

IN THE MATTER OF

TALEIGH CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3587. Complaint, June 16, 1995--Decision, June 16, 1995*

This consent order prohibits, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent order requires the respondents to have scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or smoking cessation product, or for any food, dietary supplement, drug, or device. In addition, the consent order requires the owner to post a \$300,000 performance bond before marketing any weight-loss product or smoking deterrent or cessation product in the future.

Appearances

For the Commission: *Richard L. Cleland* and *Joel Winston*.
For the respondents: *Sheldon Lustigman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Taleigh Corporation and Choice Diet Products, Inc., corporations; and William J. Santamaria, individually and as an officer and director of said corporations ("respondents"), have violated 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 Taleigh Corporation ("Taleigh"), formerly known as Taleigh, Inc., is a Florida corporation doing business under the names "Choice Diet Products," "Choice Products," and other trade names. Its principal place of business is located at 4742 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent Choice Diet Products, Inc. ("Choice") is a New York

corporation. Its principal place of business is located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent William J. Santamaria is or was at relevant times herein the sole owner, director, and officer of the corporate respondents. Individually or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His address is 20640 Baybrooke Court, Boca Raton, FL.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed weight-loss pills and a smoking cessation product to the public. Respondents have marketed the weight-loss pills under various names, including "MegaLoss," "FormulaTrim," and "MiracleTrim." These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Respondents have marketed the smoking cessation product under the name "Nicotain Stop Smoking Patch."

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.

DIET PILLS FormulaTrim 3000

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for FormulaTrim 3000, including, but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements and depictions:

A. Exhibit A:

"Debbie Hoya lost 25 pounds fast.

Tamara Cowens lost 35 pounds fast." [*Video*: 'before' and 'after' photographs of consumer endorsers displayed with amounts of weight lost.]

"Now you too can lose weight fast, with the help of this new powerful FormulaTrim 3000 diet pill." [*Video*: "LOSE WEIGHT FAST!" displayed with product and, in the next screen, the words "NEW," "FormulaTrim 3000," and "POWERFUL!" displayed in full screen with small print at the bottom of the screen stating, "Use only as directed with diet plan."]

"FormulaTrim's new fat-burning plan is so powerful, you can burn more body fat relaxing all day than running 10 miles nonstop." [*Video*: "Based on 180 pound person" displayed in small print below full screen display of two young persons in pool with caption in large print "BURN AWAY FAT!"]

"Laurette Morello burned away 17 pounds."

LAURETTE MORELLO: "I went from a size 13 to a size 5."

"Adam Locas lost 36 pounds carving 7 inches from his waist....lost 52 pounds trimming from a size 14 to a size 6."

"This powerful, doctor-approved diet pill formula is medically proven to work." [Video: "Use only as directed with diet plan" displayed in small print at bottom of full screen displaying "DOCTOR APPROVED FormulaTrim 3000."]

"The new FormulaTrim fat burning plan is so powerful you can burn more body fat relaxing all day than sweating through five exhausting hours of aerobics" [Video: "BURN AWAY FAT!" superimposed over two young persons in a pool with "Based on 180 pound person" displayed in small white letters against light background at bottom of screen.]

"Terri Nigelson burned away 15 pounds; Joanne Benora lost 32 pounds and Annette Garton lost an incredible and amazing 59 pounds! Now you can burn away fat and lose weight fast by calling . . . for your powerful new FormulaTrim 3000"

"Your satisfaction is 100% guaranteed."

* * *

[Video: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use only as directed with diet plan," "Testimonials compensated," and "Following diet plan is essential for loss of weight (average 1½ - 2 pounds per week) for results cannot be achieved solely through the use of pill."]

B. Exhibit B:

"Debbie Hoya lost 25 pounds, fast. Tamara Koons lost 35 pounds, fast."

"Now you too can lose weight fast with the help of this new powerful medically-proven FormulaTrim 3000 No Hunger Diet Pill." [Video: "Use only as directed with diet plan" displayed in small print below depiction of pill with the words "NEW," "FormulaTrim 3000," and "POWERFUL!" presented in large full-screen display.]

"Following this new powerful FormulaTrim fat burning diet plan, you can burn more body fat relaxing all day than running 10 miles nonstop or even sweating through 5 exhausting hours of aerobics." [Video: "Based on 180 pound person" displayed in small print below full screen display of two young persons in pool with caption in large print "BURN AWAY FAT!"]

"Terry Nigelson burned away 15 pounds.

Lorette Morello burned away 17 pounds." [Video: 'before' and 'after' photographs with "BURN AWAY FAT!" displayed on screen.]

LORETTE MORELLO: "I went from a size 13 to a size 5."

"Adam Locas burned away 36 pounds."

"Claire Contobi burned away 52 pounds [Video: 'before' and 'after' photographs with "BURNED AWAY 52 LBS" displayed on screen] and Annette Barton burned away an incredible and amazing 59 pounds!"

"Now you can end biting hunger pain, burn away fat and lose weight fast by calling . . . for your powerful FormulaTrim 3000"

[Video: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use only as directed with diet plan," "Testimonials compensated," and "Following diet plan is essential for loss of weight (average 1½ - 2 pounds per week) for results cannot be achieved solely through the use of pill."]

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that:

- A. FormulaTrim 3000 causes substantial weight loss rapidly;
- B. FormulaTrim 3000 causes substantial weight loss without the need to exercise or reduce caloric intake;
- C. FormulaTrim 3000 causes the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to users, than five hours of aerobic exercise or running ten miles nonstop;
- D. FormulaTrim 3000's active ingredient is new and/or unique; and
- E. Scientific studies prove that FormulaTrim 3000 causes substantial weight loss rapidly.

PAR. 6. In truth and in fact:

- A. FormulaTrim 3000 does not cause substantial weight loss rapidly;
- B. FormulaTrim 3000 does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. FormulaTrim 3000 does not cause the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to users, than five hours of aerobic exercise or running ten miles nonstop;
- D. FormulaTrim 3000's active ingredient is not new and/or unique; and
- E. Scientific studies do not prove that FormulaTrim 3000 causes substantial weight loss rapidly.

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

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that FormulaTrim 3000 burns body fat.

PAR. 8. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five A-C and seven, they possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for FormulaTrim 3000 reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 11. In truth and in fact, testimonials from consumers appearing in advertisements for FormulaTrim 3000 do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

MegaLoss 1000

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements for MegaLoss 1000, including but not necessarily limited to the attached Exhibits C and D. These advertisements contain the following statements and depictions:

A. Exhibit C:

"You can start losing up to 10, 20, 50 even 100 pounds with the powerful, doctor approved, MegaLoss 1000 Miracle Diet Pill Program for only \$9.95."

[Video: "Use Only As Directed With Diet/Exercise Plan" displayed in small print at bottom of screen below full screen depiction of pill on a finger and the words "MIRACLE DIET PILL" in large print, followed by the words "PROGRAM" and "Doctor Approved" in smaller print.]

"With this doctor-approved MegaLoss 1000 Program, you can burn more body fat relaxing in the sun than swimming 2½ miles or exercising 6 hours nonstop."

[Video: young slender woman lying by a pool with statement "Based On 180 Pound Person" in small print displayed at bottom of screen.]

"Ohio's Faye Diamond lost a dramatic 15 pounds, rapidly dropping from a size 8 to a size 4."

FAYE DIAMOND: "I'm not embarrassed to wear a bikini anymore."

"Toronto's Debbie Holloway lost 53 pounds trimming from a size 16 to a size 7."

Wisconsin's A.J. Jr. rapidly lost 75 pounds, carving 10 bulging inches from his waist.

Tennessee's Sherry Capick lost 38 pounds with her doctor-approved Miracle Diet Pill Program.

And New York's Jeff Waldo rapidly lost an awesome 92 pounds!" [Video: photos of each consumer endorser displayed with amounts of weight lost; two consumer endorsements contain small video displays in the same color as background stating "Results Vary."]

"While under her Doctor's care, Mrs. McKinson quickly lost 32 pounds.

Lorraine Liberatti rapidly lost 46 pounds.

Lynn Clarey lost an astonishing 65 pounds, and E.J. Elkar lost an incredible 100 pounds! Now you can shed excess fat by calling . . . for your doctor approved MegaLoss 1000 Miracle Diet Pill Program. . . ."

"Your satisfaction is 100% guaranteed." [Video: "30-day Money-back Guarantee" displayed with ordering information; during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use Only As Directed With Diet/Exercise Plan," "Testimonials Compensated," and "Following diet/exercise plan is essential for loss of weight for results cannot be achieved solely through the use of pill."]

B. Exhibit D:

"MIRACLE DIET PILL" [headline that appears in approximately 1-inch bold letters]

"Megaloss 1000 Diet Plan GETS THE FAT OFF FAST!" [smaller headline followed by word "Program"]

"Your Ultimate Anti-Fat Weapon!" [headline in ½ inch bold letters]

"SHRINK MILLIONS OF FAT CELLS IN JUST 24 To 48 HOURS!" [smaller headline]

"MEGALOSS GETS THE FAT OFF FAST!"

MegaLoss 1000 really works wonders ... FAST! Debbie Holloway lost an amazing 53 pounds. Harold Albright rapidly burned away 75 pounds and Erma Alkire lost 100 pounds so fast her friends could barely recognize her."

"RAPIDLY LOSE POUNDS & INCHES

Just imagine yourself beginning to burn away years of unsightly fat as the MegaLoss 1000 diet plan helps you rapidly shrink millions of fat cells almost

overnight. Now you, like Debbie, Erma and Faye have the opportunity to rapidly lose weight and regain your figure thanks to the MegaLoss 1000 fat-burning diet and its powerful, clinically tested, medically proven and doctor-recommended diet pill formula."

"MEDICALLY PROVEN - DOCTOR APPROVED!

The MegaLoss 1000 diet plan was designed to trigger super fast weight loss. Results are simply fantastic! Your self-confidence and self esteem will grow each day as you regain your youthful figure with the help of this doctor approved diet program's special diet pill ingredient. Formerly available only through doctors, this powerful ingredient is now available to help you lose weight with the doctor-approved MegaLoss 1000 diet since being recommended for its safety to the United States Government"

"Watch as you:

- LOSE up to 23 INCHES off your WAIST
- LOSE up to 20 INCHES off your HIPS
- LOSE up to 10 INCHES off your THIGHS"

"Naturally, individual weight may vary depending largely on how much you need to lose. But you'll simply be amazed as your calorie intake reduces and gnawing hunger pains are shut off as your high-speed fat burn-off turns on full flame to trim away years of built-up fat. The results are fantastic!"

"ULTIMATE ANTI-FAT WEAPON

You'll no longer be a slave to your appetite. MegaLoss 1000's medically proven formula has been praised by leading doctors, featured in thousands of studies, medical books and national magazines. You now have the ultimate anti-fat weapon you need to lose weight fast. As you quickly drop pounds and inches, experience the more vibrant, desirable and exciting new you emerge."

"NO DANGEROUS SIDE EFFECTS

You'll simply be amazed at how fast the weight comes off. And best of all - you don't have to worry about those nervous jitters, insomnia, laxative effects or dangerous side effects. But you can lose weight so fast your friends may not even recognize you.... As if by magic on the MegaLoss diet plan, down go the calories, down go the inches and down go the pounds!"

"NOW IT'S YOUR TURN

Now it's your turn to rapidly lose weight . . .

Now you can:

- Shrink Millions of Fat Cells The Very First Day
- Trigger Awesome Fat-burning in 24 to 48 Hours
- Slim Stubborn Bulges in Record Time
- Dramatically Reshape Your Body"

"SATISFACTION 100% GUARANTEED OR YOUR MONEY BACK

Now is the proper time... the turning point of your life. Now you can shed your excess fat and have a firm, youthful-looking body faster than you ever dreamed possible. No matter how many years you have been overweight, this amazing anti-fat weapon not only can... but must work wonders for you... or it doesn't cost a single cent! You risk absolutely nothing when you call in your order."

"ORDER NOW WITHOUT RISK

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You must be 100 percent satisfied with your rapid weight loss and the results you see in you waist, hips and thighs. If you are not completely satisfied in any way, simply return the unused portion in 30 days and receive a full refund of your purchase price. No questions asked. So act now. Call in your order today."

[Ad contains the following footnote in fine print: "If you read nothing else, read this . . . Following the High Speed diet plan is an extremely fast and effective means to conquer obesity. It causes you to lower caloric intake, which is essential to the rapid reduction of fat and body weight. Naturally, the incredible results described above may not be achieved solely though the use of the diet pills. You must follow the entire Hi-Speed diet plan, which includes behavior modification and walking to achieve the fastest results. Results vary. Average weight loss is 1-2 pounds per week. . . . This product should not be used by the elderly or children. Pregnant women, nursing mothers, individuals being treated for high blood pressure or depression or who have heart disease, diabetes, or thyroid disease should only use as directed by their physician."]

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that:

- A. MegaLoss 1000 causes substantial weight loss rapidly;
- B. MegaLoss 1000 causes substantial weight loss without the need to exercise or reduce caloric intake;
- C. MegaLoss 1000 causes the burning of more body fat daily, thereby resulting in the same or greater weightloss benefit to users, than swimming two and a half miles or exercising six hours nonstop;
- D. Prior to the sale of MegaLoss 1000, the active ingredient in MegaLoss 1000 was available only through doctors; and
- E. Scientific studies prove that MegaLoss 1000 causes substantial weight loss rapidly.

PAR. 14. In truth and in fact:

- A. MegaLoss 1000 does not cause substantial weight loss rapidly;
- B. MegaLoss 1000 does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. MegaLoss 1000 does not cause the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to

users, than swimming two and a half miles or exercising six hours nonstop;

D. The active ingredient in MegaLoss 1000 was available to the public without a doctor's prescription for a substantial period of time prior to the sale of MegaLoss 1000; and

E. Scientific studies do not prove that MegaLoss 1000 causes substantial weight loss rapidly.

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

PAR. 15. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that:

A. MegaLoss 1000 does not cause nervous jitters or insomnia or have any dangerous side effects;

B. MegaLoss 1000 burns body fat; and

C. MegaLoss 1000 significantly shrinks millions of fat cells within the first twenty-four to forty-eight hours of use.

PAR. 16. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs thirteen A-C and fifteen, they possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 18. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that testimonials from consumers appearing in

advertisements for MegaLoss 1000 reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 19. In truth and in fact, testimonials from consumers appearing in advertisements for MegaLoss 1000 do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph eighteen was, and is, false and misleading.

MiracleTrim

PAR. 20. Respondents have disseminated or have caused to be disseminated advertisements for MiracleTrim, including but not necessarily limited to the attached Exhibit E. This advertisement contains the following statements and depictions:

"Now you can start shrinking millions of fat cells and begin regaining your youthful figure in 24 to 48 hours." [*Video*: heavy woman depicted putting on a pair of jeans and becoming a slim woman within three frames of the ad.]

"The very first day your powerful new MiracleTrim Diet Pill System attacks years of built up fat. You can start losing up to 10, 20, 50, even an atypical 100 pounds for only \$9.95." [*Video*: "100 lbs." and "RECEIVE A FULL 21-DAY SUPPLY," and "NEW!" superimposed over a package containing two bottles of MiracleTrim pills.]

"This new MiracleTrim Diet Pill System is doctor approved to help you quickly shrink millions of fat cells so you can easily regain your youthful figure." [*Video*: "Use Only As Directed With Diet Plan" in small print at bottom of screen below full screen depiction of pill on a finger and the words "NEW!" "DOCTOR APPROVED," and "EASILY REGAIN YOUR FIGURE!" in large print.]

"You can rapidly shrink up to 10 inches off your thighs. You can easily shrink as much as 20 inches from your hips and you can quickly shrink up to an amazing 23 inches from your waist."

* * *

"Pam rapidly went from a large size 15 to a slim 7. After 15 years of diets, Treva finally found one that really worked." [*Video*: 'before' and 'after' photos displayed with amounts of weight lost.]

A man is pictured as he says: "I quickly lost 55 pounds."

"Jo's incredible 59 pound loss gave her a knockout shape. Carol lost an astonishing 40 pounds. And Edie lost a mind boggling 110 pounds." [*Video*: 'before' and 'after' photos of consumer endorsers displayed with amounts of weight lost.]

"Now it's your turn to dramatically reshape your figure by calling . . . for your new MiracleTrim Diet Pill System for only \$9.95." [*Video*: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Following Diet Plan Is Essential For Weight Loss (Average 1½ - 2 Pounds Per

Week) For Results Cannot Be Achieved Solely Through Use Of Pill," "testimonials compensated," and "use only as directed with diet plan."]

* * *

DR. PESHKIN [*shown in video*]: "Order today, you'll receive your own personal weight loss consultation, absolutely free. . . ."

PAR. 21. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that:

- A. MiracleTrim causes substantial weight loss rapidly;
- B. MiracleTrim causes substantial weight loss without the need to exercise or reduce caloric intake;
- C. MiracleTrim's active ingredient is new and/or unique; and
- D. Consumers who order MiracleTrim will receive a personal weight-loss consultation from a doctor or medically trained, professional weight-loss counselor.

PAR. 22. In truth and in fact:

- A. MiracleTrim does not cause substantial weight loss rapidly;
- B. MiracleTrim does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. MiracleTrim's active ingredient is not new and/or unique; and
- D. Consumers who order MiracleTrim will not receive a personal weight-loss consultation from a doctor or medically trained, professional weight-loss counselor.

Therefore, the representations set forth in paragraph twenty-one were, and are, false and misleading.

PAR. 23. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that MiracleTrim significantly shrinks millions of fat cells within the first twenty-four to forty-eight hours of use.

PAR. 24. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as

Exhibit E, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs twenty-one A-B and twenty-three, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 25. In truth and in fact, at the time they made the representations set forth in paragraphs twenty-one A-D and twenty-three, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twenty-four was, and is, false and misleading.

PAR. 26. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for MiracleTrim reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 27. In truth and in fact, testimonials from consumers appearing in advertisements for MiracleTrim do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph twenty-six was, and is, false and misleading.

FAILURE TO ADEQUATELY DISCLOSE MATERIAL CONNECTION

PAR. 28. In their advertising and sale of weight-loss pills, including but not necessarily limited to MegaLoss 1000, FormulaTrim 3000, and MiracleTrim, respondents have represented that consumers appearing in respondents' advertisements are endorsers of the weight-loss pills. Respondents have failed to disclose adequately that certain consumers appearing in respondents' advertisements have a material connection with respondents in that such consumers have been compensated, or offered significant compensation, for endorsing the weight-loss pills. This fact would be material to consumers in their purchase or use decisions regarding the products. The failure to disclose adequately this fact, in light of the representation made, was, and is, a deceptive practice.

TRADE PRACTICE VIOLATIONS

PAR. 29. In their advertisements for their weight-loss pills, respondents have directed consumers to call a toll-free telephone number to place an order. Typically, when consumers called this telephone number, they were given a choice of paying by check or by credit card. If consumers indicated that they preferred to pay by check, they were asked to read the numbers across the bottom of one of their checks. Respondents then magnetically encoded this information on a bank draft, which was submitted to the consumer's bank for payment. If consumers indicated that they preferred to pay by credit card, they were asked for their credit card number and respondents billed a charge directly to the consumer's credit card account.

UNAUTHORIZED DEBITS AND CHARGES

PAR. 30. In numerous instances, respondents have debited consumers' bank accounts or billed consumers' credit card accounts without the consumers' authorization or for amounts greater than those authorized by the consumers. Respondents' practices as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

FAILURE TO HONOR MONEY-BACK GUARANTEE

PAR. 31. In their advertisements and promotional materials for their weight-loss pills, respondents have represented that the weight-loss pills carry a "money-back guarantee," and that consumers can return the product within a specified time period after receipt of the product and receive a full refund within a reasonable period of time.

PAR. 32. In truth and in fact, in numerous instances, consumers have returned the weight-loss pills to respondents within the specified time period in order to obtain a refund, and respondents have failed to provide refunds of money paid by such consumers or failed to provide them within a reasonable period of time. The practices of respondents as set forth herein have caused substantial injury to consumers that is not outweighed by any countervailing benefits to

consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

TRUTH IN LENDING ACT VIOLATIONS

PAR. 33. Respondents are creditors as "creditor" is defined in Section 103(f) of the Truth In Lending Act ("TILA"), 15 U.S.C. 1602(f), and in Section 226.2(a)(17) of Regulation Z, 12 CFR 226.2(a)(17), and are, therefore, required to comply with the applicable provisions of that Act and Regulation.

PAR. 34. Section 226.12(e) of Regulation Z, 12 CFR 226.12(e), which implements Section 166 of the TILA, 15 U.S.C. 1666e, provides that:

When a creditor other than a card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

PAR. 35. In numerous instances, respondents have failed to transmit credit statements to the card issuer through the card issuer's normal channels for credit statements within seven business days from accepting the return of property or forgiving the debt for services in violation of the TILA and Section 226.12(e) of Regulation Z.

NONDELIVERY

PAR. 36. In connection with the sale of weight-loss pills to consumers, respondents have represented, directly or by implication, that the weight-loss pills would be delivered to purchasers within a reasonable period of time.

PAR. 37. In truth and in fact, in numerous instances, the weight-loss pills referred to in paragraph thirty-six that were sold to purchasers have not been delivered to such purchasers or have not been delivered to them within a reasonable period of time. Further, in numerous instances, respondents have failed to provide refunds of money paid by such purchasers or have failed to provide such refunds within a reasonable period of time. The practices of respondents as set forth herein have caused substantial injury to consumers that is

not outweighed by any countervailing benefits to consumers or competition and is not reasonably avoidable by consumers, and constitute unfair and deceptive acts or practices.

SMOKING CESSATION PRODUCT -- NICOTAIN

PAR. 38. Respondents have disseminated or have caused to be disseminated advertisements for the Nicotain Stop Smoking Patch, including but not necessarily limited to the attached Exhibit F. This advertisement contains the following statements and depictions:

[Video: "EASILY STOP SMOKING" displayed in large print.]

"You can easily stop smoking with the new nonmedicated, nicotine-free, doctor-approved Nicotain Stop Smoking Patch."

[Video: product box displayed with label reading: "nicotain STOP SMOKING PATCH."]

[Video: "DOCTOR APPROVED!" displayed in large print above depiction of person wearing patch on wrist.]

[Video: "NEW! NON-PRESCRIPTION" displayed in large print and "nicotain STOP SMOKING PATCH" displayed in smaller print over depiction of patch on wrist.]

"This revolutionary new behavior modification, nonprescription Nicotain Stop Smoking Patch Program is so effective, you can easily quit, whether you smoke one, two, even three packs a day." [Video: "Use nonmedicated patch only as directed with plan" in small print displayed at bottom of screen.]

"Roxanna Seles smoked for 12 years."

[Video: "SMOKED FOR 12 YEARS" displayed in large print.]

ROXANNA: "And I quit in just one week." [Video: "QUIT IN JUST ONE WEEK!" displayed in large print video over person identified as Roxanna Seles followed by other consumer endorsements.]

MAN: "Nicotain made it easy. And I didn't have to go to a doctor for it."

1st WOMAN: "Twenty years, twenty cigarettes a day--and I quit in just two weeks with Nicotain."

[Video: "QUIT IN JUST TWO WEEKS!" displayed in large print.]

* * *

2nd WOMAN: "I called, I quit, and it only cost \$9.95."

* * *

MAN: "Every cigarette brings you seven minutes closer to death."

[Video: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "use nonmedicated patch only as directed with plan," "testimonials compensated/one-week starter program," "product effectiveness is directly related to user's motivation to stop."]

PAR. 39. Through the use of the statements and depictions contained in the advertisements referred to in paragraph thirty-eight,

including but not necessarily limited to the advertisement attached as Exhibit F, respondents have represented, directly or by implication, that:

A. The Nicotain Stop Smoking Patch enables users to stop smoking easily, regardless of the number of cigarettes they currently smoke or the number of years they have smoked; and

B. The Nicotain Stop Smoking Patch works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

PAR. 40. In truth and in fact:

A. The Nicotain Stop Smoking Patch does not enable users to stop smoking easily, regardless of the number of cigarettes they currently smoke or the number of years they have smoked; and

B. The Nicotain Stop Smoking Patch does not work through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

Therefore, the representations set forth in paragraph thirty-nine were, and are, false and misleading.

PAR. 41. Through the use of the statements and depictions contained in the advertisements referred to in paragraph thirty-eight, including but not necessarily limited to the advertisement attached as Exhibit F, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph thirty-nine A, they possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 42. In truth and in fact, at the time they made the representation set forth in paragraph thirty-nine A, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph forty-one was, and is, false and misleading.

PAR. 43. Through the use of the statements and depictions contained in the advertisements referred to in paragraph thirty-eight, including but not necessarily limited to the advertisement attached as Exhibit F, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for The

Nicotain Stop Smoking Patch reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 44. In truth and in fact, testimonials from consumers appearing in advertisements for Nicotain Stop Smoking Patch do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph forty-three was, and is, false and misleading.

PAR. 45. The acts and practices of respondents as alleged in this complaint constitute unfair or 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.

Chairman Pitofsky not participating.

Complaint

119 F.T.C.

EXHIBIT A

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

 PRODUCT: FORMULA TRIM 3000 DIET PILLS
 TITLE: "BEFORE & AFTER"
 PROGRAM: NEWS
 STATION: WUAB
 PAGE: 1 OF 2

OH92-51134

 07/06/92 90
 (CLEVELAND) 10.58PM

EXHIBIT A (p. 1)


 (MUSIC) MALE ANNCR:
 Debbie Hoya lost 25
 pounds fast.

 Tamara Cowens lost 35
 pounds fast.

 Now you too can lose
 weight fast.

 with the help of this new
 powerful FormulaTrim
 3000 diet pill.

 FormulaTrim's new fat-
 burning plan is


so powerful.


 you can burn more body fat
 relaxing all day than
 running 10 miles non-stop

 Laurette Morello burned
 away 17 pounds.

 LAURETTE MORELLO: I
 went from a size 13 to a
 size 5.

 MALE ANNCR: Adam Locas
 lost 36 pounds carving 7
 inches from his waist.


... lost 52 pounds


 trimming from a size 14 to
 a size 6.


This powerful


 doctor-approved diet pill
 formula is medically proven
 to work.

 The new FormulaTrim fat
 burning plan is so
 powerful.

 you can burn more body fat
 relaxing all day

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

When Radio Television Reports presents the program, it is important to be aware of the fact that the program is a commercial.

EXHIBIT A

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT FORMULA TRIM 3000 DIET PILLS
TITLE "BEFORE & AFTER"
PROGRAM NEWS
STATION WUAB
PAGE 2 OF 2

OH92-51134
07/06/92 90
(CLEVELAND) 10:58PM

EXHIBIT A (p. 2)



then sweating through five exhausting hours of aerobics.



Terri Nigelson



burned away 15 pounds;



Joanne Benora lost 32 pounds



and Annette Garton lost an incredible and amazing 59 pounds!



Now you can



burn away fat and lose weight fast by calling 1-800-547-9500



for your powerful new FormulaTrim 3000



for only \$9.95. We accept personal check and credit card orders by phone.



Call 1-800-547-9500 now to order your three week supply.



For only \$9.95. Call right now



and receive your Swedish Cellulite Creme absolutely free.



Your satisfaction is 100% guaranteed.



Remember, have your check book



or credit card ready when calling.



that's 1-800-547-9500. Call now!

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Complaint

119 F.T.C.

EXHIBIT B

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT: FORMULA TRIM 3000 NO HUNGER DIET PILL 92-10715
 TITLE: "END HUNGER PAIN"
 PROGRAM: VICKI
 STATION: WPIX 9/15/92 :60
 (NEW YORK) 10:30AM

EXHIBIT B



(MUSIC) ANNCR: Debbie Hoya lost 25 pounds, fast.



Tamara Koons lost 35 pounds, fast. Now you too can lose weight fast



with the help of this new powerful medically-proven FormulaTrim 3000 No Hunger Diet Pill.



Following this new powerful FormulaTrim fat burning diet plan.



you can burn more body fat relaxing all day



than running 10 miles non-stop



or even sweating through 5 exhausting hours of aerobics.



Terry Nigelson burned away 15 pounds.



Loretta Morello burned away 17 pounds.



LORETT MORELLO: I went from a size 13 to a size 5.



ANNCR: Adam Logus burned away 36 pounds.



Claire Contobi burned away 52 pounds



and Annette Barton burned away an incredible and amazing 59 pounds! (MUSIC OUT)



ANNCR: Now you can end biting hunger pain, burn away fat and lose weight fast by calling 1-800-542-9696



for your powerful FormulaTrim 3000 for only \$9.95. We accept personal check and credit card orders by phone.



Call 1-800-542-9696 and receive your Swedish Cellulite Cream absolutely free.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

EXHIBIT C

**RADIO
TV REPORTS**

41 East 42nd Street New York, NY 10017 (212) 307-1436

PRODUCT: MEGA LOSS 1000 DIET PILLS
TITLE: "MIRACLE DIET"
PROGRAM: MOVIE
STATION: WPIX
PAGE 1

91-11148

10/06/91
(NEW YORK)
120
2:23PM

EXHIBIT C (p. 1)



(MUSIC) ANNCR: You can start losing up to 10, 20, 50 even 100 pounds



with the powerful, doctor approved,



Mega Loss 1000 Miracle Diet Pill Program for only \$9.95.



With this doctor approved Mega Loss 1000 Program, you can burn more body fat



relaxing in the sun then swimming 2 1/2 miles



or exercising 6 hours nonstop



Ohio's Faye Diamond lost a dramatic 15 pounds.



rapidly dropping from a size 8 to a size 4



FAYE DIAMOND: I'm not embarrassed to wear a bikini anymore



ANNCR: Toronto's Debbie Holloway lost 53 pounds, trimming from a size 16 to a size 7.



Wisconsin's A.J. Jr. rapidly lost 75 pounds



carving 10 bulging inches from his waist



Tennessee's Sherry Capick lost 38 pounds with her doctor approved Miracle Diet Pill Program



And New York's Jeff Waldo rapidly lost an awesome 92 pounds!



While under her Doctor's care, Mrs. McKinson



quickly lost 32 pounds

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Reports reports on, discuss the benefits of, and promotes Mega Loss 1000 Diet Pills, it does not contain any information about the product or its benefits.

Complaint

119 F.T.C.

EXHIBIT C

**RADIO
TVREPORTS**

41 East 42nd Street New York, NY 10017 (212) 309-1400

PRODUCT: MEGA LOSS 1000 DIET PILLS
TITLE: "MIRACLE DIET"
PROGRAM: MOVIE
STATION: WPIX (NEW YORK)
PAGE 2

91-11148

10/06/91
120
2:23PM

EXHIBIT C (p. 2)



Lorraine Liberatti rapidly lost 46 pounds.



Lynn Clarey lost an astonishing 65 pounds.



and E.J. Elker lost an incredible



100 pounds!



Now you can shed excess fat by calling 1-800-641-1200.



for your doctor approved Mega Loss 1000 Miracle Diet Pill Program.



for only \$9.95.



We accept all personal checks and credit card orders by phone.



Call 1-800-641-1200 now to order your 21-day supply.



for only \$9.95.



Call right now and receive



your Nighttime Cellulite Cream absolutely free.



Your satisfaction is 100% guaranteed.



Remember: Have your check book or credit card ready when calling.



That's 1-800-641-1200, call now!

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

As with all Radio-TV Reports, this program is available on video and cassette for home viewing and listening.

Billy Graham: The way you pray makes dreams come true



CAN unlock the secrets to life's riches by knowing how to pray, says famous evangelist Billy Graham in his sensational new book *Warning*. More to it than simply putting your hands together, he explains. Billy, few people have us to put prayer to work. We have no sense of community and expectantly to simply use prayer as a formula. Graham sighs. His most revered preaching the correct way to pray our dreams come true. Choose a proper setting for quiet spot where you interrupted ... a spot

BLOCKBUSTER NEW BOOK

where you can be alone with God. Next, clear your mind of anger or animosity and engage in a one-on-one conversation with the Lord. "You may not be able to pray like a clergyman in the beginning, but you can start with just a simple sentence. 'Lord, I love you.' That's a prayer. Or, 'God, help me.' That's a prayer, too. 'Snatches of memorized verses are hastily spoken in the morn-

ing, then we say goodbye to God for the rest of the day, until we rush through a few closing petitions at night," he laments. "Since the disciples had to be taught to pray, we, too, ought to study the Scriptures and learn to pray," Dr. Graham says. Prayer is not a button we can press and get an immediate answer, either. "We can't manipulate God or dictate to him. Knowing far better than we what's good for us, God gives us what we NEED," he says. Knowing how to pray isn't enough, however. We also need to know WHEN to pray. "Of course, we need to pray in times of adversity, lest we become faithless and unbelieving. But we also need to pray in times of prosperity, lest we become boastful and proud," he writes. "God may not give us what we ask for, for that may not be his wise and loving will for us. But he WILL answer our prayer in his own way. He will not let us down in our hour of need." And in such times of need, Dr. Graham promises, God will provide us with patience, courage and strength.

Worked for Naomi Judd

THE POWER of prayer has cured country singer Naomi Judd of a serious liver disease that forced her into an early retirement last year. "Medical science is a wonderful thing," says the jubilant Judd, "but I had to go to a higher authority. 'It worked. I'm in full remission.' The case of chronic hepatitis she contracted in 1990 forced Naomi to retire from the superstar singing duo with daughter Wynonna last year. Wynonna's now a big hit on her own.

Miracle Diet Pill Program



"My dress size went from a size 16 to a size 7."
Debbie Holloway

**"I LOST
53 LBS."**



EXHIBIT D (p. 2)

"I'm Not Embarrassed to Wear A Bikini Anymore!"

Miracle Diet Pill

MegaLoss 1000 Diet Plan
GETS THE FAT OFF FAST!
Program
Your Ultimate Anti-Fat Weapon!

SHRINK MILLIONS OF FAT CELLS IN JUST 24 TO 48 HOURS!

MEGALOSS GETS THE FAT OFF FAST!

MegaLoss 1000 really works wonders. **FAST!** Debye Hefway lost an amazing 53 pounds. **FAST!** Alpbright rapidly burned away 75 pounds and Emma Blake over 100 pounds so fast her friends could barely recognize her.

RAPIDLY LOSE POUNDS & INCHES

Just imagine yourself beginning to burn away years of unsightly fat as the MegaLoss 1000 diet plan helps you shrink the millions of fat cells almost overnight. Now you, too, Emma and Faye have the opportunity to rapidly weight and regain your figure thanks to the 1000 fat-burning diet and its powerful, clinically tested, medically proven and doctor-recommended diet pills.

MEDICALLY PROVEN - DOCTOR APPROVED!

"I lost 100 lbs!"

ULTIMATE ANTI-FAT WEAPON

NO DANGEROUS SIDE EFFECTS

You'll simply be amazed at how fast the weight comes off and best of all... you don't have to worry about those nervous effects, insomnia, laxative effects or dangerous side effects. But you can't lose weight so fast your friends may not even recognize you... As if by magic on the MegaLoss diet plan, down go the calories, down go the inches and down go the pounds!

NOW IT'S YOUR TURN

Now if you burn fat to rapidly lose weight, to have a new appearance, to have a new self-image, to have a new lifestyle... Now you can:

- Shrink Millions of Fat Cells The Very First Day
- Trigger Awesome Fat-burning In 24 to 48 Hours
- Shrink Stubborn Bulges in Record Time
- Dramatically Reshape Your Body

SAISFACTION 100% GUARANTEED OR YOUR MONEY BACK

Now is the proper time. The turning point of your life. Now you can shed your stress fat and have a firm, youthful-looking body faster than you ever dreamed possible. No matter how many years you have been overweight, this amazing anti-fat weapon not only can, but must work absolutely wherever you eat in your diet.

Watches as you:

- LOSE up to 23 INCHES off your WAIST
- LOSE up to 20 INCHES off your HIPS
- LOSE up to 10 INCHES off your THIGHS

Naturally, individual weight may vary depending largely on how much you need to lose. But your body may be amazed as your calorie intake reduces and draining hunger pains are shut off as your high-powered fat-burning pills on fat flame to trim away years of built-up fat. The results are fantastic!

FREE
WITH
ANY
ORDER

CALL TOLL FREE
PERSONAL CHECKS AND CREDIT CARDS ACCEPTED BY PHONE!
1-800-899-1400

WEIGHT LOSS CONSULTATION If Lines Are Busy Call, 1-800-652-1188 **ASK FOR OPERATOR 6E, 102 CALL NOW!**

Special Discount Offer!
ORDER NOW SAVE UP TO 50% OR MORE!

10-15 LBS.	15-20 LBS.	20-25 LBS.	25-30 LBS.	30-35 LBS.	35-40 LBS.	40-45 LBS.	45-50 LBS.	50-55 LBS.	55-60 LBS.	60-65 LBS.	65-70 LBS.	70-75 LBS.	75-80 LBS.	80-85 LBS.	85-90 LBS.	90-95 LBS.	95-100 LBS.	100-105 LBS.	105-110 LBS.	110-115 LBS.	115-120 LBS.	120-125 LBS.	125-130 LBS.	130-135 LBS.	135-140 LBS.	140-145 LBS.	145-150 LBS.	150-155 LBS.	155-160 LBS.	160-165 LBS.	165-170 LBS.	170-175 LBS.	175-180 LBS.	180-185 LBS.	185-190 LBS.	190-195 LBS.	195-200 LBS.	200-205 LBS.	205-210 LBS.	210-215 LBS.	215-220 LBS.	220-225 LBS.	225-230 LBS.	230-235 LBS.	235-240 LBS.	240-245 LBS.	245-250 LBS.	250-255 LBS.	255-260 LBS.	260-265 LBS.	265-270 LBS.	270-275 LBS.	275-280 LBS.	280-285 LBS.	285-290 LBS.	290-295 LBS.	295-300 LBS.	300-305 LBS.	305-310 LBS.	310-315 LBS.	315-320 LBS.	320-325 LBS.	325-330 LBS.	330-335 LBS.	335-340 LBS.	340-345 LBS.	345-350 LBS.	350-355 LBS.	355-360 LBS.	360-365 LBS.	365-370 LBS.	370-375 LBS.	375-380 LBS.	380-385 LBS.	385-390 LBS.	390-395 LBS.	395-400 LBS.	400-405 LBS.	405-410 LBS.	410-415 LBS.	415-420 LBS.	420-425 LBS.	425-430 LBS.	430-435 LBS.	435-440 LBS.	440-445 LBS.	445-450 LBS.	450-455 LBS.	455-460 LBS.	460-465 LBS.	465-470 LBS.	470-475 LBS.	475-480 LBS.	480-485 LBS.	485-490 LBS.	490-495 LBS.	495-500 LBS.	500-505 LBS.	505-510 LBS.	510-515 LBS.	515-520 LBS.	520-525 LBS.	525-530 LBS.	530-535 LBS.	535-540 LBS.	540-545 LBS.	545-550 LBS.	550-555 LBS.	555-560 LBS.	560-565 LBS.	565-570 LBS.	570-575 LBS.	575-580 LBS.	580-585 LBS.	585-590 LBS.	590-595 LBS.	595-600 LBS.	600-605 LBS.	605-610 LBS.	610-615 LBS.	615-620 LBS.	620-625 LBS.	625-630 LBS.	630-635 LBS.	635-640 LBS.	640-645 LBS.	645-650 LBS.	650-655 LBS.	655-660 LBS.	660-665 LBS.	665-670 LBS.	670-675 LBS.	675-680 LBS.	680-685 LBS.	685-690 LBS.	690-695 LBS.	695-700 LBS.	700-705 LBS.	705-710 LBS.	710-715 LBS.	715-720 LBS.	720-725 LBS.	725-730 LBS.	730-735 LBS.	735-740 LBS.	740-745 LBS.	745-750 LBS.	750-755 LBS.	755-760 LBS.	760-765 LBS.	765-770 LBS.	770-775 LBS.	775-780 LBS.	780-785 LBS.	785-790 LBS.	790-795 LBS.	795-800 LBS.	800-805 LBS.	805-810 LBS.	810-815 LBS.	815-820 LBS.	820-825 LBS.	825-830 LBS.	830-835 LBS.	835-840 LBS.	840-845 LBS.	845-850 LBS.	850-855 LBS.	855-860 LBS.	860-865 LBS.	865-870 LBS.	870-875 LBS.	875-880 LBS.	880-885 LBS.	885-890 LBS.	890-895 LBS.	895-900 LBS.	900-905 LBS.	905-910 LBS.	910-915 LBS.	915-920 LBS.	920-925 LBS.	925-930 LBS.	930-935 LBS.	935-940 LBS.	940-945 LBS.	945-950 LBS.	950-955 LBS.	955-960 L
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EXHIBIT E

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT: MIRACLE TRIM DIET PILL SYSTEM
TITLE: "SHRINK FAT CELLS"
PROGRAM: MONTEL WILLIAMS
STATION: WNYW
PAGE: 1 OF 2

93-01018

1/25/93 :90
(NEW YORK) 5:06PM

EXHIBIT E (p. 1)



(MUSIC) ANNCR: Now you can start shrinking millions of fat cells



and begin regaining your youthful figure



in 24 to 48 hours.



The very first day your powerful new Miracle Trim Diet Pill System



attacks years of built up fat.



You can start losing up to 10, 20, 50,



even a typical 100 pounds for only \$9.95.



This new Miracle Trim Diet Pill System



is doctor approved to help you quickly shrink millions of fat cells



so you can easily regain your youthful figure.



You can rapidly shrink up to 10 inches off your thighs.



You can easily shrink as much as 20 inches from your hips



and you can quickly shrink up to an amazing 23 inches from your waist.



WOMAN: Thanks to Miracle Trim I'm enjoying my new body.



ANNCR: Pam rapidly went from a



large size 15 to a slim 7.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Complaint

119 F.T.C.

EXHIBIT E

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT MIRACLE TRIM DIET PILL SYSTEM
TITLE "SHRINK FAT CELLS"
PROGRAM MONTEL WILLIAMS
STATION WNYW
PAGE 2 OF 2

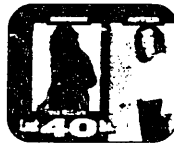
93-01018

1/25/93 :90
(NEW YORK) 5:06PM

EXHIBIT E (p. 2)



After 15 years of diets,
Treva



finally found one that really
worked.



MAN: I quickly lost 55
pounds.



ANNCR: Jo's incredible 59
pound loss gave her a
knockout shape.



Carol lost an astonishing 40
pounds.



And Edie lost a mind
boggling 110 pounds.



2nd ANNCR: Now it's your
turn to dramatically
reshape your figure



by calling 1-800-544-3344
for your new



Miracle Trim Diet Pill
System for only \$9.95.



We accept all personal
checks and credit card
orders by phone.



Call 1-800-544-3344 to order
your new



Miracle Trim for only \$9.95



and we'll give you this free
supply to complete your 21
day system.



DR. PESHKIN: Order today,
you'll receive your own



personal weight loss
consultation, absolutely
free.



2nd ANNCR: Have your
check book or credit card
ready when calling. That's
1-800-544-3344, call now.
(MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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EXHIBIT F

**RADIO
TV REPORTS**

41 East 42nd Street, New York, NY 10017 (212) 309-1400

PRODUCT: NICOTAIN STOP SMOKING PATCH 93-13570 E
TITLE: "YOU KNOW YOU HAVE TO QUIT"
PROGRAM: SPORTS DESK 60
STATION: MSG (NEW YORK) 11/27/93 11:53PM

EXHIBIT F



(MUSIC) ANNCR: You can easily stop smoking with the new non-medicated,



nicotine-free, doctor-approved Nicotain Stop Smoking Patch.



This revolutionary new behavior modification,



non-prescription Nicotain Stop Smoking Patch. Program is so effective, you can easily quit.



whether you smoke one, two, even three packs a day. Roxanna Sales smoked for 12 years.



ROXANNA: And I quit in just one week.



MAN: Nicotain made it easy. And I didn't have to go to a doctor for it.



1st WOMAN: Twenty years, twenty cigarettes a day.



and I quit in just two weeks with Nicotain. (MUSIC OUT)



ANNCR: To order Nicotain, call 1-800-435-4466.



2nd WOMAN: I called, I quit, and it only cost \$9.95.



ANNCR: Call 1-800-435-4466 now!



MAN: Every cigarette brings you seven minutes closer to death.



So don't wait. Make the call. Make the call now.



ANNCR: Order Nicotain now. Call 1-800-435-4466.



3rd WOMAN: You know you have to quit. So make the call.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 have 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 Taleigh Corporation, formerly known as Taleigh, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. At times relevant hereto, its office and principal place of business was located at 4742 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent Choice Diet Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent William J. Santamaria is an officer and director of said corporations. He formulates, directs and controls the policies,

acts and practices of said corporations and his address is 20640 Baybrooke Court, Boca Raton, FL.

2. 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.

ORDER

For purposes of this order:

1. *"Clearly and prominently"* as used herein shall mean as follows:

(a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. *"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 profession to yield accurate and reliable results.

3. *"Purchase price"* shall mean all amounts paid to respondents in cash or by check, or charged to a consumer's credit card account or debited from a consumer's checking account, including, where applicable, sales tax, and any charges not authorized by consumers to be charged to their charge card accounts or debited from their checking accounts, provided however, with regard to Part XIV, purchase price shall not include shipping or handling charges if such charges are not included in respondents' guarantee or refund offer.

4. "*Weight-loss product*" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program.

5. "*Smoking deterrent or cessation product*" shall mean any product or program designed to aid or assist the user to stop or reduce the cigarette urge, break the cigarette habit, or stop or reduce smoking.

I.

It is ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of FormulaTrim 3000, MegaLoss 1000, MegaLoss 3000, MiracleTrim, or any other weightloss product containing phenylpropanolamine as the active ingredient, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product causes or assists in causing rapid weight loss;
- B. Such product causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake;
- C. Such product is new or unique or contains a new or unique ingredient;
- D. Such product causes the burning of more body fat than five hours of aerobics, running ten miles nonstop, swimming two and a half miles, exercising six hours nonstop, or any similar exercise activity; or
- E. Such product contains an active ingredient that, prior to the sale of such product, was available only through doctors.

II.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such weight-loss product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and, in a television or videotape advertisement, simultaneously in both the audio and video portions of the advertisement, that reducing caloric intake and/or increasing exercise is required to lose weight; provided however, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such product is effective without reducing caloric intake and/or increasing exercise.

III.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, from representing, in any manner, that:

A. Such product or program weight loss, causes or assists in causing weight loss, or assists in maintaining weight loss;

B. Such product or program causes or assists in causing weight loss without exercise or reducing caloric intake;

C. Such product or program causes the burning of more body fat than any amount of exercise activity; or

D. Such product or program causes or assists the user to stop or reduce smoking easily; unless such representation is true, and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any substantially similar product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program enables users to stop smoking easily; or

B. Such product or program works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

V.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling,

promotion, offering for sale, sale, or distribution of Nicotain, or any other smoking deterrent or cessation product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any misrepresentation, including through the name of the product, concerning the nature or mechanism of operation of such product, including, but not limited to, that such product contains nicotine or works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

VI.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Such product or program is new or unique or contains a new or unique ingredient;

B. Consumers who order the product or program will receive a personal consultation from a physician, medical professional or weight-loss counselor; or

C. Any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of such product or program represents the typical or ordinary experience of members of the public who use the product or program.

VII.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an

officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, where one exists, between a person providing an endorsement of any product or program, as "endorsement" is defined in 16 CFR 255.0 (b), and any respondent, or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. For purposes of this order, "material connection" shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

VIII.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, Subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

IX.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any

partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program does not cause any dangerous side effects, nervous jitters, or insomnia;

B. Such product or program burns, reduces, or diminishes body fat; or

C. Such product or program significantly shrinks fat cells; unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

X.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device, as "food," "drug," and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any representation regarding the performance, benefits, efficacy, or safety of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

XI.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

XII.

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.

XIII.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from charging a consumer's credit card account or debiting a consumer's checking account in an amount in excess of the amount affirmatively authorized by the consumer.

XIV.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in

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

A. Representing, directly or by implication, that consumers can receive a refund, through such terms as "money back guarantee" or similar terms, unless respondents refund the full purchase price at the consumer's request in accordance with the provisions of this Part;

B. Failing to disclose, clearly and prominently, any material limitations or conditions that apply to a guarantee, warranty or refund policy;

C. Failing to comply, where applicable, with the requirements of Section 166 of the Truth in Lending Act, 15 U.S.C. 1666e and 12 CFR 226.12(e)(1); and

D. Failing to refund the full purchase price in accordance with the terms of a guarantee, warranty or refund policy within a reasonable period of time after a consumer complies with the conditions for receiving a refund. For purposes of this Part, "a reasonable period of time" shall be:

(1) That period of time specified in respondents' solicitation if such period is clearly and prominently disclosed to the consumer in the solicitation; or (2) if no period of time is clearly and prominently disclosed, a period of thirty (30) days following the date that the consumer complies with the conditions for receiving a refund.

For purposes of determining whether a consumer has complied with the conditions for receiving a refund, the date for determining whether the consumer has returned the product or program within the specified time shall be the date the consumer mails or causes the product or program to be shipped to the respondents or respondents' designated agents.

XV.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents'

agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from violating any provision of The Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 Fed. Reg. 49095.

XVI.

It is further ordered, That respondent William J. Santamaria, and respondent Santamaria's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product to the general public, unless prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondent Santamaria first obtains a performance bond in the principal sum of three hundred thousand dollars (\$300,000). Said bond shall be conditioned upon compliance by respondent Santamaria with the provisions of the Federal Trade Commission Act, and with the provisions of this order. The bond shall be deemed continuous and remain in full force and effect as long as respondent Santamaria continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. The bond shall cite this order as the subject matter of the bond and provide surety against respondent Santamaria's failure to pay consumer redress or disgorgement as set forth herein. Such performance bond shall be an insurance agreement providing surety issued by a surety company that is admitted to do business in a state in which respondent Santamaria is doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring.

Respondent Santamaria shall provide a copy of such performance bond to the associate director of the Federal Trade Commission's Division of Enforcement, 6th Street & Pennsylvania Avenue, N.W.,

Washington, D.C., prior to the commencement of any business for which such bond is required.

Provided, however, in lieu of a performance bond, respondent Santamaria may establish and fund, pursuant to the terms set forth herein, an escrow account in the principal sum of three hundred thousand dollars (\$300,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve. Respondent Santamaria shall maintain such amount in that account for so long as he continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. Respondent Santamaria shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this order as Exhibit A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Santamaria for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of this order or the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the performance bond or funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, provided that, if respondent Santamaria has agreed to the entry of a court order or an order of the Commission, a specific finding that Santamaria violated the terms of this order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Santamaria at his last known address.

Respondent Santamaria may not disclose the existence of the performance bond or escrow account to any consumer, or other purchaser or prospective purchaser, to whom a covered product is advertised, promoted, offered for sale, sold, or distributed, without

also disclosing at the same time and in a like manner that the performance bond or escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Santamaria engaged in false and misleading representations.

XVII.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., shall:

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

B. For a period of five (5) years from the date of issuance of this order, provide a copy of this order to each of respondents, future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

XVIII.

It is further ordered, That for five (5) 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 or its staff 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.

XIX.

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

XX.

It is further ordered, That respondent, William J. Santamaria, shall, for a period of seven (7) years from the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XXI.

It is further ordered, That respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Chairman Pitofsky not participating.

Decision and Order

119 F.T.C.

EXHIBIT A

THIS ESCROW AGREEMENT, made and entered into this ____ day of _____, _____, by and between William J. Santamaria (hereinafter "Santamaria"); and the Federal Trade Commission, an agency of the Government of the United States of America, by and through _____ (hereinafter "FTC"); and _____ (hereinafter "Escrow Agent");

WITNESSETH:

Whereas, the FTC and Santamaria have entered into an Agreement Containing Consent Order to Cease and Desist (hereinafter "Consent Order"), a copy of which is attached hereto as Exhibit A; and

Whereas, the Consent Order requires that Santamaria cease and desist from advertising, promoting, offering for sale, selling, or distributing any product listed therein to the general public unless he first establishes and maintains an escrow account, under the terms and conditions specified in the Consent Order;

Now, wherefore, in accordance with the terms of the Consent Order, which are incorporated herein by reference, the parties covenant and agree as follows:

1. Santamaria shall establish an Escrow Account at _____ to be styled Santamaria Escrow Account, _____ Escrow Agent. Santamaria shall deposit into the Escrow Account an initial sum of at least three hundred thousand dollars (\$300,000) in cash, or other approved assets of equivalent value. Thereafter, Santamaria shall deposit such additional amounts into the Escrow Account as are necessary to maintain the total amount in the Escrow Account at three hundred thousand dollars (\$300,000).

2. The Escrow Agent shall be the sole signatory on the Escrow Account and access to the funds held in that account shall be solely through the Escrow Agent. It is understood by the parties to this Escrow Agreement that upon the signing of this Agreement, Santamaria relinquishes to the Escrow Agent, all legal title to the escrow funds, except as to such amounts in the Escrow Account that are in excess of three hundred thousand dollars (\$300,000). Until and

unless the Escrow Account is terminated as provided for herein, Santamaria agrees to make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and, in the event of bankruptcy, Santamaria acknowledges that the funds are not part of Santamaria's estate, nor does the estate have any claim or interest therein.

3. The Escrow Agent and the parties hereto agree that the escrow funds shall be held only in accordance with the terms of the Consent Order and the Escrow Agreement. Santamaria shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that Santamaria fails to pay such costs as they become due, the Escrow Agent shall pay the costs from the interest earned on the escrow funds.

4. The Escrow Agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against Santamaria for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, which notice also shall be mailed to Santamaria at his last known address, shall pay to the Commission so much of the funds of the Escrow Account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the Escrow Agent, provided that, if Santamaria has agreed to the entry of a court order or an order of the Commission, a specific finding that Santamaria violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act shall not be necessary. The Escrow Agent shall have the power to convert to cash so much of the Escrow Account assets as are necessary to satisfy the obligations of the judgment or order.

5. The Escrow Account shall continue until at least five years after Santamaria last advertises promotes, offers for sale, sells, or distributes any product specified in the consent order, at which time, if there are no pending FTC investigations, legal or administrative actions by the FTC against Santamaria, or unsatisfied obligations pursuant to a judgment or order described in paragraph four herein, for which a claim could be made against the escrow funds under the

terms of the Consent Order, the FTC shall, upon Santamaria's request, instruct the Escrow Agent to terminate the Escrow Account and return the balance of the Escrow Account to Santamaria. At such time, the Escrow Agent shall be fully and completely released from its agency as herein described. The legal title to the escrow funds shall vest in Santamaria at such time as the Escrow Agent, pursuant to instructions from the FTC, returns the funds to Santamaria.

Witness the signatures of the parties, the day and year first above written.

DATE:

WILLIAM J. SANTAMARIA

DATE:

FEDERAL TRADE COMMISSION

COUNSEL FOR THE
FEDERAL TRADE COMMISSION

IN THE MATTER OF

KOREAN VIDEO STORES ASSOCIATION OF MARYLAND, ET AL.

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

Docket C-3588. Complaint, June 20, 1995--Decision, June 20, 1995

This consent order prohibits, among other things, a Maryland-based video store association and its members from entering into any agreement to raise, fix, or maintain prices in the retail video tape rental business; and requires, within 30 days, its members to display a poster announcing the settlement, in both English and Korean, in their respective stores and to publish the entire text of the poster in three Korean-language newspapers in the Washington, D.C. area.

Appearances

For the Commission: *Joseph G. Krauss.*

For the respondents: *Robert Paul, Shaw, Pittman, Potts & Trowbridge*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the Korean Video Stores Association of Maryland, Chang Hyun Cho, Bong Soo Ha, Yoo Kwan Jun, Dae Yong Kang, Yong Hoon Kang, Mi La Kim, Ki Sik Kim, Suk C. Kim, Ju Young Lee, Kyeong Hae Lee, Chang Jin Park, Mi Hwa Park, Young Min Ro, Chae Sul Song, Tae Eung Yu, and Seung Man Yun, hereinafter sometimes referred to as respondents, have violated the provision of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I. RESPONDENTS

1. Respondent Korean Video Stores Association of Maryland is an unincorporated trade association. Its mailing address is c/o Nalee Video, 13-G Aquahart Plaza, Glen Burnie, MD.