

IN THE MATTER OF

THIRD OPTION LABORATORIES, INC., ET AL.

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

Docket C-3628. Complaint, Nov. 29, 1995--Decision, Nov. 29, 1995

This consent order requires, among other things, an Alabama company and its officers to pay \$480,000 to be used either for refunds to consumers or as disgorgement to the U.S. Treasury, and to send a notice to consumers and distributors of the beverage, Jogging in a Jug, advising them of the consent order which requires the respondents to possess competent and reliable scientific evidence to substantiate any representation they make about the performance, safety, benefits, or efficacy of any food, dietary supplement, or drug they market in the future. In addition, the consent order prohibits the deceptive use of testimonials or endorsements and requires the respondents to clearly and prominently include a disclosure statement in future advertisements.

Appearances

For the Commission: *Toby M. Levin* and *Loren G. Thompson*.

For the respondents: *Bruce A. Rawls* and *Ross Forman, Burr & Forman*, Birmingham, AL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Third Option Laboratories, Inc., a corporation; and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation ("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 Third Option Laboratories, Inc., is an Alabama corporation with its principal office or place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama.

Respondent William J. McWilliams is the President, and an owner and director of the corporate respondent. His principal office

or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Danny Bishop McWilliams is the Treasurer, and an owner and director of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Susan McWilliams Bolton is the Secretary, and an owner and director of the corporate respondent. Her principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, she formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

PAR. 2. Respondents have labeled, advertised, promoted, offered for sale, sold, and distributed "Jogging in a Jug," a liquid made from apple cider vinegar, apple juice, and grape juice, as a preventive or treatment for numerous diseases and symptoms. Jogging in a Jug is a "food" and/or "drug" 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 Jogging in a Jug, including but not necessarily limited to the attached Exhibits A through F. These advertisements contain the following statements and depictions:

A. "Jogging in a Jug® has Health Woes on the Run [headline]. TOO OLD to take up running? Maybe you should start drinking instead. . .drinking 'Jogging in a Jug,' that is!

Just ask retired dairy farmer Jack McWilliams, who concocted the tart-tasting tonic 2 years ago. 'I used to be nearly disabled with heart-blockage and arthritis,' says Jack, who's 64. 'But after I started drinking Jogging in a Jug, I noticed a difference right away.'

'In less than a year, my arthritis cleared up, and I stopped suffering the pain and symptoms of heart disease!'

. . . Jack receives hundreds of testimonials from folks who feel that it's lowered their cholesterol, lifted their lethargy and lessened their arthritis.

'Vinegar is nature's own cleansing agent,' Jack insists, 'Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats. . .and remove decals from trucks.'

'I figure if vinegar can breakdown calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs.' . . .

Just a few ounces of his tasty Jogging in a Jug will give you energy and stamina which is what the Jogger is trying to achieve." [Exhibit A]

B. "Jogging in a Jug BULLETIN [headline]. When your body tells you it's 4th down and 50 yards to go with no time outs, get Jogging in a Jug and keep on going.

Jogging in a Jug is a drink that achieves many of the things a jogger wishes to gain from jogging.

Jogging in a Jug is for people of all ages. Its formula, a self cleansing agent for the body, is a revival of a century-old process designed to cleanse the body cells of crystal and solid build up. This helps each system do its individual task more effectively, promoting an atmosphere for a more energetic and healthful you." [Exhibit B]

C. "Jogging in a Jug (USDA Approved) [headline]. JOGGING IN A JUG is a drink that achieves many of the things a jogger wishes to gain from jogging." [Exhibit C]

D. [Announcer] "Were [sic] Here to tell you about a product on the market thats [sic] so popular and so healthy, that people are writing letters from this great country of ours, and their [sic] talking about Jogging In A Jug! And here to tell you more is the inventor of Jogging In A Jug, Jack McWilliams from Cherokee Alabama. Jack, What do all these Letters say health wise about what Jogging In A Jug can do?

[McWilliams] That It lowers Cholesterol, Triglycerides [sic] that swelling in the legs, muscle spasms were going away." [Exhibit D]

E. [Announcer] "Jack McWilliams from Cherokee Alabama, and he's interested in your good health and quality of life, as a matter of fact Jack was so upset about his own declining health in 1985 that he invented an all natural drink, its [sic] called Jogging In A Jug. This new Jogging In A Jug product has become so popular that people from all over the Southeast and other parts of the United States are raving about their improved health and outlook on life. Jack, what exactly do the letters say?

[McWilliams]. . .we have letters that say that those people who are suffering dysentery and constipation when they go on Jogging In A Jug those little 2 ounces a day, both of them seem to clear up." [Exhibit E]

F. 'I developed heart disease about five years ago with 70 percent blockage,' he [Jack McWilliams] said.

'I also have arthritis. . .'

'I started taking a mixture of vinegar and I began to improve. The swelling in my hands and the (arthritic) pain in my shoulder went away and I stopped suffering the pain and symptoms of heart disease.'

McWilliams said his claim may sound strange in a high technology world of nuclear medicine, but he is convinced the addition of a few ounces of vinegar per week to the diet can greatly reduce the risk of heart disease, cancer in the internal organs and some forms of arthritis.

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Vinegar, he said, is like a natural solvent for the body, cleaning crystal deposits that are the base of clogged arteries and arthritis." [Exhibit F, p. 1]

* * *

[Testimonial] "I know it's working for me and my wife. The family doctor even wrote a note on my cholesterol read out, 'Mike continue taking "Jogging in a Jug." . . . My cholesterol had dropped the first time down 44 points and my wife's 22 points. Now this report down to 228.' . . . E.M.G." [Exhibit F, p. 2]

* * *

". . . Mr. McWilliams began drinking his concoction every day. In less than a year his arthritis cleared up, and he stopped suffering the pain and symptoms of heart disease. The retired dairy farmer had developed a new vinegar/juice beverage which he says is as good for you as a jog around the block. In fact he named his new life restorer 'Jogging in a Jug.'

Mr. McWilliams says, 'Vinegar is nature's own cleansing agent. Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats and even remove decals from trucks. I figure if vinegar can break down calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs.'

. . . Jack receives hundreds of testimonials from people every where [sic] who feel that the vinegar/juice beverage has lowered their cholesterol, helped their arthritis and given them a new lease on life. . .

You're never too old to take up jogging. Even if it is in a jug." [Exhibit F, p. 2]

* * *

"Jack McWilliams at this date had received high tech medical treatment for seven years, with an average hospital stay of 30 days per year for a total of about 210 days, at a cost of approximately \$50,000 - \$54,000 to the insurance company plus minor cost to the family.

Convinced the fruit of the vine type of acetic acid is no longer in the diet nor on the market and is needed; McWilliams continued high-tech medication and added acetic acid through 'Jogging in a Jug' at two ounces per day at a cost of \$5.90 per month. Health was restored slowly in twelve to sixteen months."

[Depiction - two photographs of McWilliams, one with the subscript "January 1986 - age 59 atherosclerosis/arthritis (wt 148)" and the second with the subscript "January 1991 - age 64 no health problems (wt 210)"] [Exhibit F, p. 3]

* * *

"Riddled with arteriosclerosis [sic] and arthritis, Alabama dairy farmer Jack McWilliams, now 65, had lost the desire to live in 1985 when he developed 'Jogging in a Jug.'

He was also suspicious about why six people in his community of Cherokee, Alabama, died of heart disease and cancer in just six weeks, and he began to research into what was lacking in the modern diet.

It was acetic acid, he says today, and that is the elixir he mixes into the purple fluid he calls Jogging in a Jug.'

He is careful to note that the Food and Drug Administration will not allow him to make any health claims about his drink, but 'I have the First Amendment right to tell my own personal story.'

'People just don't take in the acetic acid they used to in the old days,' McWilliams said. . .

The credibility of cider vinegar in our diets began to fall into place, according to McWilliams, when he noted all it's [sic] known attributes such as the ability to clean calcium and mineral deposits off plumbing and to make meat tender. . .

He decided that if vinegar could break down calcium and chemicals outside the body, it could break down calcium and chemicals inside the body as well. . .

McWilliams has received many enthusiastic letters from 'Jogging in a Jug' drinkers telling how their cholesterol has gone down, energy has gone up and arthritis has become less painful.

And McWilliams said he was relieved of his heart disease symptoms, most of his arthritis and his shoulder stiffness is gone.

McWilliams attributes these reactions to the acetic acid in the drink which he believes helps cleanse the arteries and cells in the body. . .

This is a 2,000 year old known technology that gives us a third option to slow the rise of cancer, leukemia, heart disease and arthritis." [Exhibit F, p. 3]

[Testimonial] "My husband is an insulin dependent diabetic. . . .

This past year, on a friend's recommendation, he began taking 2 oz. of 'Jogging in a Jug' each morning. His doctor said it wouldn't hurt his control of his disease. Jack's sugar level has always tended to go too low, we were never sure what would trigger this at any time.

After beginning 'Jogging in a Jug' his episodes of low blood sugar have decreased markedly. Then in the summer haying season he ran out of 'Jogging in a Jug'. I kept forgetting to buy more. His blood sugar level began to fluctuate wildly, very high to very low seemingly without cause. We couldn't get it under control. Finally after about a week I remembered to purchase another jug.

Immediately, Jack's blood sugar leveled off to normal levels of 90-120 and stayed there.

We don't allow ourselves to be out of 'Jogging in a Jug' anymore!

I am convinced that this product has leveled his sugar off to manageable levels. Sincerely Mrs. J.A.W. Cherokee, AL" [Exhibit F, p. 4]

* * *

[Testimonial] "On 12 January 1991, my cholesterol count, was 272. I read an article about your product, Joggin [sic] in a Jug. I have been sipping the drink ever since. On 11 March 1991, my cholesterol count was 188, I am now a believer.' R.M. Montgomery, Alabama." [Exhibit F, p.4]

* * *

[Testimonial] "My cholesterol dropped from 330 to 276. My doctor told me to keep doing what I'm doing. . . ' A.H. Rockwood, TN" [Exhibit F, p. 4]

* * *

[Testimonial] "Your juice has helped to lower my mother's cholesterol, thank you.' J.C. Phil Campbell, AL" [Exhibit F, p. 4]

[Testimonial] "My cholesterol count had been hovering around 235, I tried your product for 3 weeks and my doctor was pleased to inform me it had dropped to 200.' P.H. Ft. Lauderdale, FL" [Exhibit F, p. 4]

[Testimonial] "I was stricken by a virus, after 6 weeks I was exhausted and couldn't work. I heard of your drink, after taking it for 6 weeks I am myself again and back to working 8-10 hours a day.' E.L. Hamilton, AL" [Exhibit F, p. 4]

[Testimonial] "After drinking Jogging in a Jug my husband's cholesterol has dropped from 217 to 190 and triglycerides from 419 to 148 and he can close his

hands from arthritis after three months.' F.W.B. Montgomery, AL" [Exhibit F, p. 4]

[Testimonial] "'My mother is 83 years old, and in very good health, except for high cholesterol. It was 448 when she [sic] a check-up in March. We bought her some Jogging in a Jug. I am happy to report her cholesterol is down by 124 points in just five weeks.' J.H.N. Selma, AL" [Exhibit F, p. 4]

[Testimonial] "'Thank you for helping me to reduce my cholesterol count. I took the product for two weeks before I had a cholesterol test. My doctor was so pleased he wrote across my chart, "Call her and congratulate her.'" F.R.W. Canonsburg, PA" [Exhibit F, p. 4]

[Testimonial] "'... I had arthritis pain to the point of not being able to do work with my arms over my head. Now I am able to work with my arms over my head in a normal manner.' J.C. Lawrenceville, GA" [Exhibit F, p. 4]

[Testimonial] "'I have lowered my cholesterol from 269 in September to 209 in January. Thanks.' B.Y. St. Cloud, FL" [Exhibit F, p. 4]

[Testimonial] "'For the past 6 years, I have been going to the Rheumatologist with arthritis in my hips. Sometimes [sic] could not get around. Two weeks after starting to drink Jogging in a Jug, I began feeling much better. This was five months ago and I have not been to the doctor since. It is the longest I have ever gone without taking Arthritis medication. I was even taking Cortizone [sic] shots. Thanks to Jogging in a Jug, I feel great.' G.T. Winchester, TN" [Exhibit F, p. 4]

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

A. Jogging in a Jug cures or alleviates heart disease and its symptoms, including arterial blockages;

B. Jogging in a Jug substantially lowers serum cholesterol and triglycerides;

C. Jogging in a Jug cures or alleviates arthritis and its symptoms;

D. Jogging in a Jug breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;

E. Jogging in a Jug improves the condition of the circulatory system;

F. Jogging in a Jug cleans internal organs;

G. Jogging in a Jug prevents or reduces the risk of cancer, leukemia, heart disease, and arthritis;

H. Jogging in a Jug provides the same health benefits as a jogging regimen;

I. Jogging in a Jug cures or alleviates lethargy;

- J. Jogging in a Jug cures or alleviates dysentery;
- K. Jogging in a Jug cures or alleviates constipation;
- L. Jogging in a Jug stabilizes blood sugar levels in insulin-dependent diabetics;
- M. Jogging in a Jug aids in the recovery from viral diseases;
- N. Jogging in a Jug cures or alleviates swelling of the legs and muscle spasms;
- O. Jogging in a Jug is approved by the United States Department of Agriculture; and
- P. The testimonials or endorsements from consumers contained in the advertisements and promotional materials reflect the typical or ordinary experiences of members of the public who use Jogging in a Jug.

PAR. 6. In truth and in fact:

- A. Jogging in a Jug does not cure or alleviate heart disease or its symptoms, including arterial blockages;
- B. Jogging in a Jug does not substantially lower serum cholesterol or triglycerides;
- C. Jogging in a Jug does not cure or alleviate arthritis or its symptoms;
- D. Jogging in a Jug does not break down or eliminate calcium or other mineral or chemical deposits in the circulatory system;
- E. Jogging in a Jug does not improve the condition of the circulatory system;
- F. Jogging in a Jug does not clean internal organs;
- G. Jogging in a Jug does not prevent or reduce the risk of cancer, leukemia, heart disease, or arthritis;
- H. Jogging in a Jug does not provide the same health benefits as a jogging regimen;
- I. Jogging in a Jug does not cure or alleviate lethargy;
- J. Jogging in a Jug does not cure or alleviate dysentery;
- K. Jogging in a Jug does not cure or alleviate constipation;
- L. Jogging in a Jug does not stabilize blood sugar levels in insulin-dependent diabetics;
- M. Jogging in a Jug does not aid in the recovery from viral diseases;
- N. Jogging in a Jug does not cure or alleviate swelling of the legs or muscle spasms;

O. Jogging in a Jug is not approved by the United States Department of Agriculture; and

P. The testimonials or endorsements by consumers contained in the advertisements and promotional materials do not reflect the typical or ordinary experiences of members of the public who use Jogging in a Jug.

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

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through F, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents, 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, 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. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Chairman Pitofsky not participating.

EXHIBIT A

Jogging in a Jug[®]
Has Health Woes on the Run

TOO OLD to make up running? Maybe you should start drinking instead... drinking "Jogging in a Jug", that is!

Just ask retired dairy farmer Jack McWilliams, who concocted the tantalizing tonic 2 years ago. "I used to be nearly disabled with heart blockage and arthritis," says Jack, who's 64. "But after I started drinking Jogging in a Jug, I noticed a difference right away."

"In less than a year, my arthritis cleared up, and I stopped suffering the pain and symptoms of heart disease!"

The only symptoms he suffered after that were sore feet from pounding the pavement promoting his new product. Merchants in his hometown of Cherokee, Alabama laughed at first, but Jack - like any farmer - persisted.

His persistence paid off. Nowadays, Jogging in a Jug is sold in supermarkets all across the South, and Jack receives hundreds of testimonials from folks who feel that it's lowered their cholesterol, lifted their lethargy and lessened their arthritis.

Such success may be sweet, but the taste of Jogging in a Jug certainly isn't - it's main ingredient is vinegar.

"Vinegar is nature's own cleansing agent," Jack insists. "Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meat... and remove decals from trucks."

"I figure if vinegar can break down calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner organs."

Healthy skepticism keeps some folks from trying out his treatment, Jack admits. But he points out that vinegar has been valued as a tonic and preservative since Biblical times. "My grandmother was a strong believer in using vinegar for all ailments," he adds. "She raised her family on creek water and vinegar, and her children all lived at least 90 years."

Jack's own family, wife Rebecca, son Danny, and daughter Susan, have a different health regimen these days - they're running to help him keep up with the demand for Jogging in a Jug. If this friendly former farmer has his way, you just might see it in your store!

DRINK UP!
Just a few ounces of his tasty Jogging in a Jug will give you energy and stamina which is what the Jogger is trying to achieve. Says dairyman Jack McWilliams. Here's to your good health.

Available at your local grocery store.
For Free Brochure
call 1-800-367-2598
Mon.-Fri. 8-5 p.m. Central Time.

DISTRIBUTED BY SERVICE DIST. INC., LORTON, VA.



Exhibit A

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EXHIBIT B

*Jogging in a Jug***BULLETIN**

When your body tells you it's 4th down and 50 yards to go with no time outs, get *Jogging in a Jug* and keep on going.

Jogging in a Jug is a drink that achieves many of the things a jogger wishes to gain from jogging.

Jogging in a Jug is for people of all ages. Its formula, a self cleansing agent for the body, is a revival of a century-old process designed to cleanse the body cells of crystal and solid build up. This helps each system do its individual task more effectively, promoting an atmosphere for a more energetic and healthful you.

Jogging in a Jug contains a blend of fresh and aged products of the orchard and vineyard. It contains no chemicals and no preservatives.

Jogging in a Jug is new, yet centuries old.

Make *Jogging in a Jug* a daily habit by taking a small amount each day as a part of your regular health routine.

2 Ounces per day is all it takes - 32 day supply - 64 oz. unit - \$5.95

At Your Local Grocery Store

DEVELOPED BY

Third Option Laboratories, Inc.

Route 3, Box 430

Cherokee, AL 35616

205-359-6178

Jack McWilliams

Bottled by Southern Specialty Food



Exhibit B

EXHIBIT C

10A The Huntsville Times, Wednesday, February 7, 1990

Jogging in a Jug
(USDA Approved)

JOGGING IN A JUG is a drink that contains more of the things a jogger needs to gain fresh energy.

JOGGING IN A JUG is for people of all ages. Its formula, a cold cleansing agent for the body, is a revival of a century old formula designed to clean the body out of excess and build it back up. This has been proven on an experimental basis many times, promising an alternative for a more energetic and beneficial way.



Make JOGGING IN A JUG a daily habit by taking a small amount each day as part of your regular health routine.

JOGGING IN A JUG, it's new yet centuries old! 2 Ounces per day is all it takes-32 day supply-64 oz. unit \$5.95.

At Your Local Grocery Store

Third Option Laboratories
Rt 2 Box 436 Channahon, AL 35616 (205) 359-6178 Jack McWilliams

Exhibit C

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EXHIBIT D

Jogging In A Jug EM-020

Announcer: Were Here to tell you about a product on the market thats so popular and so healthy, that people are writing letters from this great country of ours, and their talking about Jogging In a Jug! And here to tell you more is the inventor of Jogging In A Jug, Jack McWilliams from Cherokee Alabama. Jack, What do all these Letters say health wise about what Jogging In A Jug can do?

Mr. McWilliams: That it lowers Cholesterol, Triglycerides that swelling in the legs, muscle spasms were going away.

Announcer: And Jogging In A Jug will cost you just pennies a day. Jogging In A Jug is healthy and completely natural but Jack, what exactly does Jogging In A Jug taste like?

Mr. McWilliams: Jogging In A Jug if you grew up in a rural community it taste like a home brew, if you grew up in the city, it taste like a fine wine.

Announcer: (Laugh) Now that a health drink for me.

Jingle: Try the healthy choice Jogging In A Jug, Just 2 ounces a day and once you try it when you need more youre gonna buy it Jogging In A Jug.

EXHIBIT E

Jogging In a Jug EM-022

Announcer: Jack McWilliams from Cherokee Alabama, and he's interested in your good health and quality of life, as a matter of fact Jack was so upset about his own declining health in 1985 that he invented an all natural drink, its called Jogging In a Jug. This new Jogging In A Jug product has become so popular that people from all over the Southeast and other parts of the United States are raving about their improved health and outlook on life. Jack, what exactly do the letters say?

Mr. McWilliams: All right we have letters that say that those people who are suffering dysentery and constipation when they go on Jogging In A Jug those little 2 ounces a day, both of them seem to clear up.

Announcer: Sounds Great Jack, but where does this incredible popularity for Jogging In A Jug come from.

Mr. McWilliams: It got around by the word of mouth and people used it, they knew it helped them so their calling their neighbors and friends and tell them about the product.

Announcer: Its the talk of the town, Jogging In A Jug!!

Jingle: Try the healthy choice Jogging In A Jug, just 2 ounces a day and once you try it when you need more your gonna buy it, Jogging In A Jug.

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Complaint

EXHIBIT F

Third Option Laboratories
P.O. Box 648
Tusculum, AL 35674



The Jogging in a Jug information you requested.

CHECKS MONEY ORDERS: \$14.95 per case 6 cases
SHIPPING

Third Option Laboratories, Inc.
P.O. Box 648
Tusculum, AL 35674

VISA MASTERCARD
1-800-161-1198

Sorry to C.O.D.'s
Shipped only by the case!

"Times Daily" 1/17/90

Drink makes way to grocers' shelves

By Robert Palmer
Lancaster Press-Scimitar

Jack McWilliams doesn't claim to know much about medicine, but he believes a new product he is marketing can contribute to a healthier life for those who use it.

McWilliams, 61, Cherokee, has developed a drink that contains apple juice, grape juice and elder vinegar and he is marketing it as "Jagging in a Jug."

"Vinegar is the essence of the product that he says is the key to its success."

"I developed heart disease about five years ago when 70 percent blockage," he said.

"I also have arthritis. Several of my friends have died of heart disease recently."

"I started re-examining vinegar in the diet and I tried to identify a hypothesis I have about it, but I could not," he said.

"I started taking a mixture of vinegar and I began to improve. The swelling in my hands and the 'stitching' pain in my shoulder went away and I stopped suffering the pain and symptoms of heart disease."

McWilliams said his claim may sound strange in a high technology world of nuclear medicine, but he is convinced the addition of a few ounces of vinegar per week to the diet can greatly reduce the risk of heart disease, cancer in internal organs and some forms of arthritis.

"Vinegar," he said, is like a natural

solvent for the body, chemical crystal deposits that are the cause of clogged arteries and arthritis.

It contains acetic acid, he said, which has been missing from the diets of the industrialized world for 100 years.

"The erosion of acetic acid from the diet in the advanced nations is part of my hypothesis," he said. "There are four things that replaced it in our food: vitamin packing, the use of preservatives, sweetening and things other than vinegar to tenderize meat."

McWilliams said observation and research led him to pursue the use of vinegar in the diet.

He said he remembers his grandmother and her children using vinegar as a regular part of their diets.

His grandmother and four of her children lived to be 85 years old, he added.

In a gross weight, he listed some qualities of vinegar in addition to its use in making pickles. For example, McWilliams

said, "bacterial acid is used to clean drains and plumbing of calcium deposits and will break down mineral, chemical and oil crystals without harming living tissue."

McWilliams pointed out that many pregnant women often crave pickles, which he believes is the body craving acetic acid.

A 64 ounce bottle of "Jagging in a Jug" sells for \$5.99 and is now stocked in several grocery stores in Colbert and Lauderdale counties, he said.

He recommends that two ounces



Jack McWilliams, a Cherokee resident, has developed a beverage he calls "Jagging in a Jug" that is available at some stores in Lancaster and Colbert counties.

per day be taken, which allows one bottle to last for 22 days.

His mixture, created at his home in what he calls Third Option Laboratories, is processed and bottled at a plant in Laurel, Miss., that is bonded to bottle fruit juices, he said.

Colbert and Lauderdale were targeted as test markets and he said consumer reaction to its taste has

been better than 90 percent positive. A smaller bottle is on the drug board that could be sold in cafes and restaurants, he said.

McWilliams, a cattle and d farmer, said the medical community is probably aware of the benefits of acetic acid and vinegar, but has attempted to promote it because its pungent taste.

EXHIBIT F

EXHIBIT F

May : '92

Dear Mr. McWilliams,

here is another order from Mars. (PA that is)
keep giving your literature out and bragging about your "Jogging in a Jug" But these people want me to
to the ordering. They all love it. I know it's working for me and my wife. The family doctor even wrote a note
in my cholesterol read out, "Mike continue taking "Jogging in a Jug". I had even sent samples and your
literature to him and all his nurses. My cholesterol had dropped the first time down 44 points and my wife
22 points. Now this report down to 228.
Please send TWO CASES to the above address.

Thanks again.
A friend.
E. M. G.

Page O-Subscriptions Open Single Issues: Dec., 1978 Jan. 1979

"READ" ALL ABOUT IT

By Pettus Read
Associate Editor



It sure is wonderful what modern medicine can do these days. In no time I can put a new heart in and have a person back in the mainstream of life. There are new ways of seeing into the human body by sound waves and using this same method to do surgery without cutting. Yes, a person can live today a whole lot longer than they use to way back in the old days. But don't sell these old fashen remedies short. Modern medicine is great but grandma has a few tricks up her sleeve too.

"Old practices should not be ever looked in this space age. In fact, I'm going to give you an insight into just an old Arabian custom that may have saved a man's life. I know it saved his family farm and has given him a total new outlook.

The morning Jack McWilliams of Cherokee, Alabama, woke up and realized his days on this earth may be running out. He was heavily disabled with heart disease and arthritis. Mr. McWilliams's grandfather and his brother and sisters had lived to be over 90 years old. This caused him to think back about what they had done different in their lives than he had done. He remembered an old family proverb: his grandfather drank everyday of his life. It's prime ingredient was vinegar.

With vinegar as the main item of a fast fasting beverage Mr. Stekilius began clearing up his congestion every day. In less than a year he has arthritis disappeared, and he stopped suffering the pain and symptoms of heart disease. The retired dairy farmer had developed a new vinegar/juice beverage which he says is as good for you as a pig around the block. In fact he named his new life restorer "Jogging In A Jug."

Mr. McWilliams says, "Vinegar is nature's own cleaning agent. Vinegar will clean the drain in the kitchen sink, dissolve calcium and mineral deposits in pipes, tenderize meats and even remove decay from fruits. I figure if vinegar can break down calcium and chemicals outside of the body, it'll do the same inside, leading to a healthier circulatory system and cleaner arteries."

Survivors in his hometown first laughed at his new product. On January 7, 1990 he placed three, six bottle cases of Joggling in A Jugs at three stores. As of this writing his new craze on his beverage can be found in 14 states and his company is producing three to four thousand cases per week. The demand has become so great Mr. McWilliams's son Denny had to give up his trucking job to come back and work full-time with the new business. Both McWilliams children, Denny and Susan, are "onning" to keep up with dad's discovery.

Judging in A.J. can be tough, as it often is across the state of Tennessee and Jack receives hundreds of letters/emails from people everywhere who feel that the vinegar must be stronger than people they know. Jack, who helped their arthritis and given them a new lease on life. Mr. McWilliams points out that vinegar has been used as a tonic and preservative since Biblical times. He says, "My grandmother was a strong believer in vinegar for what ails you. She raised her family on creek water and vinegar, and her children all lived to be at least 80."

Even several members of the Tennessee Farm Bureau will tell you about using this tart drink. Murray Milne, editor of the FB News, has tried it and believes it has helped his shoulder feel a lot better. He has even started on his second jar.

The vinegar, grape and apple juice beverage has even saved a lamary farm. Danny McWilliams says his fathers' discovery has ^{helped} the family buaner and restored their 400 acre family farm. Danny had to leave the farm to get work elsewhere during tough times on the McWilliams farm. But due to Joeling in a Jug Danny is home and says that's where he plans to be the rest of his life.

So you may want to check your local grocery or drug store to see if they have any of this life giving beverage. If you are unable to find it or need more information about Joerging in A Jug, just write to Third Opinion Laboratories Inc., P.O. Box 648, Tuscumma, Alabama 35674 or call toll-free 1-800-262-2586.

This is another example of the persistence of a farmer and the teaching of a grandmother. Just goes to show you. You're never too old to take up jogging. Even if it is in a jug.

AGRICULTURES

LEADING EDGE

五

973

Complaint

EXHIBIT F

Jogging in a Jug

January 1986 - age 59
rheumatoid arthritis (wt 148)



January 1991 - age 64
no health problems (wt 210)

Jack McWilliams at this date had received high cost medical treatment for seven years, with an average hospital stay of 10 days per year for a total of about 210 days, at a cost of approximately \$50,000 to \$75,000 to the insurance company plus minor cost to the family.

It convinced the manufacturer of the vine type of acetic acid to market in the diet not on the market and is needed. McWilliams consumed high-strength medication and added acetic acid through "Jogging in a Jug" at two ounces per day at a cost of \$5.90 per month. Health was restored slowly in twelve to sixteen months.

Herald - Citizen

Cookeville, Tennessee, Tuesday, September 25, 1991

Vinegar is essential to health, says tonic maker

BY JENNIFER RIDEOUT
—Herald Staff Writer

Riddled with artherosclerosis and arthritis, Alabama dairy farmer Jack McWilliams, now 65, had lost the desire to live in 1985 when he developed "Jogging in a Jug."

He was also suspicious about why his people in his community of Cherokee, Alabama, died of heart disease and cancer in just a few weeks, and he began to research into what was lacking in the modern diet.

It was acetic acid, he says today, and that is the elixir he mixes into the purple fluid he calls "Jogging in a Jug."

He is careful to note that the Food and Drug Administration will not allow him to make any health claims about his drink, but "I have it. First Amendment right to tell my own personal story."

"People just don't take in the acetic acid they used to in the old days," McWilliams said.

"My family is noted for its longevity, and I just couldn't figure out why I was dying so young."

"I remembered that my grandmother used to take cider vinegar daily and used it for everything. It was always on the table," McWilliams said.

The credibility of cider vinegar in our diets began to fade some years ago, according to McWilliams, when he noted all its known attributes such as the ability to clean calcium and mineral deposits off plumbing and to make meat tender.

Cider vinegar is also a living bacterial acid made from juices, and it is the only known acid that will break down mineral, chemical and oil crystals and not harm growing, living tissue, according to McWilliams.

He decided that if vinegar could break down calcium and chemicals outside the body, it could break down calcium and chemicals inside the body as well.

So, McWilliams began combining various juices to achieve a combination that would produce the beautiful results of cider vinegar with a taste more appealing to the

palate.

The final combination was an apple juice, grape juice and apple cider vinegar drink called "Jogging in a Jug."

"Jogging in a Jug" was named by McWilliams's son-in-law who teased him about his enthusiasm for the beverage, saying the energy-producing mixture was "like putting jogging into a jug."

McWilliams has received many enthusiastic letters from "Jogging in a Jug" drinkers telling how their cholesterol has gone down, energy has gone up and arthritis has become less painful.

And McWilliams said he was relieved of his heart disease symptoms, most of his arthritis and his shoulder stiffness is gone.

McWilliams attributes these reactions to the acetic acid in the drink which he believes helps cleanse the arteries and cells in the body.

Further evidence, McWilliams cited concerned church history. He said Last Supper services contained acetic acid until commercial grape juice came into use in the 1850's.

He added about the time we lost acetic acid in the religious ritual, pressure canning and preserving came into use. That was followed by freezing foods for preservation.

Therefore, diets of people of affluent nations have been eroded of acetic acid over the years, McWilliams said.

Today, we eat a diet of refined foods containing no vinegar. We then go the doctors who mechanically open our chests and clean out our arteries of crystals and solids, McWilliams said.

He added that mechanical cleaning this way has become a multi-billion dollar industry. Only 200 years ago it was done chemically.

This is a 2,000 year old known technology that gives us a third option to slow the rise of cancer, leukemia, heart disease and arthritis.

McWilliams's company, Third Option Laboratories, has a 10-state market with 20 distributors for "Jogging in a Jug," which has been available for 20 months with 115,000-120,000 bottles distributed each month.

The distributor for this area is W. R. Whitaker and Company.

Kroger, Red Food and some Mini Mart's carry the product, claimed by many to reduce swelling and lower arthritis pain and cholesterol within a month.

W. R. Whitaker is also aware of the



NEW BREW - Jack McWilliams, a year old Alabama dairy farmer who saw was dying five years ago, holds the tonic created that relieved him of heart disease and arthritis symptoms. "Jogging in a Jug" sold in 10 states in the south and marketed in Red Food, Kroger and some Mini Mart's here. H-C Photo: Gail Carr

authorization of "Jogging in a Jug" for in the new Food Lion stores here, already sold in Food Lion stores elsewhere.

"We've been selling more than 100 a day and are receiving calls every minute about the product," McWilliams said.

"I've had investors offer me a lot of money for the product, but I want it very endorsed. It's not a money-making venture."

"I recommend taking a two-ounce every morning and starting it at any from children to the elderly."

"The 64-ounce jug will last about a year, if two ounce doses are taken as McWilliams said.

According to McWilliams, the shelf for "Jogging in a Jug" is about five years and it costs \$5.95 per jug.

For information call 1-800-262-2598.



Complaint

120 F.T.C.

EXHIBIT F

Cherokee, AL 35615
 4 January 92

Third Option Laboratories
 P. O. Box 430
 Cherokee, AL 35615

Dear Sirs:

My husband is an insulin dependent diabetic. He works as a construction ironworker and farms also in Cherokee, Alabama.

Over the past year, on a friend's recommendation, he began taking 2 oz. of "Jogging in a Jug" each morning. His doctor so concerned about his control of his disease. Jack's sugar level has always tended to go too high. We were never sure what would trigger this at any time.

After beginning "Jogging in a Jug" his episodes of low blood sugar have decreased in frequency. Then in the summer when season he ran out of "Jogging in a Jug". I kept forgetting to buy more. His blood sugar began to fluctuate wildly, very high to very low seemingly without cause. We couldn't get it under control. Finally after about 2 weeks I remembered to purchase another jug.

Immediately, Jack's blood sugar leveled off to normal levels of 90-120 and stayed there. We don't allow ourselves to be out of "Jogging in a Jug" anymore!

I'm convinced that this product has leveled his sugar off to manageable levels.

Sincerely
 Mrs. J.A.W.
 Cherokee, AL 35615

Jogging in a Jug
 A Juice-Vinegar Beverage
 Comments from Customer's Letters

"On 12 January 1991, my cholesterol count was 272. I read an article about your product, Jogging in a Jug. I have been sipping the drink ever since. On 11 March 1991, my cholesterol count was 188. I am now a believer."
 R. M. Montgomery, Alabama

"I use to get up in the morning still tired, but now when I get up I'm ready to start my day." V. F. Tuscumbia, AL

"My cholesterol dropped from 320 to 276. My doctor told me to keep doing what I'm doing. My blood pressure is 128/74, which is the best reading I can remember." A.H. Rockwood, T

"I fell and hurt my arm several years ago and it was hurting me so bad I could not sleep until I began taking your juice. My arm has not bothered me since." V. K. Huntsville, AL

"Your juice has helped to lower my mother's cholesterol, thank you." J. C. Phil Campbell, AL

"My cholesterol count had been hovering around 235. I tried your product for 3 weeks and my doctor was pleased to inform me it had dropped to 200." P. H. Ft. Lauderdale, FL

"I was stricken by a virus, after 6 weeks I was exhausted and couldn't work. I heard of your drink, after taking it for 6 weeks I am myself again and back to working 8 - 10 hours a day." E. L. Hamilton, AL

"After drinking Jogging in a Jug my husband's cholesterol has dropped from 217 to 190 and triglycerides from 410 to 148 and he can close his hands from arthritis after three months." F.W.B. Montgomery, AL

"My mother is 83 years old, and in very good health, except for high cholesterol. It was 448 when she had a check-up March. We bought her some Jogging in a Jug. I am happy to report her cholesterol is down by 124 points in just five weeks." J.H.N. Selma, AL

"Thank you for helping me to reduce my cholesterol count. I took the product for two weeks before I had a cholesterol test. My doctor was so pleased he wrote across my chart, "Call her and congratulate her." F.R.W. Canonsburg, FL

"Thanks for shipping me a case. I had arthritis pain to the point of not being able to do work with my arms over my head. Now I am able to work with my arms over my head in a normal manner." J.C. Lawrenceville, GA

"I have lowered my cholesterol from 269 in September to 209 in January. Thanks." B.Y. St. Cloud.

"For the past 6 years, I have been going to the Rheumatologist with arthritis in my hips. Sometimes could not get around. Two weeks after starting to drink Jogging in a Jug, I began feeling much better. This was five months ago and I have not been to the doctor since. It is the longest I have ever gone without taking Arthritis medication. I was even taking Cortizone shots. Thanks to Jogging in a Jug, I feel great." G.T. Winchester, TX

*Actual letters on file in corporate office for viewing during business hours. Tuscumbia, Alabama.



Third Option Laboratories, Inc.
 P. O. Box 648
 Tuscumbia, AL 35674
 1-800-262-2598

Ex. F



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 the 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, and 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, and having duly considered the comments received, now in further conformity with the procedure described 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 Third Option Laboratories, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama.

Respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton are owners and officers of said corporation. They formulated, directed, and controlled the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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

I.

It is ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

- A. Cures or alleviates heart disease or its symptoms, including arterial blockages;
- B. Substantially lowers serum cholesterol or triglycerides;
- C. Cures or alleviates arthritis or its symptoms;
- D. Breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;
- E. Improves the condition of the circulatory system;
- F. Cleans internal organs;
- G. Prevents or reduces the risk of cancer, leukemia, heart disease, or arthritis;
- H. Provides the same health benefits as a jogging regimen;
 - I. Cures or alleviates lethargy;
 - J. Cures or alleviates dysentery;
 - K. Cures or alleviates constipation;
- L. Stabilizes blood sugar levels in insulin-dependent diabetics;
- M. Aids in the recovery from viral diseases;
- N. Cures or alleviates swelling of the legs or muscle spasms; or
- O. Is approved by the United States Department of Agriculture.

II.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any food, food or dietary supplement, or drug, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding the performance, safety, benefits, or efficacy of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

For 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.

III.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that such product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

IV.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product 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 any such product represents the typical or ordinary experience of members of the public who use such product, unless such is the fact.

V.

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

VI.

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

VII.

It is further ordered, That respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer 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, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name "Jogging in a Jug" or any other name that communicates the same or similar meaning for such product; provided, however, that nothing in this order shall prevent the use of such name if the material containing the name clearly and prominently contains the following disclosure:

"THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG
[OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS."

For the purposes of this order, "clearly and prominently" shall mean as follows:

A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow, the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer, to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen, for a duration, sufficient for an ordinary consumer to read and comprehend it;

B. In a video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; provided, however, that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement;

E. On a product label, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; provided, however, that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label; and

F. On any packaging of the product shipped directly to consumers, the disclosure shall appear on each side of the packaging on which the name appears, in close proximity to the largest

presentation of the name. The total area of the disclosure shall be at least half that of the name that triggers the disclosure. The disclosure shall be of a color or shade that readily contrasts with the background of the packaging.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

Nothing in this Part shall apply to: (1) advertising appearing on items that are sold or given or caused to be sold or given by respondents to consumers for their personal use and that display the name "Jogging in a Jug" or any other name that communicates the same or similar meaning; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of respondents' letterhead, on shipping labels, or on crates provided only to purchasers for resale.

VIII.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, D.C., the sum of four hundred and eighty thousand dollars (\$480,000). Respondent shall make this payment on or before the tenth day following the date of entry of this order. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of Jogging in a Jug in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent 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. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

IX.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, within thirty (30) days after the date of service of this order, send by first class mail, postage prepaid and address correction requested, to the last address known to respondents of each consumer who purchased Jogging in a Jug in any manner directly from respondents since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall not include any other documents.

X.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall:

A. Within thirty (30) days after the date of service of this order, send by first class certified mail, return receipt requested, to each purchaser for resale of Jogging in a Jug with which respondents have done business since January 1, 1993 an exact copy of the notice attached hereto as Attachment B. The mailing shall not include any other documents;

B. In the event that respondents receive any information that subsequent to its receipt of Attachment B any purchaser for resale is using or disseminating any advertisement or promotional material that contains any, representation prohibited by this order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that

contain any representation prohibited by this order after receipt of the notice required by subparagraph B of this part.

XI.

It is further ordered, That respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to consumers pursuant to part IX of this order;

B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part X of this order; and

C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of Part X of this order.

XII.

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 for inspection and copying:

A. Any advertisement making any representation covered by this order;

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

C. 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, and complaints or inquiries from governmental organizations.

XIII.

It is further ordered, That respondent Third Option Laboratories, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of 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; and

B. For a period of seven (7) years from the date of service of this order, provide a copy of this order to each of respondent's 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 within three (3) days after the person assumes his or her position.

XIV.

It is further ordered, That respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton shall, for a period of seven (7) years from the date of service of this order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment involving the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any food, food or dietary supplement, or drug, as "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities.

XV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change, in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or

dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

XVI.

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XVII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Chairman Pitofsky not participating.

ATTACHMENT A

BY FIRST CLASS MAIL, POSTAGE PREPAID AND
ADDRESS CORRECTION REQUESTED

[To Be Printed on Third Option Laboratories, Inc. Letterhead]

[date]

Dear Consumer:

Our records indicate that you purchased Jogging in a Jug from Third Option Laboratories, Inc. This letter is to inform you of our settlement of a civil dispute with the Federal Trade Commission ("FTC") regarding certain claims made in our advertising for Jogging in a Jug.

The FTC alleged that advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can "clean" internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

Sincerely,

William J. McWilliams
President
Third Option Laboratories, Inc.

ATTACHMENT B

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
[To Be Printed on Third Option Laboratories, Inc. letterhead]
[date]

Dear [purchaser for resale]:

Third Option Laboratories, Inc. recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain claims for our product, Jogging in a Jug. As a part of the settlement, we are required to make sure that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing those claims.

The FTC alleged that the advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can "clean" internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

We request your assistance by asking you to discontinue using, relying on or distributing any of your current Jogging in a Jug advertising or promotional material. Please also notify any of your retail or wholesale customers who may have such materials to discontinue using them. If you continue to use those materials, we are required by the FTC settlement to stop doing business with you.

Thank you very much for your assistance.

Sincerely,

William J. McWilliams
President
Third Option Laboratories, Inc.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission approves and issues a consent agreement to remedy various misrepresentations concerning the purported health benefits of a drink called "Jogging in a Jug." The Commission's investigation shows that the alleged claims are far removed from reality, and there is ample reason to believe they violated Section 5 of the FTC Act. I concur in the complaint on which the order is based except to the extent that it alleges as a violation the content of newspaper articles that are reproduced in the respondents' promotional materials and those materials accurately identify and reproduce such articles in their original format without modification. Complaint ¶ 7 and Exhibit F.

Second, I dissent from Part VII of the order. Although the complaint does not challenge as materially misleading the unadorned use of the product's name, Jogging in a Jug (nor would I, given the absence of evidence), Part VII of the order prohibits, in connection with the advertising and sale of Jogging in a Jug (or any similar product), use of the name Jogging in a Jug, or any other name communicating a similar meaning, unless the name is accompanied clearly and prominently by a disclosure stating: "THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [or other name] PROVIDES ANY HEALTH BENEFITS," and which includes six extensive paragraphs minutely detailing what will constitute "clearly and prominently" for purposes of compliance with this requirement.

The Commission in the past has used this form of relief, which can substantially limit potentially lawful conduct, to remedy health claims that seem more credible than those likely to be taken by reasonable consumers here. For example, the Commission imposed a similar requirement to remedy the pain relief claim it found to have been conveyed by the name "Aspercreme" in *Thompson Medical Co.*, 104 FTC 648 (1984). The likelihood that a consumer would expect that a product named Aspercreme would contain aspirin and would rely on that claim to his or her detriment seems to me far greater than the likelihood that a consumer would rely to his or her detriment on an implied message that a product called Jogging in a Jug would provide the health benefits of jogging.