form-You-3 Weight Loss Centers" (centers) in many states. These products also include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Through franchised and company-owned centers, respondents are engaged in the sale and offering for sale of low-calorie diet programs providing 800 calories or more per day.

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

PAR. 4. Respondents have disseminated, or have caused to be disseminated, advertisements for Form-You-3 Weight Loss Centers (also referred to herein as "Formu-3 Weight Loss Centers") services and products, including but not necessarily limited to the attached Exhibits A through M.

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

A. LORA JOHNSON LOST 15 ½ POUNDS IN 20 DAYS! (Total Weight Loss 119 Pounds) (Exhibit A)

B. At Formu-3 Weight Loss Centers you can lose 1 SIZE before summer ever gets here - and another 3 SIZES before summer ends!

A nutritiously balanced 5-step program that's EASY-TO-FOLLOW and guaranteed to work if followed as directed.

DEBRA: BEFORE SHE LOST 50 POUNDS WITH FORMU-3 (Exhibit B)

C. Five Months Ago People Said I Was A Heavyweight. Now They Say I'm a Knockout!

LOSE UP TO 30-40 POUNDS BY SPRING!

ROSANNE BERNDT LOST 30 POUNDS IN 60 DAYS!!!

BEFORE: 170 POUNDS (Exhibit C)

D. MARY GRIFFIN LOST 85 POUNDS AND 85 INCHES ON THE FORMU-3 PROGRAM.

Call Formu-3 TODAY and lose 20lb-35lb by THE FIRST OF SUMMER! That's at least 3 SIZES SMALLER than you are now!

SAFE, EFFECTIVE AND NUTRITIONALLY BALANCED! (Exhibit D)

E. LOSE UP TO 25-50 POUNDS IN 10 WEEKS!

SHARON SPEIGLE LOST 66 1/2 Pounds

Safe, effective and nutritionally balanced! (Exhibit E)

F. LOSE UP TO 15-30 POUNDS IN 30 DAYS!

KATHY KLAY LOST 22 POUNDS IN 30 DAYS! TOTAL WEIGHT LOST:
42 Pounds! (Exhibit F)

G. JULIE NARANCIC LOST 21 POUNDS IN 6 WEEKS!

You Can Lose Up To 30 Pounds By Summer! (Exhibit G)

H. JENELLE LOST 15 POUNDS IN 30 DAYS! FROM SIZE 16 TO 12 IN
30 DAYS!

BEFORE FORMU-3 180 POUNDS NOW! 125 POUNDS

Extensive Life Modification program to help KEEP your weight off! (Exhibit
H)

I. "I went from size 36 to a size 7 in five months! And I've kept it off for a year
and a half because of the Formu-3 program. . .

I was taught how to eat right - and I didn't have to depend on pre-packaged
foods like a girl friend of mine did on another program. She had to spend \$50 a
week on THEIR pre-packaged food. The Formu-3 program works using real
grocery store food." Barbara Schenkel

GUARANTEED if program is followed as directed. (Exhibit I)

J. We'll show you how to keep your weight and extra inches off permanently.
. . In fact, we've helped many long-time, unsuccessful dieters achieve their goal and
stay trim for years. (Exhibit J)

K. YOU'RE JUST ONE CALL AWAY FROM ONE OF AMERICA'S MOST
AFFORDABLE WEIGHT LOSS PROGRAMS.... A PROGRAM THAT WORKS!
IT'S EASY AT FORMU-3 BECAUSE OF OUR COMMITMENT (sic) TO YOU!
WE'LL BE THERE TO MAKE SURE YOU LOSE THAT EXTRA WEIGHT....
AND TO MAKE SURE YOU KEEP IT OFF! (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, respondents have represented, directly or by
implication, that:

A. Form-You-3 Weight Loss Centers customers typically are
successful in reaching their weight loss goals;

B. Form-You-3 Weight Loss Centers customers typically are
successful in maintaining their weight loss achieved under the Form-
You-3 Weight Loss Centers diet program; and

C. Form-You-3 Weight Loss Centers customers typically are
successful in reaching their weight loss goals and maintaining their
weight loss either long-term or permanently.

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, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph six, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

- A. LOSE UP To 25-50 POUNDS IN 10 WEEKS! (Exhibit E)
- B. LOSE UP TO 15-30 POUNDS IN 30 DAYS! (Exhibit F)
- C. Lose up to 15-30 pounds in 30 days! GUARANTEED if program is followed as directed. (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 E, F, and I, respondents have represented, directly or by implication, that:

A. An appreciable number of consumers on the Form-You-3 Weight Loss Centers program lose weight at an average rate of fifty pounds in ten weeks; and

B. An appreciable number of consumers on the Form-You-3 Weight Loss Centers program lose weight at an average rate of thirty pounds in thirty days.

PAR. 11. In truth and in fact:

A. An appreciable number of consumers on the Form-You-3 Weight Loss Centers program do not lose weight at an average rate of fifty pounds in ten weeks; and

B. An appreciable number of consumers on the Form-You-3 Weight Loss Centers program do not lose weight at an average rate of thirty pounds in thirty days.

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

PAR. 12. 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 E, F, and I, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph ten, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 14. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibit J, contain the following statement:

A. What other weight loss program helps you lose 3 to 5 lbs. a week without expensive pre-packaged foods, required supplements, strenuous exercise, shots, pills or drugs? (Exhibit J)

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit J, respondents have represented, directly or by implication, that consumers on the Form-You-3 Weight Loss Centers Program typically lose weight at an average rate of three to five pounds per week.

PAR. 16. In truth and in fact, consumers on the Form-You-3 Weight Loss Centers Program do not typically lose weight at an average rate of three to five pounds per week. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, including but not necessarily limited to the statement in the advertisement attached as Exhibit J, 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. 18. 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 seventeen was, and is, false and misleading.

PAR. 19. In the routine course and conduct of their business, respondents have represented during initial sales presentations that consumers will typically reach their desired weight loss goal within the time frame computed for their weight loss program by Form-You-3 Weight Loss Centers personnel.

PAR. 20. Through the use of the statements described in paragraph nineteen, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph nineteen, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 21. In truth and in fact, at the time respondents made the representation set forth in paragraph nineteen they did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, respondents' representation as set forth in paragraph twenty was, and is, false and misleading.

PAR. 22. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits D-H and L, contain the following statements:

- A. Safe, effective and nutritionally balanced! (Exhibits D and E)
- B. Safe, effective & nutritionally balanced! (Exhibit F)
- C. SAFE and nutritionally balanced (Exhibits G and H)
- D. FORMU-3 IS ONE OF THE NATIONS (sic) MOST AFFORDABLE WEIGHT LOSS PROGRAMS, AND IS DESIGNED TO GET YOUR WEIGHT OFF AS QUICKLY AS IS SAFELY POSSIBLE FOR AN AVERAGE WEEKLY COST OF ONLY \$7.65! (Exhibit L)

PAR. 23. In the routine course and conduct of their business, respondents provide their customers with diet instructions that require said customers, *inter alia*, to come in to a Form-You-3 Weight Loss Center several times per week for monitoring of their progress, including weighing in.

PAR. 24. Through the use of the statements contained in the advertisements referred to in paragraph twenty-two, including but not necessarily limited to the statements in the advertisements attached as Exhibits D-H and L, and through the conduct of the monitoring described in paragraph twenty-three, respondents have represented, directly or by implication, on an ongoing basis to each customer that customers on respondents' weight loss program lose weight safely and do not experience an increased risk of developing health complications.

PAR. 25. In the course of regularly monitoring their customers' weight loss progress, respondents, in some instances, are presented with weight loss results indicating that a customer is losing weight significantly in excess of his or her expected rate of weight loss, which is an indication that the customer may not be consuming all of the calories prescribed by his or her diet instructions. Such conduct could, if not corrected promptly, result in health complications.

PAR. 26. When presented with the weight loss results described in paragraph twenty-five, respondents on many occasions have not disclosed to the customers that failing to follow the diet instructions and consume all of the calories 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 the representation set forth in paragraph twenty-four, said failure to disclose was, and is, a deceptive practice.

PAR. 27. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits B, G, and L, contain the following statements:

A. \$50 OFF!

OUR REGULAR PROGRAM PRICE!

At Formu-3 Weight Loss Centers you can lose 1 SIZE before summer ever gets here-and another 3 SIZES before summer ends!

Average cost is \$7.65 (includes everything) per week. During this special, average weekly cost is lower. (Exhibit B)

B. You Can Lose Up to 30 Pounds By Summer!

AVG. COST OF: \$7.65 PER WEEK.

INCLUDES EVERYTHING! (Exhibit G)

C. DON'T PANIC..... YOU STILL HAVE A FEW MONTHS! CALL A FORMU-3 WEIGHT LOSS CENTER TODAY AND USE THAT TIME TO TAKE OFF UP TO 25 TO 30 POUNDS UP TO 35 INCHES AND UP TO FOUR DRESS SIZES BEFORE YOU HANG YOUR FIRST HOLIDAY ORNAMENT! FORM-3 IS ONE OF THE NATIONS (sic) MOST

AFFORDABLE WEIGHT LOSS PROGRAMS, AND IS DESIGNED TO GET YOUR WEIGHT OFF AS QUICKLY AS IS SAFELY POSSIBLE FOR AN AVERAGE WEEKLY COST OF ONLY \$7.65! (Exhibit L)

PAR. 28. Through the use of the statements contained in the advertisements referred to in paragraph twenty-seven, including but not necessarily limited to the statements in the advertisements attached as Exhibits B, G, and L, respondents have represented, directly or by implication, that the total cost of losing weight on the Form-You-3 Weight Loss Centers program is the advertised average weekly price multiplied by the number of weeks required for a program participant to achieve his or her weight loss goal.

PAR. 29. In truth and in fact, the total cost of losing weight on the Form-You-3 Weight Loss Centers program is an amount equal to the advertised average weekly price for one full year, or the advertised average weekly price multiplied by fifty-two. Therefore, respondents' representation set forth in paragraph twenty-eight was, and is, false and misleading.

PAR. 30. In advertising the Form-You-3 Weight Loss Centers program, respondents have represented that the total cost of losing weight on the Form-You-3 Weight Loss Centers program is the advertised average weekly price multiplied by the number of weeks required for participants to achieve their weight loss goals. respondents have failed to disclose to consumers that the total cost of losing weight on the Form-You-3 Weight Loss Centers program is the advertised average weekly price for one full year, or the advertised average weekly price multiplied by fifty-two. 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. 31. In the routine course and conduct of their business, respondents provide participants in their weight loss program with diet instructions that contain, *inter alia*, diet menus. Said diet menus for respondents' program include two food products sold by respondents to be consumed by participants each day. Respondents have given additional diet instructions to participants who choose not to purchase and consume respondents' food products, directing them to substitute certain foods for the two food products listed in the diet menus. Said additional diet instructions, attached as Exhibit M, contain the following statements:

A. WHY SHOULD I USE FORMU-FAST FOOD PRODUCTS?

Because they. . .

- Decrease calories by at least 33% daily.
- Decrease fat by at least 7% daily. (Exhibit M)

PAR. 32. Through the use of the statements referred to in paragraph thirty-one, respondents have represented, directly or by implication, that participants who consume two Formu-Fast food products instead of substituting the foods specified in the additional instructions will decrease daily caloric intake by at least 33% and daily fat intake by at least 70%.

PAR. 33. In truth and fact, participants who consume two Formu-Fast food products instead of substituting the foods specified in the additional instructions will not decrease daily caloric intake by at least 33% and daily fat intake by at least 70%. Therefore, the representations set forth in paragraph thirty-two were, and are, false and misleading.

PAR. 34. Through the use of the statements described in paragraph thirty-one, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirty-two, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 35. In truth and in fact, at the time respondents made the representations set forth in paragraph thirty-two they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, respondents' representation as set forth in paragraph thirty-four was, and is, false and misleading.

PAR. 36. The advertisements referred to in paragraph four, including, but not limited to the attached Exhibit J, contain the following statement:

A. At Formu-3 a certified counselor monitors your progress, offers helpful suggestions and provides ongoing motivation and moral support to keep you on track. (Exhibit J)

PAR. 37. Through the use of the statements contained in the advertisements referred to in paragraph thirty-six, including but not necessarily limited to the statement in the advertisement attached as Exhibit J, respondents have represented, directly or by implication, that counselors employed by Form-You-3 Weight Loss Centers are

certified, through an objective evaluation process, in the treatment of obesity.

PAR. 38. In truth and fact, few, if any, counselors employed by Form-You-3 Weight Loss Centers are certified, through an objective evaluation process, in the treatment of obesity. Therefore, the representation set forth in paragraph thirty-seven was, and is, false and misleading.

PAR. 39. In providing advertisements and promotional materials such as those referred to in paragraph four to its individual franchised centers for the purpose of inducing consumers to purchase their weight loss services and products, respondent Formu-3 International, Inc., has furnished the means and instrumentalities to those centers to engage in the acts and practices alleged in paragraphs five through thirty-eight.

PAR. 40. The acts and practices of respondents 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

**THERE'S STILL
TIME TO LOSE
1 SIZE (10 lbs.)
BY THE
HOLIDAYS!**

LORA JOHNSON LOST 15%
POUNDS IN 20 DAYS!
(Total Weight Loss
110 Pounds)



There's still time to lose up to 10 or
more pounds by the holidays -
and 10 pounds can make a big
difference in the way you look
and feel this holiday season!

**FIRST
50
CALLERS**

**LOSE
1 DRESS
SIZE
FREE!**

**CALL
TODAY!**

Formu-3
WEIGHT LOSS CENTERS®
OVER 300 LOCATIONS TO BETTER SERVE YOU
See Your Web Any Other Offer.
© 1991 Formu-3 International, Inc.

Exhibit A

005027

Complaint

119 F.T.C.

EXHIBIT B

\$50 OFF!

OUR REGULAR PROGRAM PRICE!



At Formu-3 Weight Loss Centers you can lose 1 SIZE before summer ever gets here – and another 3 SIZES before summer ends!

- Enjoy regular grocery store food!
- A nutritiously balanced 5-step program that's EASY-TO-FOLLOW and guaranteed to work if followed as directed.
- Average cost is **\$7.65** (includes everything) per week. During this special, average weekly cost is lower.



DEBRA: BEFORE SHE LOST 50 POUNDS WITH FORMU-3



WEIGHT LOSS CENTERS

©1992 Formu-3 International, Inc.

Not valid with any other offer.

Exhibit B

EXHIBIT C

Five Months Ago People Said I
Was A Heavyweight.
Now They Say I'm A Knockout!

ROSANNE BERNDT
LOST 30 POUNDS
IN 60 DAYS!!!

**Lose UP TO 30-40
Pounds By
Spring!**

- Eat Regular Grocery Store Food!
- SAFE and Nutritionally Balanced!
- Includes a Comprehensive LIFE MODIFICATION PROGRAM designed to make you feel good about YOU!

BEFORE: 170 POUNDS

FOR 3 WEEKS ONLY: \$50 OFF
OUR REGULAR PROGRAM PRICE

SAVE UP TO 73%
over other nationally advertised weight loss programs (based on 40 pounds).

FORMU-3
WEIGHT LOSS CENTERS™

OVER 300 LOCATIONS
TO BETTER SERVE YOU!

Not Valid With Any Other Offer.
© 1991 Formu-3 International

Exhibit C

Complaint

119 F.T.C.

EXHIBIT D

LOSE UP TO 3 DRESS SIZES OR 20"-35" BY THE FIRST OF SUMMER!



MARY GRIFFIN
LOST 85
POUNDS AND
85 INCHES ON
THE FORMU-3
PROGRAM.

FOR AN AVERAGE COST OF **\$6.70** PER WEEK!

INCLUDES EVERYTHING: WEIGHT LOSS, STABILIZATION AND MAINTENANCE FOR BALANCE OF THE YEAR.

PRE-SUMMER SPECIAL!



Call Formu-3® TODAY and lose 20"-35" by THE FIRST OF SUMMER! That's at least 3 SIZES SMALLER than you are right now!

- LOSE UP TO 15-30 POUNDS YOUR FIRST 30 DAYS!
- EAT REGULAR GROCERY STORE FOOD!
- NO HIDDEN EXTRAS OR REQUIRED PURCHASES!
- SAFE, EFFECTIVE AND NUTRITIONALLY BALANCED!
- UP TO 65% LESS THAN OTHER NATIONALLY ADVERTISED WEIGHT LOSS PROGRAMS! (Based on 50 Pound Program.)

CALL TODAY!!!

OVER 300 LOCATIONS TO
BETTER SERVE YOU!



WEIGHT LOSS CENTERS™

Exhibit D

Not Valid With Any Other Offer.
© 1991 Formu-3 International, Inc.

**LOSE UP TO
25-50
POUNDS
IN 10 WEEKS!**

SHARON SPEIGLE
LOST 66½ POUNDS



UP TO 65% LESS THAN OTHER NATIONALLY
ADVERTISED WEIGHT LOSS PROGRAMS.
(Based on 52-Week Program)

AVG. COST \$7.65 PER WEEK!

INCLUDES EVERYTHING

Weight Loss, Stabilization and Maintenance for Balance of One Year.

- Lose up to 15-30 pounds your first 30 days!
- Safe, effective and nutritionally balanced!
- Eat regular grocery store food!
- No hidden extras or required purchases!

FORMU-3
WEIGHT LOSS CENTERS™

Exhibit E

OVER 300 LOCATIONS TO
BETTER SERVE YOU!

Not Valid With Any Other Offer.
© 1994 Formu-3 International, Inc.

Complaint

119 F.T.C.

EXHIBIT F

LOSE WEIGHT
BEFORE THE END OF SUMMER!!!

30-DAY WEIGHT AWAY!!!

LOSE ^{UP TO} 15-30 POUNDS IN 30 DAYS!

\$69 INCLUDES EVERYTHING

- NO hidden costs!
- Eat regular grocery store food!
- Safe, effective & nutritionally balanced!
- NO required purchases!

Formu-3
WEIGHT LOSS CENTERS[®]

3 WEEKS ONLY!




KATHY KLAY
LOST 22 POUNDS
IN 30 DAYS!
TOTAL WEIGHT LOST:
42 Pounds!

OVER 300 LOCATIONS TO
BETTER SERVE YOU!

Price May Vary According To Location.
Not Valid With Any Other Offer.
©1991 Formu-3 International, Inc.

Exhibit F

EXHIBIT G

AT FORMU-3 WEIGHT LOSS CENTERS

**You Can
Lose Up To
30 Pounds
By Summer!**

AVG. COST OF:
\$7.65 PER WEEK

INCLUDES EVERYTHING!

- Eat regular grocery store food!
- SAFE and nutritionally balanced
- Affordable for everyone!

CALL TODAY!

OR CALL 1-800-333-NEWU
OVER 300 LOCATIONS
TO BETTER SERVE YOU

©1992 Formu-3 International, Inc.
Not valid with any other offer.

FORMU-3
WEIGHT LOSS CENTERS®

JULIE NARANCIC
LOST 21 POUNDS
IN 6 WEEKS!

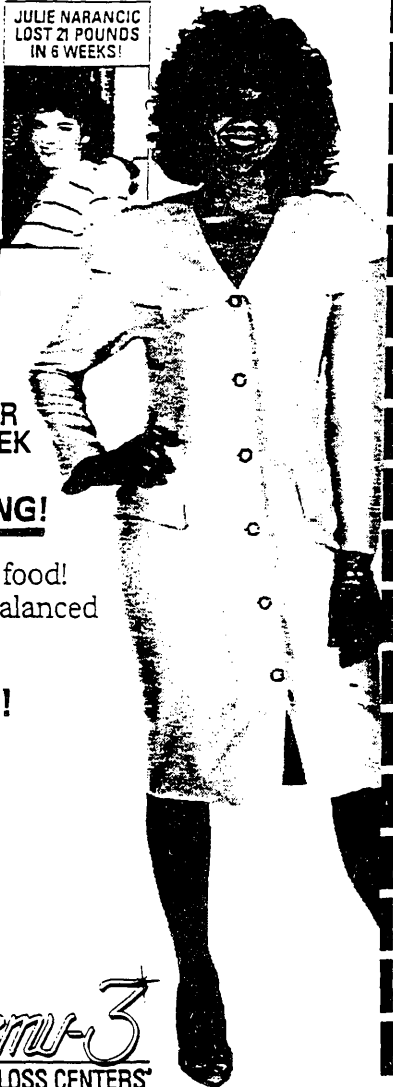


Exhibit G

Complaint

119 F.T.C.

EXHIBIT H

AT FORMU-3 WEIGHT LOSS CENTERS

30 DAYS CAN MAKE A BIG DIFFERENCE!

JENELLE LOST 15 POUNDS IN 30 DAYS!

BEFORE
FORMU-3
180
POUNDS





FROM SIZE 16 TO 12 IN 30 DAYS!

NOW!
125
POUNDS



30 DAYS

FOR 30 DOLLARS!

3 WEEKS ONLY!

- Eat regular grocery store food! ■ SAFE and nutritionally balanced!
- SAVE up to 73% over other nationally advertised weight loss programs based on 40 pounds!
- Extensive Life Modification program to help KEEP your weight off!

NO HIDDEN COSTS!!!

Formu-3
WEIGHT LOSS CENTERS

OVER 300 LOCATIONS
TO BETTER SERVE YOU!

Not Valid With Any Other Offer.
© 1991 Formu-3 International, Inc.

2
WEEKS

FINAL

Exhibit H

EXHIBIT I

FORMU-3® WEIGHT LOSS CENTERS

"I went from size 36 to a size 7 in five months! And I've kept it off for a year and a half because of the Formu-3 program..."

...I was taught how to eat right — and I didn't have to depend on pre-packaged foods like a girl friend of mine did on another program. She had to spend \$50 a week on THEIR pre-packaged food. The Formu-3 program works using real grocery store food."

Barbara Schenkel

- The Formu-3 program costs up to 60% less than other weight loss programs!
- No hidden costs!
- No required food supplements!
- Lose up to 15-30 pounds in 30 days!
- **GUARANTEED** if program is followed as directed.

\$7.65 **INCLUDES EVERYTHING**
FOR AN AVERAGE WEEKLY COST OF ONLY
WEIGHT LOSS, STABILIZATION AND MAINTENANCE FOR BALANCE OF ONE YEAR.
BASED ON A 52 WEEK PROGRAM.

NO REQUIRED FOOD SUPPLEMENTS.
Another reason why Formu-3 Weight Loss Centers are America's 1st choice in weight loss.

Formu-3
WEIGHT LOSS CENTERS™

With Over 300 Locations To Better Serve You.

Please enjoy every opportunity to succeed. Challenge yourself personally, and you will.

EXHIBIT K

FINE ADVERTISING AND MEDIA SERVICES
2 SUMMIT PARK DR., INDEPENDENCE, OHIO 44131
(216) 642-3830 FAX 642-1179

C O P Y

CLIENT: FORMU-3 WEIGHT LOSS CENTERS
SPOT#: FWL-22
RADIO : :52 (WITH :08 LIVE TAG)
TITLE : COMMITMENT
DATE : DECEMBER 4, 1991

ANR:

ARE YOU READY TO MAKE A COMMITMENT TO LOSE WEIGHT THIS
YEAR? WELL IF YOU ARE.....ALL YOU HAVE TO DO IS MAKE ONE
SIMPLE CALL!

MUSIC BED:

CALL A FORMU-3 WEIGHT LOSS CENTER TODAY AND TAKE THE
FIRST STEP TO BECOMING THE REAL YOU! THAT'S RIGHT.....YOU'RE
JUST ONE CALL AWAY FROM ONE OF AMERICA'S MOST AFFORDABLE
WEIGHT LOSS PROGRAMS.....A PROGRAM THAT WORKS! IT'S
EASY AT FORMU-3 BECAUSE OF OUR COMMITMENT TO YOU!
WE'LL BE THERE TO MAKE SURE YOU LOSE THAT EXTRA WEIGHT.....
AND TO MAKE SURE YOU KEEP IT OFF!
YOU'LL EAT REGULAR GROCERY STORE FOOD WHILE
ON THE FORMU-3 PROGRAM.....NOT PRE-PACKAGED ENTREES
THAT CAN COST UP TO SEVENTY FIVE DOLLARS EXTRA EVERY
WEEK! SO CALL FORMU-3 TODAY,
AND FOR THE NEXT FEW WEEKS WE'LL EVEN TAKE FIFTY DOLLARS
OFF THE REGULAR PROGRAM PRICE. THAT'S LIKE LOSING TEN
POUNDS FREE! IF YOU'RE READY TO MAKE THE COMMITMENT TO
LOSE WEIGHT.....WE'LL MAKE SURE YOU DO.....AND YOU WILL!
CALL FORMU-3 TODAY.....C'MON.....CALL US!
(:07 LIVE TAG)

Complaint

119 F.T.C.

EXHIBIT L

FINE ADVERTISING AND MEDIA SERVICES

2 SUMMIT PARK DR., INDEPENDENCE, OHIO 44122

(216) 642-3830

FAX 642-1179

C O P Y

CLIENT: FORMU-3 WEIGHT LOSS CENTERS
SPOT#: FWL-14
RADIO : :53 (WITH :07 LIVE TAG)
TITLE : LOSE WEIGHT BY THE HOLIDAYS
DATE : AUGUST 16, 1991

ANCR:

DID YOU KNOW THAT FALL IS WHEN MORE PEOPLE DECIDE TO
LOSE WEIGHT THAN AT ANY OTHER TIME? THAT'S PROBABLY
BECAUSE THE HOLIDAYS ARE JUST AROUND THE CORNER.....

MUSIC BED:

DON'T PANIC.....YOU STILL HAVE A FEW MONTHS! CALL A FORMU-3
WEIGHT LOSS CENTER TODAY AND USE THAT TIME TO TAKE OFF
UP TO 25 TO 30 POUNDS.....UP TO 35 INCHES.....AND UP TO FOUR
DRESS SIZES BEFORE YOU HANG YOUR FIRST HOLIDAY ORNAMENT!
FORMU-3 IS ONE OF THE NATIONS MOST AFFORDABLE WEIGHT
LOSS PROGRAMS, AND IS DESIGNED TO GET YOUR WEIGHT OFF
AS QUICKLY AS IS SAFELY POSSIBLE FOR AN AVERAGE WEEKLY
COST OF ONLY \$7.65! NOW.....PICTURE YOURSELF THIS DECEMBER;
IF YOU'RE A SIZE 18, SEE YOURSELF IN A SIZE 12. IF YOU'RE A SIZE
16, PICTURE YOURSELF UNDER THE MISTLETOE IN A SIZE 10! IT CAN
BE YOU.....IT WILL BE YOU! FALL IS THE PERFECT TIME TO START
LOSING WEIGHT. CALL FORMU-3 TODAY AND GET YOUR HEAD
START ON THE HOLIDAYS! C'MON.....CALL US!

(:07 LIVE TAG)

Exhibit L

003120

Complaint

EXHIBIT M



SUBSTITUTION OF FORMU-FAST® FOOD PRODUCTS

As a substitution for the Breakfast and Lunch Formu-Fast® Food Products on Levels 1, 2, and 3, add the following:

LUNCH

4 oz. Poultry/Seafood

AND

1 Slice High-Fiber
Low-Calorie Wheat Bread

PLEASE NOTE: When substituting the poultry/ seafood and bread for the Formu-Fast® Food Products, a slower weight loss may occur. When substituting the above, you may have two Formu-Fast® Food Products per day. If the substitution is not used, you may have up to four Formu-Fast® Food Products per day.

WHY SHOULD I USE FORMU-FAST® FOOD PRODUCTS?

Because they...

- Decrease calories by at least 33% daily.
- Decrease fat by at least 70% daily.
- Taste great!
- Appease temptation by providing dessert items.
- Help you develop more control to achieve quicker results.
- Create a feeling of fullness by providing the body with healthful nutrients.
- Provide a rapid, smooth transition from old eating habits to new eating habits.
- Help you to resist the temptation to eat more fattening foods when dining out.
- Can be easily prepared anytime, anywhere!
- Provide the best results possible on your program.

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 attorney, 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 a 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. Proposed respondent Formu-3 International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

2. Proposed respondent Formu-3 of Northern Ohio, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

3. Proposed respondent Formu-3 of Northern Ohio, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at 4790 Douglas Circle N.W., Canton, Ohio.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

O R D E R

DEFINITIONS

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

A. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence, based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the 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. A "*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. 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, Formu-3 International, Inc., a corporation, Formu-3 of Northern Ohio, Inc., a corporation, and

Formu-3 of Southern Ohio, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives 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, 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 using the 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 of 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: "Form-You-3 Weight Loss Centers makes no claim that this [these] result[s] is [are] representative of all participants in the Form-You-3 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 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 xx
xxx.]
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; and

(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"; and

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 in 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 Form-You-3 Weight Loss Centers customers in losing weight or maintaining achieved weight loss; provided, however, that in determining the generally expected success for Form-You-3 Weight Loss Centers customers, respondents 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; and

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: "Form-You-3 Weight Loss Centers clients 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 subparagraph 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, the average or typical rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents, weight loss programs have reached or 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.

H. 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 diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

I. Representing, directly or by implication, the daily, weekly, or monthly price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, and in close proximity to such representation, either: (1) the number of days, weeks, or months participants will be obligated to pay the weekly price represented; or (2) the total cost of the weight loss program;

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.

J. Misrepresenting, directly or by implication, the competence, skill, training, credentials or expertise of any of respondents' employees or any of the employees of respondents' franchisees.

K. Misrepresenting, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of calories, fat, or any other nutrient or ingredient in any food product, or otherwise misrepresenting the performance, efficacy, safety, nutritional composition, or benefits of any food or drug, as those terms are defined in Section 15 of the Federal Trade Commission Act.

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

II.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

III.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV.

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 respondents 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.

V.

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 that were relied upon in disseminating 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.

VI.

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 five (5) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VII.

It is further ordered, That:

A. Respondent Formu-3 International, Inc., 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 Formu-3 International, Inc., 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 Formu-3 International, Inc.'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 the franchise or license agreement and applicable state law to bring about cessation of that conduct by the franchisee or licensee.

VIII.

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 it has complied with this order.

IN THE MATTER OF

DEL MONTE FOODS COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3569. Complaint, April 11, 1995--Decision, April 11, 1995*

This consent order requires, among other things, Del Monte Corporation and Pacific Coast Producers to terminate the purchase option agreement and the provisions of the supply agreement that relate to planning for the 1995 canning season within three days after this order becomes final, and to terminate the remaining provisions of the supply agreement by June 30, 1995. In addition, the order requires the California-based respondents to obtain, for ten years, Commission approval before acquiring any stock or assets of a United States canned fruit manufacturer and before entering into a variety of marketing, packing, or other agreements with competitors.

Appearances

For the Commission: *Ronald B. Rowe* and *Marimichael O. Skubel*.

For the respondents: *Terry Calvani* and *Terrence A. Callan*, *Pillsbury, Madison & Sutro*, San Francisco, CA.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Del Monte Foods Company, through its wholly-owned subsidiary Del Monte Corporation, and Pacific Coast Producers have entered into an agreement in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows: