

IN THE MATTER OF

LIVE-LEE PRODUCTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3620. Complaint, Oct. 10, 1995--Decision, Oct. 10, 1995*

This consent order prohibits, among other things, a California-based corporation and its officer from making any claim that a food, dietary supplement or drug has any effect on the user's health, or on the structure or function of the body, and from making any claim of performance, benefit, efficacy or safety of any smoking cessation product, service or program unless they have competent and reliable scientific evidence to support the claims.

Appearances

For the Commission: *Lisa B. Kopchik.*

For the respondents: *Timothy Kevene, Thorpe & Thorpe*, Los Angeles, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Live-Lee Productions, Inc., a corporation, and Ruta Lee, individually and as an officer and director of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Live-Lee Productions, Inc. ("Live-Lee") is a Texas corporation, with its offices and principal place of business at 2761 Laurel Canyon Blvd., Los Angeles, California. Live-Lee is engaged in the business of providing the services of Ruta Lee in connection with the marketing, advertising, sale and distribution of consumer products.

Respondent Ruta Lee ("Lee") is an officer, director, and sole shareholder of Live-Lee, and her address is 2436 Shirley Avenue, Fort Worth, Texas. Lee has served as the on-air host of "Spotlight on Ruta Lee" ("Spotlight"), an advertisement promoting the sale of

consumer products. Spotlight has appeared on the Home Shopping Club, which consists of advertising in the form of television programming that is disseminated through cable channels, company-owned broadcast stations, and satellite dish receivers. Through this programming, Home Shopping Club, Inc. ("HSC"), a subsidiary of Home Shopping Network, Inc., sells products via direct marketing to viewers.

PAR. 2. The products marketed on Spotlight have included spray vitamin and smoking cessation products sold by HSN Lifeway Health Products, Inc. ("Lifeway"), a wholly-owned second-tier subsidiary of Home Shopping Network, Inc. These products are foods and/or drugs, as the terms "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act. Lee performed the functions of an advertising agency by creating and disseminating the representations alleged in this complaint for said products on Spotlight. She received a royalty for each unit of Lifeway's products that was purchased for HSC's inventory.

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 created and disseminated advertisements for Lifeway's spray vitamin and smoking cessation products, including but not necessarily limited to the attached Exhibit A, a transcription of a television advertisement entitled "Spotlight on Ruta Lee" that appeared on the Home Shopping Club. This advertisement contains the following statements:

(a) Ruta Lee: "And you know how much of that vitamin pill I am absorbing? If I'm exceedingly lucky, five percent. The rest of that vitamin pill gets squashed through me and gets flushed down the toilet the first time I go piddle. So, 95% of my money is wasted going down the toilet. 95% of my vitamin is not even getting into my body. . . .

. . . .

. . . Now, let me tell you about the three different two-packs that we have at \$19.95 Instead of flushing that down the toilet, you are getting it into your body. Now, I think that is remarkable. That just by spraying. [She sprays into her mouth.] There I am. I've taken my vitamins . . . I've got my vitamins. Now you do this four times a day. And you have a month's supply in every tube." [Exhibit A, page ii-iii]

(b) Ruta Lee: "Vitamin C and Zinc. Just spray directly on your throat. Spray in your mouth. Kills rhinovirus on contact. You can avoid colds forever. . . . So,

Vitamin C and Zinc. You can avoid colds for the rest of your life." [Exhibit A, pages iii-iv]

(c) Ruta Lee: "I get calls from dentists who say 'tell everybody that's listening, Ruta, if they have a mouth lesion or something' -- Christie, our makeup lady, just had her big molars pulled back here [pointing to the back of her mouth].

....

I gave her some Vitamin C and Zinc to spray directly on the lesion, the whole inner mouth. Zinc is a healer, and we forget how good it is.

....

You get cold sores, spray it directly on. You get cracks in the corners of your mouth, spray it directly on. It's delicious." [Exhibit A, page iv]

(d) Ruta Lee: "But, you know every once in a while--"

Show host: "You need a boost."

Ruta Lee: "Sure. Your butt starts to drag and you say Oh, God, I need a cup of coffee, or, Gee, I think I need a candy bar or I need a coke. You don't need any of that which goes to nothing but stuff on your big, lard butt."

Show host: "Plus you end up with the highs and lows when you're getting your fixes -- "

Ruta Lee: "Yeah. A sugar high is a phony high. It raises you up and then it drops you like a ton of bricks."

Show host: "Right, right."

Ruta Lee: "Vitamin B-12. All you do is spray, and honey, it's like two martinis. Hits you, oh -- happy time. Its absolutely phenomenal." [Exhibit A, pages iv-v]

(e) Ruta Lee: "Alcohol, by the way, depletes B-12 just like that [she snaps her fingers]. If you're going to be sipping during the holidays, and we all are, and I'm not saying you should deny yourself a cocktail or a little Christmas grog, take your Vitamin B-12. Great for hangovers on New Year's Eve.

....

It's the greatest thing for a hangover. It's absolutely fabulous." [Exhibit A, page v]

(f) Ruta Lee: "We've got the magic one of them all. The one you've been hearing about and reading about in every newspaper, in every health periodical, in every beauty periodical. You have been reading about the antioxidants. They are the buzz-words of the 90s when it comes to health and beauty. And believe me, I don't care how much makeup you put on, your beauty starts from inside. The antioxidants are the things that keep your immune system working well. It is firmly believed by most medical authorities, and everybody in research, that Vitamins A, C and E are the key to keeping your immune system working. Why does your immune system have to work? I'll tell you why. Because whether it is a cold or whether it is any of the life-threatening diseases that are all around us -- that's what happens. You pick them up if your immune system isn't working for you. A, C and E are the vitamins that have been shown, and are now widely believed to be the things that keep your immune system working. . . . You want to stay young and gorgeous without 52 facelifts? God promises us in the bible 120 years. Honey, I intend to go into my coffin looking damn good. Why? Because I'm going to spray my fabulous A, C and E. It's going to keep me young. I'm not going to get the lines. I'm going to keep the sparkle in my eyes." [Exhibit A, page vi]

(h) Ruta Lee: "Dear ones, let me tell you about this smoke-less spray. The same process works. All you do is open wide, spray. And it satisfies your need for a cigarette. Somehow a message goes from the brain to the body that says 'stop quivering. You've satisfied a need.' And you haven't done it with a drug. You've done it with vitamins, minerals, herbs and spices that tickle your tongue and tickle your fancy. . . . Now, if you're a smoker, you know here in your mind and in your soul that you should quit smoking. And its very hard to do. I promise you this works. You get our money-back guarantee. It works with just the natural vitamin and mineral and herb and spice ingredients." [Exhibit A, page x]

(i) Ruta Lee: "I've had smokers call to tell me they have been smoking for 20, 30, 40 years and that they are able to quit smoking in five days, able to quit cold-turkey. . . . And you can do it. In an easy, simple way. Let's take a call.

....

... Hi, Sally. . . . Are you a smoker?"

Caller: "No. I quit three years ago with your sprays."

Ruta Lee: "Oh! Hallelujah, Sally! Well, Sally, you obviously have been with me right since the beginning, haven't you honey?"

Caller: "Yeah --"

Ruta Lee: "Three years --"

Caller: "I know if you sell anything, it's bound to work."

Ruta Lee: "Oh, bless you. You know -- you're bringing up a good point. You prove a point. I am starting my fifth year on the air with my products. The diet sprays, the vitamin sprays, and the smoke-less spray. Sally can attest to this. I wouldn't have lasted for five minutes, five weeks, if it didn't work. Because we guarantee you your money back. Sally, how much did you smoke?"

Caller: "Three packs a day."

Ruta Lee: "Whoo!"

Caller: "For thirty years."

Ruta Lee: "Thirty years, three packs a day. And, I don't remember now, how long did it take you to quit?"

Caller: "A month."

Ruta Lee: "A month. Like I said, thirty days. Make a habit, thirty days to break one. And Sally, it was fairly easy, wasn't it?"

Caller: "Yeah -- very easy."

....

Ruta Lee: "Hallelujah! Are you hearing this, ladies and gentlemen? Sally, who three years ago quit smoking in about a month's time, and she had smoked for thirty years, three packs a day." [Exhibit A, pp. xi-xii]

(j) Ruta Lee: "Because you're [the caller is] a source of inspiration to an awful lot of people out there who are sitting back on their rusty-dusty saying 'Oh, I don't know. I tried to quit smoking, but I gained weight.' I've had so many callers tell me that they don't gain weight when they use this spray.

Caller: "Oh, I lost weight when I used yours."

Ruta Lee: "Hooray! You lost weight." [Exhibit A, page xiii]

(k) Ruta Lee: "It's guaranteed to work. It doesn't put chemicals into your body. All natural given, vitamins, minerals, herbs and spices. You won't be shaky with anxiety. Just spray every time you want a cigarette. But, most of all, get to the phone. Call now. Think about this as a Christmas gift for somebody that you want

to stop smoking. . . . Don't wait. Don't wait until the doctor says you're gonna die if you don't stop smoking. Use your brains that God gave you. God gave you one body to last you a lifetime. Don't spit in His eye by smoking. Dear ones, what can I do but say hallelujah for this product. It works. But it won't work unless you get up off your duff, get to the telephone, use your finger to dial, and then use your finger to spray before you put that cigarette in your mouth." [Exhibit A, page xiv]

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

- (a) The vitamins in Life Way Spray Vitamins are more fully absorbed by the human body than vitamins taken in pill form;
- (b) Life Way Vitamin C and Zinc Spray, sprayed directly in the mouth at the dosages recommended, heals lesions in the mouth, cold sores on the mouth and cracking of the corners of the lips for users generally;
- (c) Life Way Vitamin C and Zinc Spray, sprayed directly in the mouth at the dosages recommended, prevents common colds;
- (d) Life Way Vitamin B-12 Spray, at the dosages recommended, effectively treats symptoms related to hangovers;
- (e) Life Way B-12 Vitamin Spray, at the dosages recommended, increases energy for users generally;
- (f) Life Way Anti-oxidant Spray, at the dosages recommended, ensures the proper functioning of the immune system;
- (g) Life Way Anti-Oxidant Spray, at the dosages recommended, reduces the risk of contracting infectious diseases;
- (h) Life Way Anti-Oxidant Spray, at the dosages recommended, prevents facial lines;
- (i) Life Way Smoke-Less Nutrient Spray enables smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily; and
- (j) Life Way Smoke-Less Nutrient Spray satisfies the physiological urge to smoke a cigarette and eliminates the quivering, anxiety and weight gain attendant with quitting smoking.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit A, respondents have represented, directly or by implication, that at the

time they made the representations set forth in paragraph five, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Respondents knew or should have known that the representation set forth in paragraph six was, and is, false and misleading.

PAR. 9. 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.

EXHIBIT A

TRANSCRIPT OF SPOTLIGHT ON RUTA LEE

Show host: How are you?
Ruta Lee: Ho Ho Ho!
Show host: That was so original, wasn't it?
Ruta Lee: That was so original, and honey, the whole point is that the Christmas season is here. We've already done ourselves in on Halloween by eating everything that the kids brought home.
Show host: I know.
Ruta Lee: And now we've got the -- whole Christmas season coming up.
Show host: And Thanksgiving.
Ruta Lee: And you know it is such a tension-ridden season.
Show host: Right, right.
Ruta Lee: It's suppose to be jolly and warm and wonderful and mellow.
Show host: Hum hum.
Ruta Lee: And instead it's ahhh! [shaking both hands in the air] It's because you haven't got it put together.
Show host: That's right. We all do this too. And you think you've got a year -- but you know, you still, something --
Ruta Lee: Right. Well, I start shopping. I mean I shop on Home Shopping Network all the time. And when I see the real bargains, I get like twelve of something, or six of something, and then just put them aside, and then whenever a birthday or a holiday comes along, I've got something that I can give.
Show host: You're prepared that way.

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Ruta Lee: Generic gifts. Not very thoughtful, but smart on the pocketbooks.

Show host: That's right.

Ruta Lee: And that's the thing to do here. Now listen. We're talking about stress, dear ones. I live a very stressful life. Lord knows, you live a very stressful life. And you know what, we're not rare. Everybody out there is in stress. Just getting out of your driveway into the traffic is stressful. I've got the answer to your prayers, dear ones. Stress does one thing beyond anything else. And that is it depletes your body of every vitamin and mineral that you've got in it. And you know what you've got in it? Not very much. Because if you really stop and think about how we live such hectic lives, we depend on convenience foods, we depend a lot on fast foods. Even if we're good homemakers, you know that the grains are stored in silos in preservatives so that they shouldn't rot. Then they put them in the grounds that are also filled with chemicals. The little vegetable sticks its little plant root up out of the ground and ssshhh, you hit it with spray to get the bugs off of it. Right? Then you take it to the marketplace, you put it in a preservative. You keep it on a shelf in a preservative and then you get it home and you zap it in the microwave oven, right? What kind of minerals and vitamins are we getting. Absolutely nothing. So, I know a lot of us are smart enough to take our vitamin pills. And if you are taking some that are great, more power to you. I can't swallow pills. I don't know about you, but --

Show host: No, I can't either.

Ruta Lee: I think you're very sensitive about swallowing. And if I get it down, it sort of chokes half way down. And then it gunks and I'm coughing and gagging. If it finally makes it down to my stomach, then it sits there and it stews for a while. And I'm burping that awful taste.

Show host: Right, right.

Ruta Lee: And it repeats on me all day long. It feels like its burning a hole in my stomach. And you know how much of that vitamin pill I am absorbing? If I'm exceedingly lucky, five percent. The rest of that vitamin pill gets squashed through me and gets flushed down the toilet the first time I go piddle. So, 95% of my money is wasted going down the toilet. 95% of my vitamin is not even getting into my body. Sweeties, I've got the greatest vitamin product this world has ever seen. Regis Philbin says it's the only civilized way to take vitamins. Look, all I do is open wide. [She sprays vitamins into her mouth from a tube.] That's it. I've taken my vitamins. Now you're probably thinking, oh, that must taste pukey. It's fabulous. It's mouth-refreshing. It's pleasant. And look what's happened. I've got my vitamins. Now you do this four times a day. And you have a month's supply in every tube. We're bringing them to you in two-packs because that's the way

- you asked for them. And they're \$18.95 which really throws me because they used to me (sic) \$19.95.
- Show host: Exactly.
- Ruta Lee: I think we're being very nice because it's the holiday season coming up or something.
- Show host: Right.
- Ruta Lee: Grab them while you can. This is my last visit for this month. Please, dear ones, think about these for your children and for yourself. Now, let me tell you about the three different two-packs that we have at \$19.95. And just think, instead of flushing \$19.00 -- well, let's see. What would 95% of \$19.95 be? Ahh -- \$17.00 or something or other. Instead of flushing that down the toilet, you are getting it into your body. Now, I think that that is remarkable. That just by spraying. [She sprays into her mouth.] There I am. I've taken my vitamins. Four times a day. You've got a month's supply in every tube. Let me tell you first about the Vitamin C and Zinc. As you're probably noticing, I am a little nasal. I've got a sinus condition. That could very easily develop into a nasty throat infection.
- Show host: Right, the draining. Ah -- it's such a horrible feeling.
- Ruta Lee: You know. When you're dripping the stuff down your throat. The drainage camps there. It creates a beautiful bed of mucous for all the bacteria to sit in. Vitamin C and Zinc. Just spray directly on your throat. Spray in your mouth. Kills rhinovirus on contact. You can avoid colds forever. If you feel one coming on, you'd have to take two bottles of Vitamin C and Zinc and it would burn a hole in your stomach. Especially if have a sensitive stomach. And if you're on any other medication, you don't want to swallow more stuff. This way, it doesn't interfere with any other medication you're taking. So, Vitamin C and Zinc. You can avoid colds for the rest of your life. I get calls from dentists who say "tell everybody that's listening, Ruta, if they have a mouth lesion or something" -- Christie, our makeup lady, just had her big molars pulled back here [pointing to the back of her mouth] --
- Show host: Right, yes.
- Ruta Lee: I gave her some Vitamin C and Zinc to spray directly on the lesion, the whole inner mouth. Zinc is a healer, and we forget how good it is.
- Show host: A healer, right. That is so important.
- Ruta Lee: You get cold sores, spray it directly on. You get cracks in the corners of your mouth, spray it directly on. It's delicious.
- Show host: And immediately it dissolves. It's different from some of the product creams.
- Ruta Lee: That's it. That's it. Its right there and its doing its magic. So, that is enough about Vitamin C and Zinc except that we live in closed-in environments. You know? You can't open a hotel room window. Through the office, you can't open a window. If

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anybody's got a cold, it gets passed around through the ventilation system.

Show host: Right.

Ruta Lee: Have this on hand all the time. [Holding up a tube of Vitamin C and Zinc.] Carry it with you and spray.

Ruta Lee: Now, Vitamin B-12. That, to me, is my mother's milk. Its the source of life for me. I'm a high-energy lady. This sweet lady, Bobbi, is even more energetic than I am, if that is possible.

Show host: No, no, no, no.

Ruta Lee: But, you know every once in a while --

Show host: You need a boost.

Ruta Lee: Sure. Your butt starts to drag and you say Oh, God, I need a cup of coffee, or, Gee, I think I need a candy bar or I need a coke. You don't need any of that which goes to nothing but stuff on your big, lard butt.

Show host: Plus you end up with the highs and lows when you're getting your fixes --

Ruta Lee: Yeah. A sugar high is a phony high. It raises you up and then it drops you like a ton of bricks.

Show host: Right, right.

Ruta Lee: Vitamin B-12. All you do is spray, and honey, it's like two martinis. Hits you, oh -- happy time. Its absolutely phenomenal. And you're not doing yourself in with alcohol and sugars and the sat-fat that are phoney and had for you. Alcohol, by the way, depletes B-12 just like that [she snaps her fingers]. If you're going to be sipping during the holidays, and we all are, and I'm not saying you should deny yourself a cocktail or a little Christmas grog, take your Vitamin B-12. Great for hangovers on New Year's Eve.

Show host: I never thought of that.

Ruta Lee: It's the greatest thing for a hangover. It's absolutely fabulous. Now look, this is also a great way to get vitamins into your kids. Our -- Terri Toner, our --

Show host: Jonelle loves them too.

Ruta Lee: You know, I know she does. Terri Toner's pediatrician said this is the greatest thing that came down the pike for kids because we are a pill-popping society. We take pills for vitamins. We have a headache, we take a pill. We're feeling blue, we take a pill. We're feeling too up and we can't sleep, we take a pill. And we get our kids so used to taking pills, especially with vitamins, that when someone comes along in the school yard and says 'Hey, kid. You want a blue? Hey, kid. You want a yellow?' He says that this is a great way to get vitamins into your kids and get them out of the pill-popping mode.

Show host: Away from the pills. Exactly. A terrific way.

Ruta Lee: Exactly. Now, last but not least, and girls you can listen while you are on the phone. We are going to be running out of time so shortly. It's my last visit until next month. Do not kick yourself

in your behind for the rest of the month saying 'why didn't I listen? Why didn't I do it?' We've got the magic one of them all. The one you've been hearing about and reading about in every newspaper, in every health periodical, in every beauty periodical. You have been reading about the antioxidants. They are the buzz-words of the 90s when it comes to health and beauty. And believe me, I don't care how much makeup you put on, your beauty starts from inside. The antioxidants are the things that keep your immune system working well. It is firmly believed by most medical authorities, and everybody in research, that Vitamins A, C and E are the key to keeping your immune system working. Why does your immune system have to work? I'll tell you why. Because whether it is a cold or whether it is any of the life-threatening diseases that are all around us -- that's what happens. You pick them up if your immune system isn't working for you. A, C and E are the vitamins that have been shown, and are now widely believed to be the things that keep your immune system working. What happens with oxidants is that they attack the oxygen-free radicals that our own bodies create because of the air we breath, because of the pollutants we take in, like tobacco and alcohol and etc. They naturally metabolize and they are nasty little things like termites that romp through your body randomly and attack healthy, live cells that keep you young and keep you healthy. And when they bite into one cell, it attacks another one like a domino theory. The oxygen-free radicals are put out of your body by the oxygenators. The A, C and E are just like a fire hose coming in and putting out the fire. Its a miracle. You want to stay young and gorgeous without 52 facelifts? God promises us in the bible 120 years. Honey, I intend to go into my coffin looking damn good. Why? Because I'm going to spray my fabulous A, C and E. It's going to keep me young. I'm not going to get the lines. I'm going to keep the sparkle in my eyes. Let's take a call.

Show host: Get to the phone calls, ladies and gentlemen, We have only a very short period of time. Hi, you're on the air, with Ruta. And what is your name please?

Caller: Sally.

Ruta Lee: Valerie, did you say?

Caller: Sally.

Show host: Sally.

Ruta Lee: Oh. Sally. I'm sorry. I've got to turn up my speaker back here. I'm reaching back here. I'm not scratching. I'm turning you up. Sally, where are you calling from?

Caller: I'm calling from Noridge, New York. I used the Vitamin C last year, and I worked all winter long and I didn't have a cold.

Ruta Lee: Whoo! [clapping loudly] You hear that? Isn't it a miracle? You know, I think our body tells us when we are starting to feel a little puny. And if we will just pay attention to it and give it

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what it needs. And a blast of Vitamin C and Zinc can surely prevent a lot of troubles. And you used it all winter?

Caller: Yes. And I didn't have any colds at all. I've started using it again this winter.

Ruta Lee: Good for you, sweetheart. I hope you're trying these marvelous antioxidants as well.

Caller: Yeah. I have them too.

Ruta Lee: Now, I want you to tell everybody how these vitamins taste?

Caller: Tastes almost like mint.

Ruta Lee: They are nice, aren't they?

Caller: Very nice.

Ruta Lee: 'Cause I'm sure people think, 'Ooh'. I know how nasty vitamins taste when you swallow them, and how they repeat on you. And these are like a mouth freshener, aren't they?

Caller: Um hum.

Ruta Lee: Well, Sally, honey, I'm so glad that you're going into this cold and flu season taking good care of yourself.

Caller: Yes, and that's another thing. My doctor knows that I have an awful reaction to the flu shots.

Ruta Lee: Oh, yes.

Caller: And she lets me use Vitamin C and Zinc all winter instead.

Ruta Lee: That's fabulous. So, you showed this to your doctor and she said 'spray away,' didn't she?

Caller: Yeah.

Ruta Lee: You know, that's another thing you brought up, Sally, that I want to mention. You can't overdose. We suggest -- the label says spray four times for the daily requirements. I think that sometimes our bodies need more than the daily requirement, so I spray more. Now, I don't want this to get into my throat, so I'm spraying all the time directly onto my throat. And, it's going to do the job. Thank you for calling, sweetheart. Have a wonderful Thanksgiving.

Caller: You too.

Ruta Lee: And I urge everybody out there to listen to our darling sister Sally. Get on the phone. Order now. If you're a new buyer, hang on. Don't get discouraged because you have to hold on. The lines are so busy. This is the time. Now look, I also want to mention something else. I have gotten calls from the nursing staff and professions and the people who work in the medical service industry. And the nurses in the nursing homes for the aged say, Ruta, you don't know what a boom this is for our senior citizens. Because as they get older, they seem to lose their appetite. Nothing tastes as good, and if they are not feeling well or if they are on medication of some kind, all I do is say 'Open wide' and spray this. It tastes good and it gives them a pickup. It puts a sparkle back in their life. The nurses down at HMS Anderson that take care of the little babies who have leukemia and who are on radiation and chemotherapy called to say 'you

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don't know how -- when you are on radiation and chemotherapy' -- and we have so many people out there who are, thank God, getting rid of cancer. But they have to go through the process. You get nauseous and pukey and puny and you don't want to eat. But you have got to keep your strength up. This is the way to do it. Just spray this in. Get it into your system and not flush 95% of it down the toilet.

Show host: So, please. Just stay on the phone lines, ladies and gentlemen. We are going to continue to take the calls coming through on the vitamins. But, we have to offer you the chance to have, yes, your holder. But more important than that, as we talk about the impact of the holidays, a lot of people are going to be grabbing the cigarette and smoking more than they normally do due to stress. So, for people out there -- and this is Ruta's last day here. I mean this is the time to make the call. If you were with us yesterday, or the day before and you've heard about it, make the call today. Let's take a look right now, in a two-pack, which allows you the chance to either have two for yourself or use one for a friend, the smoke-less spray. Two packs today at only \$18.95. And the holder. I can't believe we have any left. A few hundred left of this incredible holder.

Ruta Lee: Very --

Show host: A constant reminder of the importance of using these products.

Ruta Lee: And you know its also such a beautiful gift.

Show host: That's a great idea.

Ruta Lee: You know it comes in this wonderful, little velvet pouch. And, come over here so I can show you. Can you see -- oops -- here is -- there it is --

Show host: There you go.

Ruta Lee: It comes in a beautiful little drawstring velvet pouch. The point is, don't keep it in the pouch. Put it around your neck like this. And one of the girls called me -- I've got to share this with you. She said 'Ruta, you've changed my life. Not only am I happy and healthy. But I was spraying my vitamins as I was going down in the elevator one day because my butt was dragging and I thought, gee, I'm tired. I need some of my vitamins.' And she said a cute guy was standing next to me and he said 'what are you doing?' And she said, 'well, I'm spraying my vitamins.' And they got to talking and, to cut a long story short, he took her out for drinks and they are now married. So you see, it's a great conversation starter as well. Dear ones, let me tell you about this smoke-less spray. The same process works. All you do is open wide, spray. And it satisfies your need for a cigarette. Somehow a message goes from the brain to the body that says 'stop quivering. You've satisfied a need.' And you haven't done it with a drug. You've done it with vitamins, minerals, herbs and spices that tickle your tongue and tickle your fancy. Now, I promise you, these things used to be available in a fancy

catalogue for about \$28.00, \$29.00 a piece. I'm not talking about the holder. I'm talking about just the spray itself. We bring you two of them, because I made a pledge that I would never bring you anything that I didn't believe it, down to the tips of my toes and what is the best available at the very lowest price. Sweeties, there they are. Two for \$18.95 and the holder for \$14.95. What a treat. Either for yourself or maybe a smoker in your family. Now, listen to me. You know you've got to quit smoking. But this is a very stressful season and you're going to be reaching for a cigarette all the time. Somehow smoking and drinking seem to go together. Its cocktail time. Its Christmas party time. Its celebration time. And they seem to go together. It would be quite wonderful if you could carry this with you the way I do with this beautiful piece of jewelry and spray every time you think you want a cigarette. Now, if you're a smoker, you know here in your mind and in your soul that you should quit smoking. And its very hard to do. I promise you this works. You get our money-back guarantee. It works with just the natural vitamin and mineral and herb and spice ingredients. Money-back guarantee. Does any other product promise you a money-back guarantee? Does the patch, which just feeds you more nicotine? Does the nicorette gum, which feeds just more nicotine? Do you know that all of the products out there on the marketplace that you might go to out of panic all say if you are on heart medication do not use. If you are pregnant, do not use. If you are on high blood pressure medicine, do not use. If you overdose, go to your nearest poison center. I don't want you to put that crap in your body. I want you to spray natural, God-given vitamins and minerals. And you know what happens? A message goes to your body that says quit shaking. You can make it for another ten minutes without a cigarette. You can make it for another ½ hour without a cigarette.

I've had smokers call to tell me they have been smoking for 20, 30, 40 years and that they are able to quit smoking in five days, able to quit cold-turkey. I always say it takes a month to make a habit, it takes a month to break one. So, think about doing this as a Christmas gift to your family. Open this up in front of your family and say 'Family, as a Christmas gift to all of you because you love me, I'm going to quit smoking. I promise you.' And you can do it. In an easy, simple way. Let's take a call.

Show host: Hi, you're on the air with Ruta. And what is your name, please?

Caller: Sally.

Ruta Lee: Sally?

Caller: Yes. She just talked to me.

Ruta Lee: Yes. Hi, Sally. Are you back again? Are you a smoker?

Caller: No. I quit three years ago with your sprays.

Ruta Lee: Oh! Hallelujah, Sally! Well, Sally, you obviously have been with me right since the beginning, haven't you honey?

Complaint

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Caller: Yeah --
Ruta Lee: Three years --
Caller: I know if you sell anything, it's bound to work.
Ruta Lee: Oh, bless you. You know -- you're bringing up a good point. You prove a point. I am starting my fifth year on the air with my products. The diet sprays, the vitamin sprays, and the smokeless spray. Sally can attest to this. I wouldn't have lasted for five minutes, five weeks, if it didn't work. Because we guarantee you your money back. Sally, how much did you smoke?
Caller: Three packs a day.
Ruta Lee: Whoo!
Caller: For thirty years.
Ruta Lee: Thirty years, three packs a day. And, I don't remember now, how long did it take you to quit?
Caller: A month.
Ruta Lee: A month. Like I said, thirty days. Make a habit, thirty days to break one. And Sally, it was fairly easy, wasn't it?
Caller: Yeah -- very easy.
Ruta Lee: It didn't kill you.
Caller: Yeah. You just had to put that with your cigarettes. And instead of using your cigarettes, you --
Ruta Lee: When you got it, we didn't even have the holder then. You know how easy it is now to have this thing because every time it hits you between your boobies, it reminds you. But I always say if you don't get the holder, it doesn't matter. Take the spray, put it in your car -- pack of cigarettes, wrap a rubber band around it, and then just before you reach for a cigarette, spray. Course, I like having a holder because then I can say, put your cigarettes upstairs, and when you're downstairs you don't want to run up the stairs. And, Sally, you know better than anybody that \$18.95 is about what a carton of cigarettes cost. And --
Caller: I don't know what they are now.
Ruta Lee: Well now with Mr. Clinton's sin tax --
Caller: I just go by the counter and look down at them and say 'I'm so glad I don't have to buy them.'
Ruta Lee: Hallelujah! Are you hearing this, ladies and gentlemen? Sally, who three years ago quit smoking in about a month's time, and she had smoked for thirty years, three packs a day. Do you know, Sally, that in thirty years -- how much money did you burn up? I mean, we're talking probably about \$50,000. That you burned up. And now, you are saving -- if -- if two pack a day is -- what is it honey, we figured it out. Three packs a day. You've got to do it. Two packs is \$150.00 a month. Three packs would be about \$2 -- a little more -- \$225.00 a month. That you're saving.
Caller: Yeah.

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Complaint

Ruta Lee: Think about that. And not only are you saving that. But, you know what? You're not gonna have to spend money on a fancy funeral because you're gonna outlive everybody.

Caller: But I feel a lot better than I have in years.

Ruta Lee: God bless you for being my friend, Sally. I once again wish you a very, very, happy Thanksgiving Day. A very blessed Christmas. Call me during the Christmas holidays. You know? When I get back here in the middle of December, and let me know how you're doing, okay?

Caller: Okay.

Ruta Lee: Because you're a source of inspiration to an awful lot of people out there who are sitting back on their rusty-dusty saying 'Oh, I don't know. I tried to quit smoking, but I gained weight.' I've had so many callers tell me that they don't gain weight when they use this spray.

Caller: Oh, I lost weight when I used yours.

Ruta Lee: Hooray! You lost weight.

Caller: And I got my girlfriend started on it this summer, so I'm hoping she's stopped. She's in Florida, so I haven't heard yet.

Ruta Lee: Well, God love you. And let me know what she says, okay?

Caller: Okay.

Ruta Lee: A great big hug and kiss, Sally. Bye, bye, angel.

Caller: Bye, bye.

Show host: Now, we have only one minute and 42 seconds left. This is the time to make the call. As Ruta has said, this is her last time here --

Ruta Lee: That's right.

Show host: And the next time will be after Thanksgiving.

Ruta Lee: Now look. This is for you. If you're not a smoker, isn't there somebody in your life that you love dearly who smokes? And if you are the smoker, remember this, that you're not just killing yourself. You're killing everybody around you with your secondary smoke. You're killing your children, your grandchildren, You're killing your pets, dear ones. It makes me crazy when I see young families out in restaurants. And the mother and father are smoking and they're saying 'eat your broccoli, dear, it's good for you. Eat your carrots, dear, it's good for you.' Children, you're killing your children. Not only are you killing them, you smell like a compost heap on fire. You know the grand kids come in and say 'I don't want to kiss grandma. She stinks.' It's guaranteed to work. It doesn't put chemicals into your body. All natural given, vitamins, minerals, herbs and spices. You won't be shaky with anxiety. Just spray every time you want a cigarette. But, most of all, get to the phone. Call now. Think about this as a Christmas gift for somebody that you want to stop smoking. Maybe young college people. Maybe someone that has suddenly starting smoking because they think it is chic. I got a call from a lady last month. And she said

'Ruta,' and she had called me a year or two ago and she said 'Ruta, we worked so hard, my husband and I, to save our money, put our kids through school. We thought we would go into our golden retirement years traveling and enjoying the money that we earned.' Do you know what she said? 'Do you know where I'm traveling? To the nursing home where my husband is strapped to a machine that does his breathing for him.' She called me last month to say 'Darling Ruta. I wish this had been around five years ago and ten years ago when it would have made a difference in his lungs. My husband died.' She said 'Thank God, I have stopped. But, I could have had a lovely, long life with my husband thanks to your product. If it had just been around a few years before.' Don't wait. Don't wait until the doctor says you're gonna die if you don't stop smoking. Use your brains that God gave you. God gave you one body to last you a lifetime. Don't spit in His eye by smoking. Dear ones, what can I do but say hallelujah for this product. It works. But it won't work unless you get up off your duff, get to the telephone, use your finger to dial, and then use your finger to spray before you put that cigarette in your mouth. Just promise me that you'll do it. Try it. You have nothing to lose but a rotten, crappy habit that is not just killing you, but everybody around you. And, if you're not the smoker, get it for somebody you love who does smoke.

Show host: Ruta, thank you so much for being here.
Ruta Lee: You're an angel.
Show host: It's always great. Wonderful health.
Ruta Lee: Thank you for sharing your time.
Ruta Lee: Dear ones, hang on the phone. We'll take the call, but hang on the phone. Get in there and do it now.
Show host: So, do not hang up. Stay there. We'll continue to take all the calls coming through.

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 respondents of all the jurisdictional facts set forth in the

aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents 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 Live-Lee Productions, Inc. ("Live-Lee") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Texas, with its offices and principal place of business at 2761 Laurel Canyon Blvd., Los Angeles, California.

2. Ruta Lee is an officer and director of Live-Lee. She formulates, directs, and controls the policies, acts, and practices of said corporation, and her principal office and place of business is located at the above stated address. She resides at 2436 Shirley Avenue, Fort Worth, Texas.

3. 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

I.

It is ordered, That respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation; 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 Life Way

Vitamin C and Zinc Spray, Life Way Antioxidant Spray, Life Way Vitamin B-12 Spray, or any other food, food or dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That such product:

1. Is more fully absorbed by the human body than any other product;
2. Heals lesions in the mouth, cold sores on the mouth, or cracking of the corners of the lips;
3. Prevents common colds;
4. Effectively treats symptoms related to hangovers;
5. Increases energy;
6. Ensures the proper functioning of the immune system;
7. Reduces the risk of contracting infectious diseases;
8. Prevents facial lines; or

B. That use of the product can or will have any effect on the user's health, or on the structure or function of the human body,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For the purposes of this order, "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 have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

Provided, that it shall be a defense hereunder that the respondents neither knew nor had reason to know of the inadequacy of substantiation for the representation.

II.

It is further ordered, That respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation; 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 Life Way Smoke-Less Nutrient Spray or any other smoking cessation product, program, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. That such product, program, or service enables smokers, regardless of how long they have smoked or how much they smoke, to stop smoking easily;

B. That such product, program, or service satisfies the physiological urge to smoke a cigarette, or eliminates the quivering, anxiety and weight gain attendant with quitting smoking; or

C. Regarding the performance, benefits, efficacy or safety of any such product, program, or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation;

Provided, that it shall be a defense hereunder that the respondents neither knew nor had reason to know of the inadequacy of substantiation for the representation.

III.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

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

IV.

It is further ordered, That respondent Live-Lee Productions, Inc. shall, within thirty (30) days after service of this order, provide a copy of this order to each of respondent's 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.

V.

It is further ordered, That respondent Live-Lee Productions, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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.

VI.

It is further ordered, That respondent Ruta Lee 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 her present business or employment and of her affiliation with any new business or employment which involves the sale of consumer products. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and her duties and responsibilities.

VII.

It is further ordered, That respondents Live-Lee Productions, Inc., a corporation, its successors and assigns, and its officers; and Ruta Lee, individually and as an officer and director of said corporation, 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.

Set Aside Order

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IN THE MATTER OF

MANNESMANN, A.G.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3378. Consent Order, Mar. 24, 1992--Set Aside Order, Oct. 11, 1995*

This order reopens a 1992 consent order--which required Mannesmann to divest the Buschman Co. and to obtain, for 10 years, Commission approval prior to acquiring any business that manufactures and sells certain conveyor systems--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement. The order cites the availability of the premerger notification and waiting period requirements, and noted that under the Policy Statement, the Commission presumes that the public interest requires setting aside the prior approval requirement in paragraph V of the order.

ORDER SETTING ASIDE ORDER

On June 29, 1995, Mannesmann, A.G. ("Mannesmann"), filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. Mannesmann asks that the Commission reopen and modify the 1992 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ Mannesmann in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3378 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph V that Mannesmann seek prior Commission approval for certain acquisitions. The Petition was on the public record for thirty days; no comments were received.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15

¹ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).