

Complaint

120 F.T.C.

IN THE MATTER OF

ORIGINAL MARKETING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3596. Complaint, Aug. 9, 1995--Decision, Aug. 9, 1995*

This consent order prohibits, among other things, the Florida-based corporation, two of its officers and an affiliated advertising agency from making performance or benefit claims for any weight-loss or weight-control product or program or acupressure device unless the claims are true and substantiated by competent and reliable scientific evidence. Also, the consent order prohibits the respondents from misrepresenting any endorsement or testimonial for any weight-loss or weight-control product or program or any acupressure device as representing the typical or ordinary experience of users. In addition, the respondents are required to pay refunds to purchasers of Acu-Stop 2000 who have previously returned it, or who return it within 90 days after the order is final, and the individual respondents are required to post a \$300,000 performance bond, or to pay that amount into an escrow account, before marketing any weight-loss or weight-control product or program or any acupressure device.

*Appearances*For the Commission: *Richard L. Cleland and Brian A. Dahl.*For the respondents: *Sheldon Lustigman, Helfgott & Karas, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Original Marketing, Inc., d/b/a Acu-Stop 2000, and Franklin & Joseph, Inc., corporations; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc. ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Original Marketing, Inc. ("OMI") is a Florida corporation doing business under the name Acu-Stop 2000. Its principal place of business is located at 11570 Wiles Road, Pompano Beach, Florida.

Respondent Franklin & Joseph, Inc. is a New York corporation with its principal place of business located at 237 Mamaroneck Avenue, White Plains, New York.

Respondent Barry A. Weiss is or was at relevant times herein an officer and director of OMI. Individually or in concert with others, he formulated, directed, and controlled the acts and practices of OMI, including the acts and practices alleged in this complaint. He resides at 22471 Vista Wood Way, Boca Raton, Florida.

Respondent Roger Franklin is or was at relevant times herein an officer and director of OMI and Franklin & Joseph, Inc. Individually or in concert with others, he formulated, directed, and controlled the acts and practices of OMI and Franklin & Joseph, Inc., including the acts and practices alleged in this complaint. He resides at 33 Maplemoor Lane, White Plains, New York.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed to the public, the Acu-Stop 2000, an acupressure weight-loss device that nests inside the ear. The Acu-Stop 2000 is a device within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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 and promotional materials for the Acu-Stop 2000, including but not necessarily limited to the attached Exhibits A-E. These advertisements contain the following statements:

A. YOU'LL PROVE TO YOURSELF:
YOU CAN LOSE 30 POUNDS IN 30 DAYS!
ACU-STOP 2000 GUARANTEES:

This device is all you'll need, ever, to control your weight and get rid of flab. It will work for you or we'll refund every cent you paid for it. Every cent.

21st CENTURY METHOD MEANS:

- No Dieting - No Pills
- No Nervousness
- No Frantic Exercising
- No Strange Formulas
- No Special Foods To Buy

MORE THAN 200,000 SOLD! TESTIMONIALS ABOUND!

Ms. K.B. of California is typical of ACU-STOP 2000 users. She writes:
I've lost five pounds in eight days. My energy level is up. Those diet pills cost a ton of money and can't do this.

Ms. S.L.M. is an adult model who had all but given up on regaining her figure. She writes:

My waist had ballooned to 32 inches. Now it's back to 25 and I'm modeling again. I love you for making me beautiful again.

Mr. P.N. of Minnesota didn't think it would work but decided to give it a try:
30 pounds in 30 days? Right. Actually, I lost 33 pounds in 30 days. I still can't believe it.

NOT A 30-DAY OR 60-DAY SUPPLY. ONE ACU-STOP 2000 IS ALL YOU NEED . . . EVER!

ACU-STOP 2000 is a precision-engineered invention that fits snugly (and invisibly) in the right ear. It contacts and stimulates six precise pressure points, exactly like renowned acupressure. Using it just minutes a day eliminates your craving for food. You'll lose weight at the pace you think best. (If you lose too much weight, use your ACU-STOP 2000 less often.)

* * * *

Ask yourself: Would ACU-STOP 2000 make such an offer if thousands of users hadn't proved how effective it is? Nothing--no, nothing is as effective and as safe. (Exhibit A).

B. YOU TOO WILL BE ABLE TO SAY:

"I LOST 33 POUNDS IN 30 DAYS!"

WE PREDICT:

By the year 2001 this will be the standard. WHY? Because only Acu-Stop 2000 means

- No Strenuous Dieting
- No Pills - No Nervousness
- No Frantic Exercising
- No Strange Formulas
- No Special Food To Buy

Please Read Every Word of This ACU-STOP 2000 GUARANTEE:

This device is all you'll need, ever, to control your weight and get rid of the flab. It will work for you or we'll refund every cent you paid for the product. Every cent.

ASK THE MORE THAN 200,000 ACU-STOP BUYERS!

Ms. K.B. of Florida is an ACU-STOP user. She writes:

I've lost five pounds in eight days. My energy level is up. Those diet pills cost a ton of money and can't do this.

Ms. S.L.M. is an adult model who had all but given up on regaining her figure. She writes:

My waist had ballooned to 32 inches. Now it's back to 25 and I'm modeling again. I love you for making me beautiful again.

Ms. K.McF. of California didn't think it would work but decided to give it a try:
30 pounds in 30 days? Right. Actually, I lost 33 pounds in 30 days. I still can't believe it.

Results described in this ad may be atypical. [fine print]

YOU'LL NEVER HAVE TO SPEND ANOTHER CENT. THIS IS NOT A 30-DAY OR 60-DAY SUPPLY. ONE ACU-STOP IS ALL YOU NEED . . . EVER! ACU-STOP 2000 is a precision-engineered invention that fits snugly (and invisibly) in the right ear. It contacts and stimulates six precise pressure points, exactly like renowned acupressure. All of "mainstream" science does not accept the discipline of acupressure. Most doctors do . . . and over 200,000 satisfied customers can't be wrong. Using it just minutes a day eliminates your craving for food. We can't tell you how much weight you will lose. Everyone is different. Results will vary depending on the individual.

* * * *

Ask yourself: Would ACU-STOP 2000 make such an offer if thousands of users hadn't proved how effective it is? Nothing--no, nothing--is as effective and as safe. (Exhibit B).

C. Introducing a real breakthrough in losing weight. So advanced, it won't let you fail! Pure Science or Pure Miracle? Maybe it's a little of both.

* * * *

From now on, every other diet method is a thing of the past.

Think of it. No pills to pop. No favorite foods to give up. No tasteless, unsatisfying meal plans. No endless, wearying exercise. Just one incredible product that can enable you to lose weight fast and easily. Amazing? You bet. Here's why.

Based on a centuries-old understanding of how our bodies work.

The idea for ACU-STOP 2000 comes to us from across the seas in China. Their understanding of human physiology has long been acknowledged by medical experts to be extremely advanced. ACU-STOP 2000 is an acupressure-like device that stimulates those points in your body which regulate appetite . . . and suppresses their activity. It fits almost invisibly in your right ear. You don't have to wear it all day, just for a few minutes. But those few minutes a day can change the rest of your life--because that's all it takes to make those excess pounds and inches you hate disappear. What happens is, your hunger pangs and your craving for food just stop. They go away. Gone. With absolutely no unpleasant side effects, you eat less. And lose more. It's so effective, you'll see results immediately.

Lose weight with none of the drawbacks other diet methods have.

We know how hard it is to lose weight. The emotional and physical toll on your mind and body can be devastating. But with ACU-STOP 2000 you will succeed. It just won't let you fail. And you won't have to worry about any of the negatives of other methods. You don't have to starve yourself, like a prisoner in your own home. You don't have to pop strange chemical pills with who-knows-what side effects (pills that can make you so nervous and irritable, that even if they work friends and family may hate to be around you). And you don't have to undergo strenuous, exhausting exercise day after day. Forget all that. The acupressure method puts you in control without endless exercise and with minimal will power! All you do is stimulate the ear piece and your ravenous appetite goes . . . followed quickly by all those unwanted pounds and inches.

* * * *

Mrs. K.McE, Los Angeles, CA.

I have been overweight for 30 of my 38 years. On Oct. 1st, I weighed myself. I used the Acu-Stop following your instructions, and ate what I liked. On Nov. 1st

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to my absolute and total amazement I had LOST, YES LOST!! 33 pounds and all of that in just 30 days.

* * * *

Miss H.L., Huntington, NY: I tried your product and lost 20 pounds in the first three weeks. I can't believe how easy it was and I feel so much better about myself. Thank you so much.

Mrs. L.P., Kingwood, TX: I recently ordered one of your Acu-Stop 2000's. I followed the enclosed instructions and within the first month I lost 36 pounds. I'd like to take this opportunity to tell you how very pleased I am with your product. It worked for me better than any diet pill I've tried.

Ms. A.S., Massepequa, NY: I purchased your product several months ago. When I opened the package I didn't quite believe that this product would work. However, I was very surprised--IT WORKED!! I lost my target weight faster than any other product or diet I tried before. I can't thank you enough.

Mrs. K.B., Ft. Lauderdale, Fla.: Using your product I lost seven pounds in the first seven days! I am continuing to use your product because I know that with its help I can continue to lose weight.

Results will vary and these losses are atypical. If you lose too much weight, discontinue use immediately. (Exhibit C).

D. What Pleasure You'll Get From Reading About A Method That REALLY DOES Work . . .

--Without Pills

--Without Diets

--Without Books

--Without Will-Power

ACU-STOP 2000®

Once You Own It,

You'll NEVER Buy Another Pill . . .

You'll NEVER Go On Another Diet . . .

You'll NEVER Have To Plow Through Another Book . . .

You'll NEVER Again Depend On Will-Power!

ACU-STOP 2000 WORKS ON ITS OWN. NOTHING ELSE TO BUY, EVER.
TESTED BY DOCTORS AND BACKED BY A ROCK-SOLID 100%
GUARANTEE.

* * * *

ONCE YOU UNDERSTAND HOW IT WORKS, YOU'LL UNDERSTAND WHY
IT WILL WORK FOR YOU!

Centuries ago, Chinese physicians perfected acupressure.

(Acupressure differs from its cousin, acupuncture, in its effectiveness without needles or discomfort.)

What these sages learned was that light stimulating pressure in the ear can control various cravings. Now, as we approach the 21st century, the scientists at Acu-Stop have refined this knowledge.

Acu-Stop 2000 is a thoroughly tested and proved device that fits invisibly in the right ear. It has no batteries nor moving parts. But activating it controls the appetite.

* * * *

We Make You This Promise:

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You've never experienced such an easy, effortless way to lose surplus pounds and inches. Never!

* * * *

Are You Currently On Another Diet Plan?

ACU-STOP 2000® has been found to accelerate the results of diet pills and meal plans. This means you can reach your weight loss goals considerably faster. The same unconditional guarantee applies, of course. (Exhibit D).

E. LOSE 30 POUND IN 30 DAYS

--WITHOUT DIETING

--WITHOUT EXERCISE

ACU-STOP 2000

THE WEIGHT LOSS METHOD OF THE FUTURE IS AVAILABLE TODAY-

* * * *

LOSE 30 POUNDS IN 30 DAYS

Doctor patented Acu-Stop 2000 is so effective, a loss of 30 pounds in 30 days is not unusual. Our satisfied customers have told us their stories and they are fantastic! Miss H.L., Huntington, NY: I tried your product and lost 20 pounds in the first three weeks. I can't believe how easy it was and feel so much better about myself. Thank you so much.

Mrs. L.P., Kingwood, TX: I recently ordered one of your Acu-Stop 2000's. I followed the enclosed instructions and within the first month I lost 36 pounds. I'd like to take this opportunity to tell you how very pleased I am with your product. It worked for me better than any diet pill I've tried.

Ms. A.S., Massepequa, NY: I purchased your product several months ago. When I opened the package I didn't quite believe that this product would work. However, I was very surprised--IT WORKED!! It lost my target weight faster than any other product or diet I tried before. I can't thank you enough.

Mrs. K.B., Ft. Lauderdale, Fla.: Using your product I lost seven pounds in the first seven days! I am continuing to use your product because I know that with its help I can continue to lose weight.

Mrs. B.K., Hartland, MI: Thank you for inventing this amazing product! This is the first diet that is really easy. Acu-Stop 2000 suppressed my appetite and I eat what I want while still losing weight.

Why Did The U.S. Government Officially Approve Acu-Stop 2000 For A Legal Patent?

From Mike Powers, President

Acu-Stop 2000

* * * *

The Official U.S. Government Document you see here hangs framed on my wall. I'm proud of it for it tells people who have a weight problem that Acu-Stop 2000 has been tested and patented by a Doctor.

Yes, you can finally have the beautiful, slim figure you're after . . . and lose up to 30 pounds in 30 days. No diets. No exercise. No pills. Why?

Because Acu-Stop 2000 will CONTROL your hunger in a remarkable new way. So amazing in fact, that the U.S. Government officially approved Acu-Stop 2000 with the Legal Patent you see above. One of the major problems in America is that people are too fat, and that's not just unsightly, it's unhealthy, too.

Acu-Stop 2000 has the POWER to end this problem. The Chinese invented it, and we perfected it! I can prove it really works. (Exhibit E).

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

- A. The Acu-Stop 2000 causes significant weight loss;
- B. The Acu-Stop 2000 causes significant weight loss without the need to diet or exercise;
- C. The Acu-Stop 2000 controls appetite or eliminates a person's craving for food; and
- D. The Acu-Stop 2000 is scientifically proven to cause significant weight loss and control appetite.

PAR. 6. In truth and in fact:

- A. The Acu-Stop 2000 does not cause significant weight loss;
- B. The Acu-Stop 2000 does not cause significant weight loss without the need to diet or exercise;
- C. The Acu-Stop 2000 does not control appetite or eliminate a person's craving for food; and
- D. The Acu-Stop 2000 is not scientifically proven to cause significant weight loss and control appetite.

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

PAR. 7. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-E, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five (A) - (C), they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph five (A) - (C), respondents did not possess and rely upon a reasonable basis that substantiated such

representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C and E, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for the Acu-Stop 2000 reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 10. In truth and in fact, testimonials from consumers appearing in advertisements for the Acu-Stop 2000 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 nine was, and is, false and misleading.

PAR. 11. 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.

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EXHIBIT A

**Don't Take Anybody's Word
That You'll Lose Weight... EXCEPT
YOUR OWN!**

© 1993 Acu-Stop 2000

YOU'LL PROVE TO YOURSELF:**ACU-STOP 2000
GUARANTEES:**

This device is all you'll need, ever, to control your weight and get rid of flab. It will work for you or we'll refund every cent you paid for it. Every cent.

**21st CENTURY
METHOD MEANS:**

- No Dieting ■ No Pills
- No Nervousness
- No Frantic Exercising
- No Strange Formulas
- No Special Foods To Buy

**MORE THAN 200,000
SOLD! TESTIMONIALS
ABOUND!**

Ms. K.B. of California is typical of ACU-STOP 2000 users. She writes:

I've lost five pounds in eight days. My energy level is up. Those diet pills cost a ton of money and can't do this.

Ms. S.L.M. is an adult model who had all but given up on regaining her figure. She writes:

My waist had ballooned to 32 inches. Now it's back to 25 and I'm modeling again. I love you for making me beautiful again.

Mr. P.N. of Minnesota didn't think it would work but decided to give it a try: 30 pounds in 30 days? Right. Actually, I lost 33 pounds in 30 days. I still can't believe it

**YOU
CAN
LOSE
30
POUNDS
IN
30
DAYS!**

**NOT A 30-DAY OR
60-DAY SUPPLY.****ONE ACU-STOP 2000 IS
ALL YOU NEED...EVER!**

ACU-STOP 2000 is a precision-engineered invention that fits snugly (and invisibly) in the right ear. It contacts and stimulates six precise pressure points, exactly like renowned acupressure. Using it just minutes a day eliminates your craving for food.

You'll lose weight at the pace you think best. (If you lose too much weight, use your ACU-STOP 2000 less often.)

NOW:

If you think it won't work for you, we challenge you: Try it. You can't lose, because if after using your ACU-STOP 2000 for one full month you don't agree it's the most effective way to get rid of fat and flab you've ever tried, just send it back for a 100% refund. Ask yourself: Would ACU-STOP 2000 make such an offer if thousands of users hadn't proved how effective it is? Nothing - no, nothing is as effective and as safe.

Only \$39⁹⁹**WHY WAIT 1 MORE DAY?
WHY NOT LOOK YOUR ABSOLUTE
BEST? WHY WASTE MONEY
ON PILLS AND BOOKS?**

Operators standing By 24 Hours A Day
Call Toll Free **1-800-228-3663**

or mail coupon to
ACU-STOP 2000
10343 Royal Palm Blvd.
Coral Springs, Florida 33065

ACU-STOP 2000 • 10343 Royal Palm Blvd., Suite 339 • Coral Springs, Florida 33065

☐ YES, rush my ACU-STOP 2000. I understand this is all I'll need, ever. I'll use it for one full month. If I'm not delighted with the results, I have the absolute right to send it back for a 100% refund of every cent I've paid for the product.

☐ 1 Acu-Stop 2000 @ \$39.99, plus \$4.50
Shipping and Handling - Total = \$44.49
Florida residents add \$2.40 sales tax

☐ 2 Acu-Stop 2000 @ \$29.99, plus \$4.50
Shipping and Handling - Total = \$64.48
(Save \$20)
Florida residents add \$3.60 sales tax

Please indicate payment method:

☐ Check or money order enclosed.
Charge to: ☐ Visa ☐ MasterCard

Card

No

Expires

Signature

Please Print

Name

Address

City

State

Zip

For fastest service call

Toll-Free

1-800-228-3663

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EXHIBIT B

Take Your Own Word For It! GUARANTEE

©1993 Acu-Stop 2000

YOU TOO WILL BE ABLE TO SAY:**WE PREDICT:**

By the year 2001 this will be the standard. WIN? Because only Acu-Stop 2000 means

- No Strenuous Dieting
- No Pills ■ No Nervousness
- No Frantic Exercising
- No Strange Formulas
- No Special Food To Buy

Please Read Every Word of This ACU-STOP 2000 GUARANTEE:

This device is all you'll need, ever, to control your weight and get rid of the flab. It will work for you or we'll refund every cent you paid for the product. Every cent.

ASK THE MORE THAN 200,000 ACU-STOP BUYERS!

Ms. K.B. of Florida is an Acu-Stop user. She writes: 've lost five pounds in eight days. My energy level is up. Those diet pills cost a ton of money and can't do this.

Ms. S.L.M. is an adult model who had all but given up on regaining her figure. She writes: My waist had ballooned to 32 inches. Now it's back to 25 and I'm modeling again. I owe you for making me beautiful again.

Ms. K. McF. of California didn't think it would work but decided to try it: 30 pounds in 30 days? Right. Actually, I lost 33 pounds in 30 days. I still can't believe it.

*Results described in this ad may be atypical.

**"I
LOST
33
POUNDS
IN
30
DAYS!"**

\$39⁹⁹
Only

YOU'LL NEVER HAVE TO SPEND ANOTHER CENT. THIS IS NOT A 30-DAY OR 60-DAY SUPPLY. ONE ACU-STOP IS ALL YOU NEED...EVER!

ACU-STOP 2000 is a precision-engineered invention that fits snugly (and invisibly) in the right ear. It contacts and stimulates six precise pressure points, exactly like renowned acupressure. All of "mainstream" science does not accept the discipline of acupressure. Most doctors do...and over 200,000 satisfied customers can't be wrong. Using it just minutes a day eliminates your craving for food. We can't tell you how much weight you will lose.

Everyone is different. Results will vary depending on the individual.

NOW:

If you think it won't work for you, **we challenge you:** Try it. You can't lose, because if after using ACU-STOP 2000 for one full month you don't agree it's the most effective way to get rid of fat and flab you've ever tried, just send it back for a 100% refund. Ask yourself: Would ACU-STOP 2000 make such an offer if thousands of users hadn't proved how effective it is? Nothing—no, nothing—is as effective and as safe.

**WHY WAIT EVEN ONE MORE DAY?
WHY NOT LOOK TRIM IN A SWIMSUIT?
WHY WASTE MONEY ON PILLS AND BOOKS?**

Operators Standing By 24 Hours A Day

Call Toll Free **1-800-395-7638**
or mail coupon to ACU-STOP 2000,
11900 SW 66th Ave., Miami, FL 33186

ACU-STOP 2000 • 11900 SW 66th Ave., • Miami, Florida 33186

☒ **YES,** rush my ACU-STOP 2000. I understand this is all I'll need, ever. I'll use it for one full month. If I'm not delighted with the results, I have the absolute right to send it back for a 100% refund of every cent I've paid for this product.

☐ 1 ACU-STOP 2000 @ \$39.99, plus \$4.50
Shipping and Handling Total \$44.49
(Florida residents add \$2.40 sales tax)

☐ 2 ACU-STOP 2000 @ \$29.99, plus \$4.50
Shipping and Handling Total \$64.48
(Save \$20!)
(Florida residents add \$3.60 sales tax)

Please indicate payment method:
☐ Check or money order enclosed
Charge to: ☐ Visa ☐ MasterCard
Card No. _____
Expires _____
Signature _____

Please Print

Name _____

Address _____

City _____

State _____

Zip _____

For faster service call Toll-Free 1-800-395-7638

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EXHIBIT C

lost 33 pounds in 30 days!" *Mrs. K. McE., Los Angeles, CA.

**Introducing
a real
breakthrough
in losing
weight.**

**So advanced,
it won't
let you fail!**

Pure Science or Pure Miracle?
Maybe it's a little of both.



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EXHIBIT C

We've changed so many lives We can change yours.

**From now on, every other diet method
is a thing of the past.**

Think of it. No pills to pop. No favorite foods to give up. No tasteless, unsatisfying meal plans. No endless, wearying exercise. Just one incredible product that can enable you to lose weight fast and easily. Amazing? You bet. Here's why.

**Based on a centuries-old understanding
of how our bodies work.**

The idea for ACU-STOP 2000 comes to us from across the seas in China. Their understanding of human physiology has long been acknowledged by medical experts to be extremely advanced.

ACU-STOP 2000 is an acupressure-like device stimulates those points in your body which regulate appetite...and suppresses their activity. It fits almost invisibly in your right ear. You don't have to wear it all day, just for a few minutes. But those few minutes a day can change the rest of your life because that's all it takes to make those excess pounds and inches you hate disappear. What happens is, your hunger pangs and your craving for food just stop. They go away. Gone. With absolutely no unpleasant side effects, you eat less. And lose more. It's so effective, you'll see results immediately.

*You have nothing to lose
but pounds
and inches.*



You t
You t
You probably
**NOW IS THE
TRY ACU-STOP**

Miss H.L., Huntington, NY: I tried your product and lost 20 pounds in the first three weeks. I can't believe how easy it was and I feel so much better about myself. Thank you so much.

Mrs. L.P., Kingwood, TX: I recently ordered one of your Acu-Stop products. I followed the enclosed instructions and within the first month I lost 15 pounds. I'd like to take this opportunity to tell you how very pleased I am with your product. It worked for me better than any diet pill I've tried.

Results will vary and these losses are not guaranteed.

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EXHIBIT C

Lose weight with none of the drawbacks other diet methods have.

We know how hard it is to lose weight. The emotional and physical toll on your mind and body can be devastating. **But with ACU-STOP 2000 you will succeed. It just won't let you fail.** And you won't have to worry about any of the negatives of other methods. You don't have to starve yourself, like a prisoner in your own home. You don't have to pop strange chemical pills with who-knows-what side effects (pills that can make you so nervous and irritable, that even if they work friends and family may hate to be around you). And you don't have to undergo strenuous, exhausting exercise day after day. Forget all that. **The acupressure method puts you in control without endless exercise and with minimal will power!** All you do is stimulate the ear piece and your ravenous appetite goes... followed quickly by all those unwanted pounds and inches.

Everything you need to know about our money-back guarantee.

It couldn't be simpler. We're so sure you'll be satisfied with ACU-STOP 2000, if you don't lose the weight, we'll refund your money. No questions asked.

Nothing to buy ever again – a small price to pay for looking great.

This may not be your first attempt at losing weight, but it will be your last. Because this method works. You'll never have to spend money on a diet pill, plan, meal, book or exercise aid again. Order ACU-STOP 2000 once and that's it. This isn't a 30 or 60 day supply. This isn't step 1. This is it. Use it until you reach your goal weight, then put it away. If you have to use it again in the future for a minor weight gain, no problem. The stimulator lasts for years. But don't buy ACU-STOP just because of the money you'll save. Buy it because of all the weight you'll lose!

d pills...
l plans...
en tried prayer...
**IT'S TIME TO
STOP 2000**

***"I LOST 33 POUNDS IN 30 DAYS!"**

Mrs. K. McE, Los Angeles, CA.

I have been overweight for 30 of my 38 years. On Oct. 1st, I weighed myself. I used Acu-Stop following your instructions, and ate what I liked. On Nov. 1st, to my absolute and total amazement I had LOST, YES LOST!! 33 pounds and all of that in just 30 days.



Ms. A.S., Maspeth, NY: I purchased your product several months ago. When I opened the package I didn't quite believe that this product would work. However, I was very surprised – IT WORKED!! I lost my target weight faster than any other product or diet I tried before. I can't thank you enough.

Mrs. K.B., Ft. Lauderdale, Fla.: Using your product I lost seven pounds in the first seven days! I am continuing to use your product because I know that with its help I can continue to lose weight.

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EXHIBIT C

ORDER TODAY- DON'T WAIT

Even if you've given up all hope of losing weight, ACU-STOP 2000 is right for you. Don't give up. Don't give in. This is different from every other diet method. And it will work. For you. Guaranteed. Call now. Our operators are standing by, 24 hours a day. Now is the time to lose the weight you hate.

CALL NOW - TOLL FREE
1-800-292-1971

MONEY BACK GUARANTEE

We guarantee ACU-STOP 2000 to be fast, safe and effective. If you are not completely satisfied, simply return it within 30 days for a full refund. No questions asked!

**TWO FREE GIFTS
WITH YOUR ORDER!
LIMITED TIME ONLY**

BRILLIANTLY FACETED
ONE CARAT CUBIC ZIRCONIA



Suitable for setting

JEWELRY CASE
from China -
perfect for those
special pieces
that you cherish.



BOTH YOURS - FREE!



**ONLY
\$39.99**

SPECIAL
Buy 2 and pay only
\$29.99 each. Save \$20.

**It controls
your hunger,
so you can
control
your weight.**



**NOTE: If you lose too much weight,
discontinue use immediately.**

Acu-Stop 2000, 10343 Royal Palm Blvd., Suite 339
Coral Springs, FL 33065-9896

YOU TAKE NO RISK!

When your
ACU-STOP 2000
arrives, use it for
one full month!
At our risk,
if for any reason you
aren't thrilled and
delighted, send it back
for a full refund of
every cent you paid for
your ACU-STOP. You
don't risk one dime.
Why not put
ACU-STOP 2000
to the test?

ACU-STOP 2000.

Phone or mail your order within the next 10 days and we'll include a brilliantly faceted one carat cubic zirconia, suitable for setting, and this handsome jewelry case from China. These gifts are yours to keep, our way of saying thanks for trying ACU-STOP 2000.

© 1991 Acu-Stop 2000

Available Only From

NEW-STOK

EXHIBIT D

**YOU SAY
YOU'VE TRIED**
 — PILLS
 — DIETS
 — BOOKS
 — WILL-POWER
 AND YOUR WEIGHT
 STILL BOUNCES UP AND
 DOWN LIKE A YO-YO?

*What Pleasure You'll Get From
Reading About A Method
That REALLY DOES Work...*

- Without Pills
- Without Diets
- Without Books
- Without Will-Power

ACU-STOP 2000®

**Once You Own It,
You'll NEVER Buy Another Pill...
You'll NEVER Go On Another Diet...
You'll NEVER Have To Plow Through Another Book...
You'll NEVER Again Depend On Will-Power!**

ACU-STOP 2000
WORKS ON ITS
OWN. NOTHING
ELSE TO BUY,
EVER.



Before



After

TESTED BY
DOCTORS AND
BACKED BY A
ROCK-SOLID
100% GUARANTEE

\$39⁹⁹ Complete
plus \$4.50 shipping/handling

nothing else to buy ever!

Complaint

120 F.T.C.

EXHIBIT D

The Totally New Principle.
Ours Alone. And You Can Have It!

ONCE YOU UNDERSTAND HOW IT WORKS, YOU'LL UNDERSTAND WHY IT WILL WORK FOR YOU!

(reading time 1 1/2 minutes)

Concentrate again, Chinese physicians prefer to diagnose (in appropriate offices, from its office, and you will have needles or discomfort.)

What these say: I cannot see that light stimulating pressure in the ear can control various cramps. Now as we approach the 21st century, the services at Acu-Sleep have refined this knowledge.

Acu-Sleep 2000 is a thoroughly tested and proved device that fits invisibly in the right ear. It has no batteries nor moving parts, but activating it creates the appropriate stimulation points you might walk around with your finger, and you'll have a comfortable and socially acceptable device.)

But only with us, we know your ear, we can help you. Acu-Sleep 2000, you really don't have to wear it for more than 30 minutes. The effort is kept testing.

Think W! This Means!

- No More Pills-Poppin'**
This can be badgering and dangerous to your health. Create trapped with pills, you keep pe and paying and paying, while poorly ingests a daily dose of chemicals.
- No More Forced Diet**
Even the moderate diet (complicated) eat foods you don't like. You have to eat the diet. When you have a business dinner, you do eat the window.
- No More On Will-Do**
Why add stress to your life? Today's daily pressure and stress, feeling while it leaves true, unstable, without pep and joy.

ACU-STOP 2000 WORKS!

IT HAS PROVED ITSELF OVER AND OVER AND OVER! IT WILL WORK FOR YOU! OR YOUR MONEY BACK!

YOUR LIFE — AS WELL AS YOUR APPEARANCE — WILL BE IMPROVED FOREVER!

Note: Don't lose too much weight. Discontinue when your weight is right, then keep ACU-STOP 2000 handy for the time when you might need it again. It lasts a lifetime.

Why Wait?
 One Phone Call Can End Your Dependence On Diets And Pills

CALL THE ACU-STOP 2000 HOTLINE:
1-800-241-3111

Acu-Sleep will be on its way to you. We Make You This Promise: **111** You will lose weight in such an easy, effortless way to lose surplus pounds and inches. Never!

And we back up this promise with our

LOSE 30 POUNDS
IN 30 DAYS

-WITHOUT
DIETING

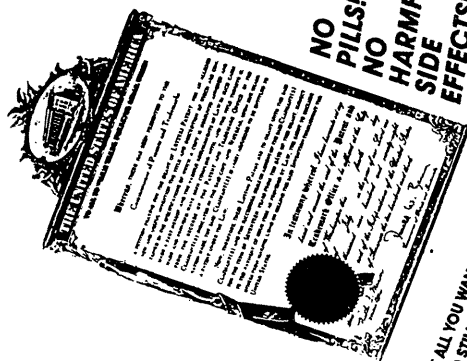
-WITHOUT
EXERCISE!

ACU-STOP 2000

THE WEIGHT LOSS METHOD OF THE FUTURE

IS AVAILABLE
TODAY-

**NEW PATENTED
WEIGHT LOSS METHOD
MAKES DIET PILLS
OBSOLETE!**



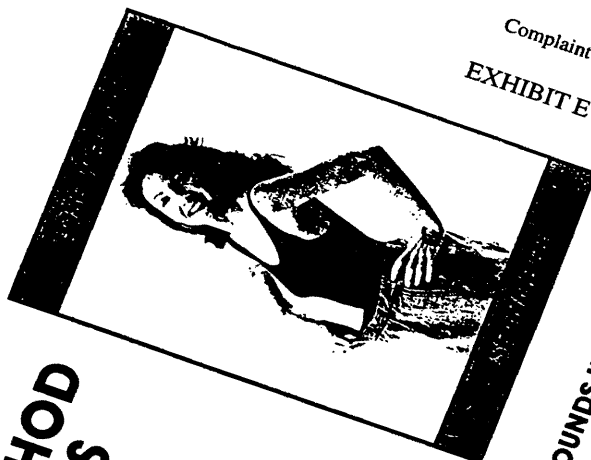
**EAT ALL YOU WANT
AND STILL LOSE WEIGHT**

[illegible]

THE LAST DIET

ILL POWER

NO WILL POWER
If you know how hard you've tried to lose weight in the past, now with keto-burn 2000, you will succeed. This



Complaint

LOSE 30 POUNDS IN 30 DAYS

230 POUNDS IN 30 DAYS

EXHIBIT E

Why Did The U.S. Government Officially Approve Acu-Stop 2000 For A Legal Patent?



From Mike Powers, President
Acu-Stop 2000

Coral Springs, Florida
Thursday, 2:30 p.m.

SPECIAL REPORT

Dear Friend,

The Official U.S. Government Document you see here hangs framed on my wall. I'm proud of it for it tells people who have a weight problem that Acu-Stop 2000 has been tested and patented by a Doctor.

I've also framed the letters I get from Acu-Stop 2000 users. These letters hang on my wall, too.

Let's make one thing perfectly clear right now. The Acu-Stop 2000 sure-fire way to CONTROL weight, permanently, does away with pills, diets, and exercise. I'm sure that's good news for you, because if you're like most people who have a FAT problem, you most likely hate to give up the foods you love, deplore long hours of strenuous exercise, and are suspicious of swallowing pills to lose weight.

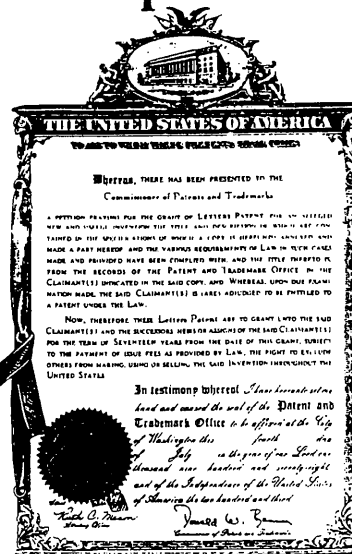
The fact is, statistics clearly show us that pills, crash diets (which are dangerous to health) and long hours of boring exercise rarely conquer fat on the long term. Most overweight women and men who try these methods know that they may lose weight...then gain it back again.

Is this the case with you? Are you tired of being on a roller coaster, losing, gaining, losing, gaining...without permanent results? If so, you have my Written Guarantee that Acu-Stop 2000 will change all that.

Yes, you can finally have the beautiful, slim figure you're after...and lose up to 30 pounds in 30 days. No diets. No exercise. No pills. Why?

Because Acu-Stop 2000 will CONTROL your hunger in a remarkable new way. So amazing in fact, that the U.S. Government officially approved Acu-Stop 2000 with the Legal Patent you see above. One of the major problems in America is that people are too fat, and that's not just unsightly, it's unhealthy, too.

Acu-Stop 2000 has the POWER to end this problem. The Chinese invented it, and we perfected it! I can prove it really works.



U.S. Patent 4098277

Please turn the page

Complaint

120 F.T.C.

EXHIBIT E

← Please read other side first

SPECIAL REPORT

Why Did the U.S. Government Officially Approve Acu-Stop For A Legal Patent?

In America today, health care costs are enormous. One of the leading causes of poor health is heart disease. Being overweight can lead to heart disease...ask your Doctor.



And while you're at it, please show him this letter. I'm sure your Doctor wants to see you shed unwanted pounds fast and sensibly, and so do I. Acu-Stop 2000 makes it easy.

So forget past failures. All I ask is that you give this amazing NEW WEIGHT LOSS MIRACLE an honest try for just 30 days. All over America people are doing it. They have a lot to smile about....



A woman from New York lost 20 pounds the first three weeks! In the first month, a lady from Texas said goodbye to 36 pounds of fat. An Acu-Stop 2000 user from Florida lost a pound a day! I have framed letters hanging on my wall to prove it.

NO CRASH DIETS...NO STRENUOUS EXERCISE...NO PILLS! POUNDS MELT OFF FAST, JUST LIKE MAGIC! YES, IT REALLY WORKS.

FOR MEN TOO

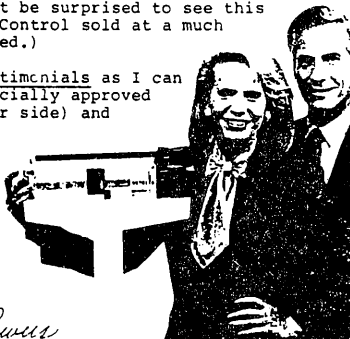
I'll Even Pay You Money To Help Me Prove That Acu-Stop 2000 Can Change Your Life!

Right now, our Company is planning a Nation Wide Advertising Campaign. Do be surprised to see Acu-Stop 2000 on television and major magazines and newspapers all across America. (Also don't be surprised to see this MAJOR BREAKTHROUGH in the field of Weight Control sold at a much higher price than on the ORDER FORM enclosed.)

Frankly, I'm after as many honest Testimonials as I can lay my hands on. The U.S. Government officially approved Acu-Stop 2000 for a Legal Patent (see other side) and I want to prove it really works.

Do this: Order this proven FAT-FIGHTER right now, by phone or mail. Use it as directed and be thrilled with fast results! Send me a letter... if I feel your letter is suitable for publication I'll send you \$100 right away. Your name will not be published unless I have your permission...but I will frame it and proudly hang it on my wall.

Sincerely, *Mike Powers*



ORDER TODAY - DON'T WAIT

Acu-Stop 2000 is right for you. It's unlike any other diet method you've ever tried, and it works! Call now. Our operators are standing by, 24 hours a day.

Try it for 30 days. You have nothing to lose but unwanted pounds and inches!



ONLY \$39.99

(plus \$4.00 shipping and handling)

**AND YOU'LL
NEVER NEED
ANOTHER DIET
OR DIET PILLS
AGAIN!**



**NOTE: If you lose too much weight,
discontinue use immediately.**

*Money
Back
Guarantee*

We guarantee Acu-Stop 2000
to be fast, safe,
and effective. If you are not
completely satisfied,
simply return it
within 30 days
for a full refund.
No questions asked.

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, 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 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. Respondent Original Marketing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 11570 Wiles Road, in the City of Pompano Beach, State of Florida.

Respondent Franklin & Joseph, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 237 Mamaroneck Avenue, in the City of White Plains, State of New York.

Respondent Barry A. Weiss is an officer and director of Original Marketing, Inc. He formulates, directs and controls the policies, acts

and practices of Original Marketing, Inc. He resides at 22471 Vista Wood Way, in the City of Boca Raton, State of Florida.

Respondent Roger Franklin is an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc. He formulates, directs and controls the acts and practices of said corporations. He resides at 33 Maplemoor Lane, in the City of White Plains, State of New York.

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 the purposes of this order:

1. "*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.

2. "*Acupressure device*" shall mean any product, program, or service that is intended to function by means of the principles of acupressure.

I.

It is ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of the Acu-Stop 2000 or any other acupressure device 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 significant weight loss;
- B. Such product causes significant weight loss without the need to diet or exercise;
- C. Such product controls appetite or eliminates a person's craving for food; or
- D. Such product is scientifically proven to cause significant weight loss or control appetite.

II.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, benefits, efficacy, or safety of such product, program, or device unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or

distribution of any weight-loss or weight-control product or program or any acupressure device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product, program, or device represents the typical or ordinary experience of members of the public who use the product, program, or device unless this is the case.

IV.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc.; Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss or weight-control product or program or any acupressure device 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.

V.

It is further ordered, That respondents, and their successors and assigns, are jointly and severally liable for, and shall pay refunds to eligible consumers of Acu-Stop 2000 as provided herein. "Eligible consumer" shall mean any person who purchases, or has purchased, an Acu-Stop 2000 from respondents; who returns, or has returned, the device to respondents requesting a refund prior to ninety (90) days after the date this order becomes final; and who has not previously received a refund. "Eligible consumer" shall not include persons who request a credit from a credit card issuer and who do not otherwise request a credit or refund from respondents. Respondents shall

provide to the Commission all information necessary to identify eligible consumers and to verify their eligibility.

A. Not later than the date this order becomes final, respondents shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payments due under the provisions of this order ("escrow account"), the sum of fifty thousand dollars (\$50,000.00). These funds, together with accrued interest, less any amount necessary to pay the costs of administering the escrow account and refund program provided herein, shall be used by the Commission or its representative to pay refunds to those eligible consumers who purchased an Acu-Stop 2000 from respondents prior to January 1, 1995. Any funds remaining in the escrow account after all refunds to consumers under this subparagraph have been paid shall be paid to the United States Treasury.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. Costs associated with the administration of the escrow account and refund program provided herein, if any, shall be paid from funds in the escrow account.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds shall vest in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

B. Respondents shall pay from their own funds refunds to all eligible consumers who are not paid from the escrow account provided herein. This requirement shall include:

- 1) All refund requests from eligible consumers who purchased an Acu-Stop 2000 after January 1, 1995, and

2) All refund requests under subparagraph A that exceed the amount available in the escrow account.

All refunds required in subparagraph B.1 shall be paid within thirty (30) days after the receipt of the request, or within thirty (30) days after the date this order becomes final, whichever is later. All refunds required in subparagraph B.2 shall be paid within thirty (30) days after notification to respondents that the funds available in the escrow account to pay refunds have been depleted.

VI.

It is further ordered, That for three (3) years after this order becomes final, respondents, and their successors and assigns, shall maintain documents and records demonstrating the manner and form of respondents' compliance with Part V of this order, and upon request make available to the Commission, at a place it designates for inspection and copying, copies of:

A. All documents and records evidencing the refunds respondents paid, or charge card credits issued, to eligible consumers, as that term is defined in Part V;

B. A list containing the name, mailing address, and purchase price for each eligible consumer who requested a refund;

C. The name and last known address of each consumer who requested a refund but was refused and the reason for each refusal to refund; and

D. Copies of all correspondence and other communications to, or from, any consumers regarding a refund.

VII.

It is further ordered, That the respondents Barry A. Weiss, Roger Franklin, and their 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 or weight-control product or program or any acupuncture device to the general public, unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondents Weiss and Franklin first obtain a

performance bond in the principal sum of three hundred thousand dollars (\$300,000). Said bond shall be conditioned upon compliance by respondents Weiss and Franklin 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 respondents Weiss and Franklin continue to advertise, promote, offer for sale, sell, or distribute any weight-loss or weight-control product or program or any acupuncture device, directly or indirectly, to the general public, and for at least five (5) years after they have ceased any such activity. The bond shall cite this order as the subject matter of the bond and provide surety against respondents' 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 respondents Weiss and Franklin are doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bonding and Reinsuring.

Respondents Weiss and Franklin 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. 20580, prior to the commencement of any business for which such bond is required.

Provided, however, in *lieu* of a performance bond, respondents Weiss and Franklin 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. Respondents Weiss and Franklin shall maintain such amount in that account for as long as they continue to advertise, promote, offer for sale, sell, or distribute any weight-loss or weight-control product or program or any acupuncture device, directly or indirectly, to the general public, and for at least five (5) years after they have ceased any such activity. Respondents Weiss and Franklin 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 (30) days following

receipt of notice that a final judgment or an order of the Commission against respondent Weiss and/or respondent Franklin 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 Weiss and/or Franklin 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 respondents have agreed to the entry of a court order of an order of the Commission, a specific finding that respondents 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 Weiss and/or respondent Franklin at their last known address.

Respondents Weiss and Franklin 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, program, or device 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 respondents engaged in false and misleading representations.

VIII.

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.

IX.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, 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 position.

X.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, 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 the may affect compliance obligations arising out of this order.

XI.

It is further ordered, That respondents, Barry A. Weiss and Roger Franklin, shall, for a period of five (5) 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 respondents' 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.

XII.

It is further ordered, That respondents, Original Marketing, Inc. and Franklin & Joseph, Inc., corporations, their successors and assigns, and their officers; Barry A. Weiss, individually and as an officer and director of Original Marketing, Inc., and Roger Franklin, individually and as an officer and director of Original Marketing, Inc. and Franklin & Joseph, Inc., 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.

EXHIBIT A

This escrow agreement, made and entered into this ____ day of _____, _____, by and between _____ (hereinafter "_____"); 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 _____ 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 _____ cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss or weight-control product or program or any acupressure device to the general public unless ____ 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. _____ shall establish an Escrow Account at _____, to be styled _____ Escrow Account, _____, Escrow Agent. _____ shall deposit into the Escrow Account an initial sum of at least three hundred thousand dollars (\$300,000.00) in cash, or other approved assets of equivalent value. Thereafter, _____ 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 (\$300,000.00).

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, _____ 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 (\$300,000.00). Until and unless the Escrow Account is terminated as provided for herein, _____ 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, _____ acknowledges that the funds are not part of _____'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. _____ shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that _____ 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 _____ for consumer redress of 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 _____ 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 shall also be mailed to _____ 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 _____ has

agreed to the entry of a court order or an order of the Commission, a specific finding that _____ 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 _____ 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 _____, or unsatisfied obligations pursuant to a judgment or order described in paragraph 4 herein, for which a claim could be made against the escrow funds under the terms of the consent order, the FTC shall, upon _____'s request, instruct the Escrow Agent to terminate the Escrow Account and return the balance of the Escrow Account to _____. 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 _____ at such time as the Escrow Agent, pursuant to instructions from the FTC, returns the funds to _____.

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

SIGNATURES

DATE:

Complaint

120 F.T.C.

IN THE MATTER OF

THE ESKIMO PIE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3597. Complaint, Aug. 11, 1995--Decision, Aug. 11, 1995*

This consent order prohibits, among other things, a Virginia-based corporation from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product and from falsely claiming that any frozen dessert product has been approved, endorsed or recommended by any person, group or organization. In addition, the consent order requires a disclosure statement, should Eskimo Pie represent that any frozen dessert is a useful or appropriate part of a diabetic's diet.

Appearances

For the Commission: *C. Steven Baker and Barbara DiGiulio.*

For the respondent: *F. Clairborne Johnston, Jr., Mays & Valentine*, Richmond, VA. and *Stuart M. Pape and Daniel Krakov, Patton, Boggs & Blow*, Washington, D.C.

COMPLAINT

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

PARAGRAPH 1. Respondent The Eskimo Pie Corporation is a Delaware corporation, with its principal office or place of business at 901 Moorefield Park Drive, Richmond, Virginia.

PAR. 2. Respondent has advertised, labelled, offered for sale, sold, and distributed a number of different varieties of Eskimo Pie Sugar Freedom frozen dessert products to the public. Each of these products is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.