

Complaint

121 F.T.C.

IN THE MATTER OF

THE DIET WORKSHOP INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3663. Complaint, June 3, 1996--Decision, June 3, 1996*

This consent order prohibits, among other things, the Massachusetts-based corporations from misrepresenting the results of any weight-loss program they offer, requires them to possess scientific data to substantiate any claims concerning weight-loss and maintenance, and mandates that they make certain disclosures regarding maintenance and other claims.

*Appearances*

For the Commission: *Gary Cooper and Andrew Caverly.*

For the respondents: *John Tifford, Brownstein & Zeidman,*  
Washington, D.C.

## COMPLAINT

The Federal Trade Commission, having reason to believe that The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations (collectively 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 The Diet Workshop, Inc. ("Diet Workshop") and respondent The Diet Workshop of Boston, Inc. ("Diet Workshop of Boston") are Massachusetts corporations, with their principal offices or places of business located at 1 University Office Park, 29 Sawyer Road, Waltham, Massachusetts.

PAR. 2. Respondents advertise, offer for sale, sell, and otherwise promote throughout much of the United States weight loss and weight maintenance services and products, and make them available to consumers at numerous Diet Workshop centers. These products include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Through centers owned by Diet

Workshop and Diet Workshop of Boston, franchised by Diet Workshop, and licensed by Diet Workshop to use the Diet Workshop trademark and the Diet Workshop weight loss and weight maintenance services and products, respondents are engaged, and have been engaged, in the sale and offering for sale of low calorie diet ("LCD") weight loss programs and weight maintenance programs to consumers.

PAR. 3. In the course and conduct of their businesses, respondents have disseminated or caused to be disseminated advertisements for weight loss and weight maintenance services and products. Respondents have placed, or have authorized the placement of, these advertisements with numerous newspapers, radio stations, and television stations for the purpose of inducing consumers to purchase their products and services. Respondents further advertise the Diet Workshop weight loss programs through the use of promotional materials, including pamphlets and brochures, that are mailed to customers and prospective customers or are given to them at individual Diet Workshop centers.

PAR. 4. 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. 5. Respondents' advertisements and promotional materials include, but are not necessarily limited to, the advertisements and promotional materials attached hereto as Exhibits A-R.

PAR. 6. The advertisements and promotional materials referred to in paragraph five, including but not necessarily limited to the attached Exhibits A-M and R, contain the following statements:

(a) For Weight Loss ... and Forever.

And if you've always wanted to be thin, THE DIET WORKSHOP has the weight-loss program that will help you reach your goal range and maintain it.

[Exhibit A]

(b) At the Diet Workshop, we care about your weight. Whether you have 5 pounds to lose, or 50, or more, we're ready to work with you and help you become the thin person you've always wanted to be.

...

The Diet Workshop's FLEXI-GROUPS can help you design a diet program that suits your lifestyle needs and helps you reach your Goal Range at a pace that's comfortable for you.

[Exhibit B]

(c) 1965 MINI-SKIRTS WERE IN. LBJ WAS PRESIDENT. I LOST 42 LBS. 1990 I'M STILL THIN!

Since 1965 THE DIET WORKSHOP has fit millions into the fashions of the day. In our 25th Anniversary Year, we still teach Healthy Eating Habits For Weight Loss and Forever!

...

LOSE WEIGHT!

...

Lois Lindauer, President and Maintainer For 25 Years! 24 Million Pounds Lost. Since 1965. Add Your Weight Loss to Our Losing Record!

[Exhibit C]

(d) 1969 TIE-DYE WAS COOL. MEN WALKED ON THE MOON. I LOST 54 LBS. 1990 I'M STILL THIN!

...

Karen Barnett, Maintainer For 21 Years!

[Exhibit D]

(e) 1974 DISCO WAS KING. MOOD RINGS WERE IN. I LOST 60 LBS. 1990 I'M STILL THIN!

...

Lauren Beckman, Maintainer For 16 Years!

[Exhibit E]

(f) In 1982, I lost 32 pounds. I'm still thin today. You can be thin, too!

...

Karen Martin, Maintainer for 8 years!

[Exhibit F]

(g) "Losing 216 pounds gave me back my self-respect and built up my confidence" - Terry Heinrich

...

Give DIET WORKSHOP a try ... you could be our next success story....

[Exhibit G]

(h) "After losing 31 lbs. in Diet Workshop's Quick Loss Program, my husband says I look better now than I did 10 years ago. Just like me, you can look better than ever and feel really good about yourself ...."

Kathie Mogensén

[Exhibits H and I]

(i) Join the millions who have learned how to become thin for life using Diet Workshop's nutritionally balanced weight-loss programs.

...

We want you to lose all the weight you want to once and for all. Whether you have 5, 50, 100 lbs. or more to lose, Diet Workshop is here to help you become the thin person you always wanted to be. Since 1965, we've helped millions of men and women like you become Diet Workshop weight-loss success stories ....

...

At Diet Workshop you'll not only lose weight, you'll gain control of your eating habits and acquire a new sense of achievement that will last you a lifetime.

[Exhibit J]

(j) Diet Workshop's Flexi-Groups offer you total flexibility to help you custom design a diet program that fits your lifestyle needs, so you can reach your goal range at a pace that's comfortable for you.

[Exhibit K]

(k) If you have ever lost weight only to regain it, you owe it to yourself to try the ultimate. The Diet Workshop's new Ultimate Flexi-Diet. It's the last diet you'll ever need. In a recent study, 3 out of 4 Diet Workshop graduates surveyed said they're still thin, some after more than 20 years ....

[Exhibit L]

(1) A Big Difference That's Permanent: Behavior Change.

...

By experiencing this behavior modification step, you are assured that your QUICK LOSS is permanent loss.

[Exhibit M]

(m) As member Kristen Campione says, "My mother lost 40 pounds and I've lost 56 pounds. In fact, our family has lost a total of 140 pounds at Diet Workshop." [Exhibit R]

PAR. 7. Through the use of the statements set forth in paragraph six, and others in advertisements and promotional materials not specifically set forth herein, respondents represent and have represented, directly or by implication, that most Diet Workshop customers:

- (a) Reach their weight loss goals; and
- (b) Maintain their weight loss either long-term or permanently.

PAR. 8. Through the use of the statements set forth in paragraph six, and others not specifically set forth herein, respondents represent and have represented, directly or by implication, that at the time they made the representations set forth in paragraph seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 10. Through the use of the statements set forth in paragraph six (c)-(h) and (m), and others in advertisements and promotional materials not specifically set forth herein, respondents represent and have represented, directly or by implication, that testimonials from consumers appearing in the advertisements and promotional materials for Diet Workshop weight loss programs reflect the typical or ordinary experience of members of the public who have used the programs.

PAR. 11. Through the use of the statements set forth in paragraph six (c)-(h) and (m), and others not specifically set forth herein, respondents represent and have represented, directly or by implication, that at the time they made the representation set forth in paragraph ten, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 12. In truth and in fact, at the time they made the representation set forth in paragraph ten, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. The advertisements and promotional materials referred to in paragraph five, including but not necessarily limited to the attached Exhibits H, I and N-Q, contain the following statements:

(a) Lose up to 20 lbs. for the summer!

...

Gain control and lose up to 20 lbs. in just 6 weeks.

[Exhibit H]

(b) Gain control and lose up to 20 pounds in just six weeks with Quick Loss.

[Exhibit I]

(c) LOSE UP TO 20 LBS. IN 6 WEEKS!

The Biggest Difference Of All! QUICK LOSS CLINICS have a distinct beginning and end. Six weekly visits and that's it! It is common for participants to lose as much as twenty pounds during a session!

[Exhibit N]

(d) LOSE UP TO 20 lbs. BY EASTER!

With the Energizer Diet

Quick Loss Sessions

6 Weekly Visits - That's It!

[Exhibit O]

(e) Do you think you could be 20 pounds thinner by Halloween? Well your answer could be, yes I can. If you call the Diet Workshop now and choose to lose the yes I can weight, with the Diet Workshop's Quick Loss clinics. Now here's how it works, the next Quick Loss clinic starts next week and continues on for six weekly visits. In those next six visits, before Halloween in fact, you could be 20 pounds thinner, with the kind of discipline and structured diet, only Quick Loss clinics can give .... Twenty pounds thinner, six weekly visits. Say, yes I can, to the next Quick Loss clinic and it will happen.

[Exhibit P]

(f) Structured for maximum results in just six weeks

...

Diet Workshop's Quick Loss program encourages Members to make a firm, intensive six week commitment to weight loss. Quick Loss Members motivate each

other by providing valuable insight and support. You'll remain enthusiastic and be rewarded for your efforts by a loss of up to 20 lbs. in 6 weeks.  
[Exhibit Q]

PAR. 14. Through the use of the statements set forth in paragraph thirteen, and others in advertisements and promotional materials not specifically set forth herein, respondents represent and have represented, directly or by implication, that an appreciable number of customers on the Diet Workshop's Quick Loss program lose 20 pounds over a six week period.

PAR. 15. Through the use of the statements set forth in paragraph thirteen, and others not specifically set forth herein, respondents represent and have represented, directly or by implication, that at the time they made the representation set forth in paragraph fourteen, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 16. In truth and in fact, at the time they made the representation set forth in paragraph fourteen, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. In the course and conduct of their businesses, respondents provide their customers with diet instructions that require said customers, *inter alia*, to come in to one of respondents' weight loss program locations once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining their customers' weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet instructions. Such conduct could, if not corrected promptly, result in health complications.

PAR. 18. When presented with the weight loss results described in paragraph seventeen, respondents on many occasions have not disclosed to the customers that failing to follow the diet instructions and consume all of the food prescribed could result in health complications. This fact would be material to consumers in their purchase and use decisions regarding respondents' weight loss programs. In light of respondents' practice of monitoring people on

the programs, said failure to disclose was, and is, a deceptive practice.

PAR. 19. In providing advertisements and promotional materials referred to in paragraph five to its individual franchisees or licensees, respondent Diet Workshop has furnished the means and instrumentalities to said franchisees or licensees to engage in the acts and practices alleged in paragraphs five through eighteen.

PAR. 20. The acts and practices of respondents as alleged in this complaint constitute 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 B

## Exhibit B

**Person-to-person  
rapid weight loss systems**

**Some people need one-on-one counselling to succeed at weight loss.**

**T**he Diet Workshop has a solution: The Person-to-Person Program, where you can meet with a Counselor on a weekly basis to design a weight-loss program that suits your special needs. Working with a trained professional, you'll learn how to handle specific situations that may be hindering your success. Whether they are dealing with business lunches, preparing meals for the family or handling a busy social calendar, Person-to-Person can find the best solutions for you.



Person-to-Person features the individualized support so many of us need. Together you, the Client, and your Counselor create a personal diet program that's both easy to live with and conducive to healthy weight loss.

"This is my first time having surgery while working. It's my health problem's only fix. It's hard to plan around. The April 24-April 26 program gave me the support needed to reach my goal."

Dr. C.B. Probst

## CLINIC: QUICK LOSS

Do you need a more structured diet and an interactive approach to weight loss? If so, Quick Loss Clinics are for you.



**Q**uick Loss Clinics are small discussion groups that feature safe, fast, weight loss in only six weeks. Following a carefully-planned, balanced diet, you'll work with a professional Moderator and group support to focus on any eating habits that hinder your weight loss. Together, you'll develop ways to eliminate those habits – forever.

At Quick Loss Clinics, Members motivate each other by providing valuable insight and support. By making a firm six-week commitment to Quick Weight Loss, you'll remain enthusiastic and be rewarded for your efforts by a loss of up to 20 pounds.

[illegible]

"Speed my way out."  
 "Speed my way out."  
 "Speed my way out."  
 "Speed my way out."



*The heart of The Diet Workshop is its FLEXI-GROUPS. These are on-going, weekly meetings focusing on diet, nutrition, behavior change, and exercise awareness.*

All our FLEXI-GROUPS are led by successful graduates who are professionally trained in weight control. Each meeting includes a personal weight-in and an informative lecture on a variety of dieting topics, such as eating in restaurants, handling stress, the importance of regular exercise and healthy, low-calorie food preparation. Members follow The Diet Workshop's FLEXI-DIE™, featuring a wide variety of foods of the world to make your dieting experience pleasant, easy and successful.

**T**he Diet Workshop's FLEXI-GROUPS can help you design a diet program that suits your lifestyle needs and helps you reach your Goal Range at a pace that's comfortable for you.

**Now You CAN Be  
Thin With The Diet  
Workshop's Healthy,  
Nutritionally-Balanced  
Weight-Loss Programs!  
Choose The  
Program Designed  
For Your Special Needs.**

**At The Diet Workshop, we care about your weight. Whether you have 1 pound to lose, or 50 or more, we're ready to work together with you and help you become the thin person you've always wanted to be. We'll be there for you, giving experienced, professional help, the most current weight loss tools and techniques, innovative programs and products, and a flexible diet that's successful and nutritionally healthy.**

“It’ll meet you halfway on your weight-loss journey in our classes, through our Staff, with our programs and our products, to ensure your success. When you find out what we’re all about, we think you’ll agree that The #1 Workshop is the weight-loss answer we’ve been looking for.”



1. The first step is to identify the problem.

One! Workshop, Inc.  
on Breeding Place West  
Weymouth, MA 02148  
1 738-2222



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## EXHIBIT C

Exhibit c

**1965**  
MINI-SKIRTS WERE IN.  
LBJ WAS PRESIDENT.  
I LOST 42 LBS.

**1990**  
I'M  
STILL THIN!

Since 1965 THE DIET WORKSHOP has fit millions into the fashions of the day. In our 25th Anniversary Year, we still teach Healthy Eating Habits For Weight Loss and Forever!

**LOSE  
WEIGHT!**



**With 5 STAR  
FLEX-DIET!**

**1965 PRICE!  
JUST \$3  
TO JOIN!**  
Save \$11  
1/2 Off Total First  
Week Fee!  
**March 25-31 Only!**  
There's a meeting every week near you! Call.

**Lois Lindauer, President and  
Maintainer For 25 Years!**



**THE DIET WORKSHOP®**  
24 Million Pounds Lost. Since 1965. Add Your Weight Loss to Our Losing Record!

Weight Losses May Vary.

One-on-one diet counseling is also available in your area.  
Call us for a FREE consultation introducing our Person-to-Person™ program.

Replacement type for "C" ads in  
April:

**April 22-28 Only!**  
**With TDW Fitness  
Walking Program!**

We work where you work.  
Call us for more information on Workplace™ programs.

Ad size: 4 1/4" x 9" # 627-C

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EXHIBIT D

Exhibit D

|                                                                                                              |                                                 |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| <b>1969</b><br><b>TIE-DYE WAS COOL.</b><br><b>MEN WALKED ON</b><br><b>THE MOON.</b><br><b>I LOST 54 LBS.</b> | <b>1990</b><br><b>I'M</b><br><b>STILL THIN!</b> |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------|

Since 1965 THE DIET WORKSHOP has fit millions into the fashions of the day. In our 25th Anniversary Year, we still teach Healthy Eating Habits For Weight Loss and Forever!

New!  
Quick  
& Easy  
Lo-Cal  
Recipes!

**LOSE WEIGHT!**

**Save \$10!**  
**JUST \$12**  
**TO JOIN!**  
 Feb. 4-17 Only!

There's a meeting every week near your Café.

Before

Weight Losses May Vary.

**Karen Barnett, Maintainer for 21 Years!**

 **THE DIET WORKSHOP®**  
24 Million Pounds Lost Since 1965. Add your Weight Loss to Our Losing Record.

One-on-one diet counseling is also available in your area.  
 Call us for a FREE consultation introducing our Person-to-Person™ program.

We work where you work.  
 Call us for more information on Workplace™ programs.

Ad size: 4 1/4" x 9" # 625-C

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EXHIBIT E

Exhibit E

**1974**  
**DISCO WAS KING.**  
**MOOD RINGS**  
**WERE IN.**  
**I LOST 60 LBS.**

**1990**  
**I'M**  
**STILL THIN!**

Since 1965 THE DIET WORKSHOP has fit millions into the fashions of the day. In our 25th Anniversary Year, we still teach Healthy Eating Habits For Weight Loss and Forever!

**LOSE WEIGHT!**

With  
5 STAR  
FLEXI-DIET!



**Save \$10!**  
**JOIN FOR**  
**JUST \$12!**  
March 4-17 Only!

There's a meeting every week over your Call.

Lowen Beckman, Maintains For 16 Years!



**THE DIET WORKSHOP®**

14 Million Pounds Lost Since 1965. Add your Weight Loss to Our Lasting Record.

One-on-one diet counseling is also available in your area. Call us for a FREE consultation introducing our Person-to-Person™ program.

We work where you work.  
Call us for more information on Workplace™ programs.

Ad size: 4 1/4" x 9" # 626-C

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## EXHIBIT F

Exhibit F

*In 1982, I lost 32 pounds.  
I'm still thin today.  
You can be thin, too!*

THE  
PRE-SUMMER  
SAVINGS PLAN  
available at:

(Area Directors:  
Insert your May  
FLEXI-GROUP  
schedule here)

Karen Martin,  
Maintainer for 8  
years!

\* Or You may  
take advantage  
of our advertised  
special the week  
of May 6 and 13  
and Join for Just  
\$12, saving \$11  
Off Total First  
Week's Fee.

Call Now:

**000-0000****THE DIET WORKSHOP®**

EXHIBIT G

Exhibit G

***"Losing 216 pounds gave me  
back my self-respect and built  
up my confidence."***

**- Terry Heinrich**

Let Workshop teaches you  
how to deal with real food,  
so you can live the rest of  
your life at your ideal body  
weight. We put the emphasis  
on changing your eating habits,  
not selling you food. We've got  
the program you can afford to  
live with. Give DIET WORKSHOP  
a try...you could be our next  
success story, just like  
Terry Heinrich.



**DIET WORKSHOP**

**JOIN NOW! PAY AS LITTLE AS \$6.00 A WEEK**  
**SPECIAL SPRING BONUS GET ONE WEEK FREE**  
**FOR DETAILS CALL**  
**1-800-488-DIET**  
(OFFER EXPIRES MAY 15TH)

*Patriot Ledger 4/28/93  
page 3*

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## EXHIBIT H

Exhibit H

Boston Globe Magazine  
Sunday, June 6, 1993

**diet workshop's  
summer  
slimdown**

**Lose up to 20 lbs. for the summer!  
Hurry, next Quick•Loss starts the  
week of June 6th!**



KATHY MOGGENSEN  
TONAWANDA, NEW YORK

"After losing 31 lbs. in Diet Workshop's Quick Loss Program, my husband says I look better now than I did 10 years ago. Just like me, you can look better than ever and feel really good about yourself. Gain control and lose up to 20 lbs. in just 6 weeks."

**6** weekly visits **just \$69**  
By Reservation Only

**DIET WORKSHOP**

**1-800-488-DIET**

\*A \$14.00 Registration Fee may apply to first time members.

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EXHIBIT I

Exhibit I

**A**fter losing 31 pounds in Diet Workshop's Quick Loss Program, my husband says I look better than I did 10 years ago!

Just like me, you can look better than ever and feel really good about yourself. Gain control and lose up to 20 pounds in just six weeks with Quick Loss.

*Kathie Mogensen*

Kathie Mogensen, wife and mother, Tonawanda, New York, Quick Loss member

**BE A QUICK LOSS SUCCESS STORY**

**LOSE UP TO 20 POUNDS BY MARCH**

**6 WEEKS FOR \$74.95**

HURRY! Program Starts Week Of JAN. 25th BY RESERVATION ONLY!

**Call 454-5800 or 1-800-735-DIET**

**FINAL DAYS!**

SUNDAY, JANUARY 24, 1993



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## EXHIBIT J

## Exhibit J

Join the millions who have learned how to become thin for life using Diet Workshop's nutritionally balanced weight-loss programs. Choose the plan that's right for you and start losing weight the Diet Workshop way. The Healthy Way To Success.

**We want you to lose all the weight you want to once and for all. Whether you have 5, 50, 100 lbs. or more to lose, Diet Workshop is here to help you become the thin person you always wanted to be.**

Since 1965, we've helped millions of men and women like you become Diet Workshop weight-loss success stories. Our medically proven methods for success use time-tested weight-loss tools and techniques for a sensible program of healthy nutrition, behavior modification and exercise that you can really live with — today and forever.

Achieving results is even faster and easier than you think. Each progressive weight-loss plan offers weekly support that includes monitored weigh-ins, nutritional counseling, a focus on behavior change and fitness plus convenient, optional D.W. Food choices. Best of all, Diet Workshop programs are led by professionally trained people who have personally achieved weight-loss with Diet Workshop. So you'll always receive the support you need from counselors who understand you best.

Unlike other diet services, Diet Workshop offers more than one weight-loss program. In fact, we offer four: Flexi-Group, Quick Loss, Workplace and Person to Person. Each specialized program offers unique features to best suit your individual tastes, needs and lifestyle and to ensure maximum results for you.

At Diet Workshop you'll not only lose weight, you'll gain control of your eating habits and acquire a new sense of achievement that will last you a lifetime.

Come on, take the first step. Join one of our easy-to-follow programs today and let us help you become our next Diet Workshop Success Story.

**DIET WORKSHOP®**

*"Once you've lost*

*weight with*

*Diet Workshop*

*there's nothing*

*left to do but*

*accomplish*

*within reason."*

*Lois Lindauer*  
*Founder*

## EXHIBIT K

Exhibit K

If you like variety in your diet, our popular Flexi•Group Program is perfect for you. Flexi•Groups are led by successful graduates who are professionally trained in weight control management.

Each friendly, motivational meeting includes a private weigh-in and an informative lecture on an array of dieting topics, such as how to order from a menu, handling daily stress, the joy of regular exercise, and healthy meal preparation tips.

Members follow Diet Workshop's Ultimate Flexi•Diet, the only diet available which color-codes foods, counts fat grams for you and gives extra incentives for exercise.

Diet Workshop's Flexi•Groups offer you total flexibility to help you custom design a diet program that fits your lifestyle needs, so you can reach your goal range at a pace that's comfortable for you.

Flexi•Group  
P R O G R A M™

"Strict diets

don't work for

me. I need

something

flexible. A diet

designed for a

person, not a

bird."

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## EXHIBIT L

## Exhibit L



PRODUCT: DIET WORKSHOP  
TITLE: "FLEXI DIET"  
PROGRAM: NEWS  
STATION: WCVB

CA 1792  
BUSTON



(MUSIC) LOIS LINDAUER: If you've ever lost weight



only to regain it.



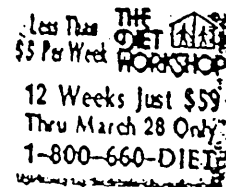
you owe it to yourself to try the ultimate.



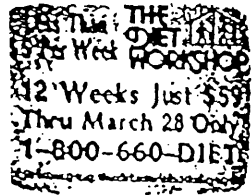
The Diet Workshop's new Ultimate Flexi-Diet.



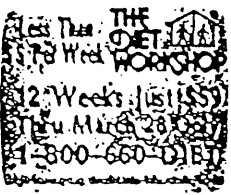
It's the last diet you'll ever need.



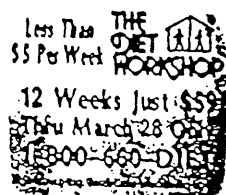
WOMAN ANNCR: In a recent study.



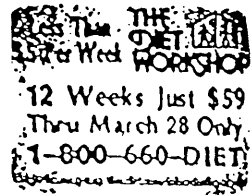
1 out of 4 Diet Workshop graduates surveyed said they're still thin.



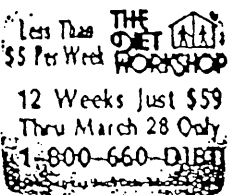
some after more than 20 years.



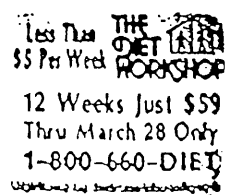
If that sounds good, then call 1-800-660-DIET now.



Get 12 weeks for just \$59. That's 1-800-660-DIET.



1-800-660 DIET to pay less than \$5 per week.



The Diet Workshop. Call now. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

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## EXHIBIT M

## Exhibit M

**One Big Difference Is The Small Group.** Welcome to QUICK LOSS CLINICS, one of THE DIET WORKSHOP'S most innovative and successful weight loss programs. Unlike THE DIET WORKSHOP'S FLEXI GROUPS, which are ongoing weekly meetings with an unlimited Membership, QUICK LOSS CLINICS offer a small, intimate group setting with a limit of 15 participants in each Clinic.

**Another Big Difference: Your Moderator.** Most weight loss programs feature an instructor who informs you on a variety of nutritional topics. With QUICK LOSS CLINICS, you get that and more. A *Moderator*. Who not only offers the most up to date nutritional advice, but who also guides you through a dieting experience that's personally tailored to you and your lifestyle.

**A Big Difference That's Permanent: Behavior Change.** QUICK LOSS CLINICS work well for two types of dieters: those who want a large initial weight loss, and those who have a small amount of weight to lose. Both types of people are guaranteed to know one thing by the time they complete the session that they didn't know when they began. And that is the reason they gained those extra pounds.

*That Leads To Quick Loss!!*

Something special happens in this close knit atmosphere. Something that's called "small group power." You and the other participants have our special desire in common: to lose weight quickly and safely. Together, and individually, you will. Thanks to the bond that you'll share during six weekly visits, and the powerful strength and support that bond will bring.

*"I look and feel great and am having no trouble maintaining my lower weight."*  
*Therelle Kirtz*  
*Brookline*

Over the course of your six weekly QUICK LOSS CLINIC visits you and your Mod-erator will get to know each other well. Especially since she has successfully completed the same weight loss journey you'll be experiencing. By the end of the session, you'll not only have gained superior nutritional knowledge, you'll have made a good friend as well.

*"I lost 21 pounds in 6 weeks. I am confident that I will keep it off. My habit of eating junkening foods between meals has been broken for good."*  
*Ed Roth*  
*Sharon*

Your Moderator is professionally trained to employ behavior modification techniques that *change the way you feel about food*. Personal awareness is encouraged during each visit through discussion as well as specially designed journals that you keep throughout the whole session. By exposing this behavior modification step, you are assured that your QUICK LOSS is permanent loss.

*"The commitment on special behavior techniques was exactly what I needed to solve my weight problem."*  
*Maryann Mackie*  
*Stoughton*

## FEDERAL TRADE COMMISSION DECISIONS

Complaint

EXHIBIT N

Exhibit N

121 F.T.C.

**Even The Different Diets Are Different!** Each QUICK LOSS CLINIC features a totally unique and different Diet. The present variety is the Spice of Life, and somewhere of weight loss interest, however, is created for health, for interest and for quick weight loss. They all employ the theory of behavior change, and meet all lifestyle needs. Here are just some of the Diets you may experience:

# The Diets

The **Energizer Diet**  
**TAKE-IT-OFF-QUICK DIET**  
**BEACON HILL DIET**  
**Wild Weekend Diet**  
**Blitz-It-Off Diet**  
**Boston Lo-Carbo Diet**

From #101 to 108  
 The Diet Workshop, Inc., 1989

**LOSE UP TO 20 LBS.  
 IN 6 WEEKS!**

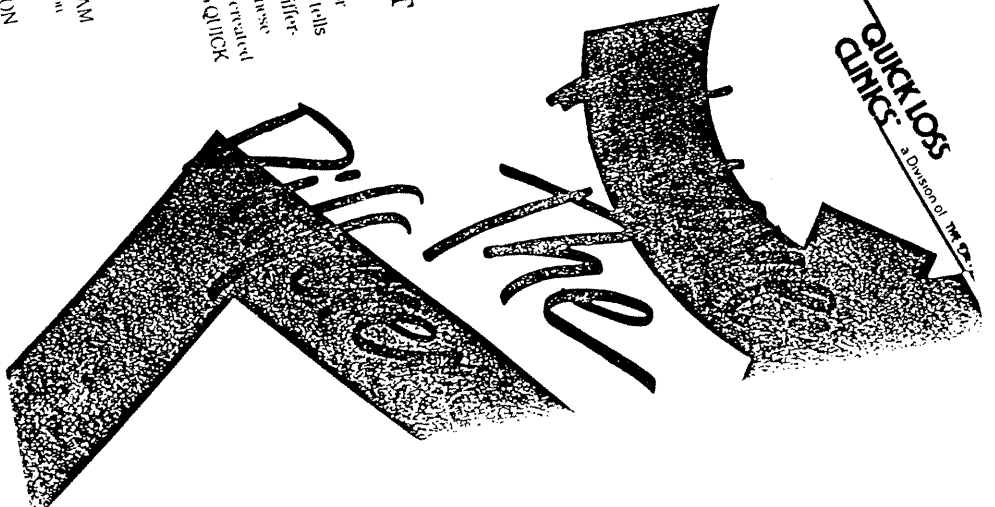
**The Biggest Difference  
 Of All QUICK LOSS CLINICS** have a distinct beginning and an end. Six weekly visits and that's all! It is common for participants to lose as much as twenty pounds during a session! Each CLINIC is limited to 15 participants only and fills on a first call, first serve, reservation only basis. Payment is required to reserve your space. Credit cards and personal checks are accepted, of course.

**For More Information,  
 Call:**

**A Word About THE DIET WORKSHOP.** Since 1965, we've been teaching healthy eating habits for weight loss and forever. Our research tells us that different people respond to different ways of losing weight. To meet these needs, THE DIET WORKSHOP has created three major divisions in addition to QUICK LOSS CLINICS:

**ELLEN GROWTH'S**  
 Company  
 Weekly Group Meetings  
**WORKPLACE PROGRAM**  
 On-site Company Location  
 Weekly Meetings  
**PERSON TO PERSON**  
 One-on-one  
 Private Counseling

**QUICK LOSS  
 CLINICS** a Division of THE DIET WORKSHOP



## EXHIBIT O

Exhibit O

SUNDAY, MARCH 7, 1993 9:00



**CALL TODAY!**

# LOSE UP TO 20 lbs BY EASTER!

With the **Energizer Diet**

## QUICK LOSS SESSIONS

- ◆ 6 Weekly Visits - That's It!
- ◆ Focus on behavior
- ◆ Support from same members every week
- ◆ Lot's of choices
- ◆ Easy to follow

**Join For Just \$74.95**

HURRY! Group Size Is Limited! **BY RESERVATION ONLY**

**SIX-WEEK SESSION STARTS WEEK OF MARCH 8**

**CLASS SCHEDULE:**

**BEAVERCREEK CENTRE**  
Beverly Hills Plaza, Fairfield Rd.  
(Behind Heritage Restors)  
Mon. 8:30 pm A  
Tues. 8:00 pm  
Wed. Noon A  
Thurs. 10:00 am, 7:15 pm  
Sat. 11:00 am A, MEWT

**DAYTON HALL AREA CENTRE**  
The Dayton Mall Shopping  
B. Springfield Pl. next to Click Camera  
Mon. 8:00 pm A  
Tues. Noon A, 7:00 pm  
Wed. 8:00 am, 4:00 pm A, 7:30 pm  
Thurs. 8:00 pm MEWT  
Sat. 8:00 am MEWT

**RAINBOW CENTRE**  
Stuyvesant Plaza, Kaufman Ave.  
Mon. 7:00 pm  
Tues. 4:00 pm A, 8:00 pm A  
Wed. 8:00 am MEWT, 7:30 pm MEWT  
Thurs. Noon A, 8:00 pm A, MEWT  
Fri. 8:00 am MEWT  
Sat. 10:15 am MEWT

**HUNTER HEIGHTS CENTRE**  
Imperial Heights, Old Troy Pl.  
Mon. 4:15 pm A, 8:30 pm A  
Tues. 7:00 pm  
Wed. 1:00 pm  
Thurs. 1:00 pm A, MEWT  
Sat. 100 LA LOSERS

**NEVERING TOWN & COUNTRY CENTRE**  
Wood & Fairview Ave.  
Mon. 4:00 pm A, 8:30 pm A  
Tues. 7:00 pm MEWT  
Wed. 10:45 pm A, Noon A, 5:30 pm A  
Thurs. 8:00 am MEWT, 7:30 pm  
Fri. 8:00 am, 8:30 pm A, 7:00 pm A  
Sat. Noon A, MEWT  
Sun. 8:45 am A, 10:00 am MEWT

**QUAKERTOWN CENTRE**  
M11 Burger Palace, near Colonial Plaza  
Mon. Noon A, 7:30 pm  
Tues. 8:00 pm  
Wed. 8:00 am MEWT  
Thurs. 8:00 pm, 8:30 pm A, MEWT  
Fri. Noon A, MEWT, 4:00 pm A  
Sat. 8:15 am A

**COLLEEN CENTRE**  
Gloria's entrance, near Lake  
next to Click Camera  
Mon. 7:00 pm A, MEWT  
Tues. 10:00 am MEWT  
Wed. Noon A, 7:00 pm MEWT  
Thurs. 4:00 pm A  
Fri. 8:00 pm A  
Sat. 8:00 am A, MEWT

**SPRING CENTRE**  
637 N. Mary's St.  
Mon. 8:15 pm A  
Wed. 8:00 am A, 7:15 pm MEWT

**STILLWATER COUNTRY CENTRE**  
(look for the red canopy)  
1132 N. Main St.  
Mon. 8:00 am, 8:30 pm A  
Tues. 7:00 pm  
Wed. 8:00 pm, 7:30 pm  
Thurs. 8:00 pm A, 7:15 pm  
Fri. 10:00 am A  
Sat. 8:30 am MEWT, 11:00 am A

**TRUST CENTRE**  
Troy Village (across from the old Am.  
Mon. 8:30 pm  
Tues. 7:15 pm MEWT ONLY GROUP  
Wed. 7:30 pm  
Thurs. Noon A, 4:00 pm A, MEWT, 7  
Sat. 11:00 am A, MEWT

**CLINIC CENTRE**  
1218 N. Monroe Drive  
(across from General Mass. Hosp.)  
Mon. 7:30 pm MEWT  
Tues. 8:00 pm A, MEWT  
Wed. 8:30 am  
Sat. 11:00 am A, MEWT

**BROWNVILLE**  
San Francisco Blvd. (across from  
428 N. Wolf Creek Pl.  
Sat. 1:00 pm

**WILSON CENTRE**  
Honeycreek United Presby. Ch.  
811 W. Jefferson  
Wed. 7:00 pm

**NEW LEBANON**  
Germantown Medical Building, Suite  
875 W. Main St.  
Tues. 8:00 pm

A "QUICK LOSS" Group is 1 hour. Regular Groups are 90 min.

**Call 454-5800 or Toll Free 1-800-735-DIET**

**DIET WORKSHOP QUICK LOSS SESSIONS**

Complaint

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## EXHIBIT P

EXHIBIT P

**RADIO  
TVREPORTS**

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

RADIO COMMERCIAL TRANSCRIPT

92R49638

PROGRAM: NEWS 9-10-92

:60

STATION: WBMX (BOSTON)

1:00PM

THE DIET WORKSHOP

(MUSIC IN B.G.)

MALE ANNCR.: Do you think you could be 20 pounds thinner by Halloween? Well your answer could be, yes I can. If you call the Diet Workshop now and choose to lose the yes I can weight, with the Diet Workshop's Quick Loss clinics. Now here's how it works, the next Quick Loss clinic starts next week and continues on for six weekly visits. In those six visits, before halloween in fact, you could be 20 pounds thinner, with the kind of discipline and structured diet, only Quick Loss clinics can give. Personalized attention in a small group setting and real delicious foods that you can buy at the supermarket just like everyone else. Twenty pounds thinner, six weekly visits. Say, yes I can, to the next Quick Loss Clinic and it will happen. Starts next week for just \$75. By reservation only, so hurry. Call 1-800-488-DIET. 1-800-488-DIET. For the next Quick Loss Clinic at the Diet Workshop. That's 1-800-488-DIET to reserve space right now. In New Hampshire call 1-800-582-7188 for Quick Loss Clinics at the Diet Workshop.

(MUSIC OUT)

\*\*\*

726

Complaint

## EXHIBIT Q

Exhibit Q

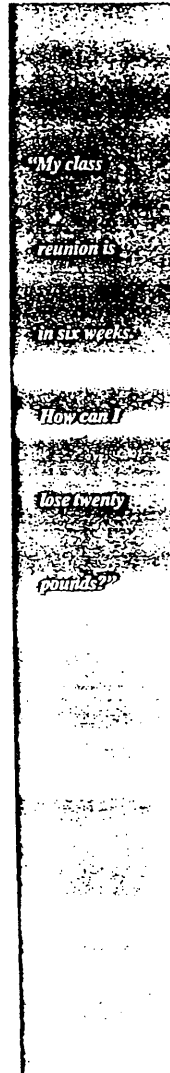
# structured for maximum results in just six weeks

When you need to lose weight fast, Diet Workshop has the answer. Our Quick Loss Program offers maximum results in minimum time with smaller, more intimate discussion groups that focus on behavior change and promote healthy, fast, weight loss in only six weeks. Following a variety of nutritious, well-balanced diets that help maintain your interest, you and your group will work with a professional Moderator to focus on changing habits that hinder your weight loss. Together, you'll develop new strategies for healthy eating and exercise that will last you a lifetime.

## Quick Loss®

P R O G R A M

Diet Workshop's Quick Loss program encourages Members to make a firm, intensive six-week commitment to weight loss. Quick Loss Members motivate each other by providing valuable insight and support. You'll remain enthusiastic and be rewarded for your efforts by a loss of up to 20 lbs. in 6 weeks.



Complaint

121 F.T.C.

## EXHIBIT R

Exhibit R

## Thanks To Diet Workshop My Mother And I Are Seeing Less Of Each Other.



Sometimes two can lose weight better than one. And it's especially true with Diet Workshop's Food and Fitness Plan.

As member Kristen Campione says, "My mother lost 40 pounds and I've lost 56 pounds. In fact, our family has lost a total of 140 pounds at Diet Workshop."

Our Food and Fitness Plan helps you to achieve

realistic, healthy weight loss without making unrealistic demands. You eat low-fat, real foods you like and follow a fitness program you can stick with. You can even dine in a restaurant to celebrate this and every Mother's Day.

And to give you a little extra incentive to get started, we're making a special offer to you and your family. So call us today.

**Mother's Day  
Family  
Special**

**SAVE \$5 each**  
when you join together

**Offer ends May 14**  
**1-800-488-DIET**

Cannot be combined with  
other offers

**DIET WORKSHOP**  
The Right Weight. The Right Way.

## 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 complaint which the Boston Regional Office 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,

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with their offices and principal places of business located at 1 University Office Park, 29 Sawyer Road, Waltham, Massachusetts.

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

## DEFINITIONS

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

A. "*Competent and reliable scientific evidence*" shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results;

B. "*Weight loss program*" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A "*broadcast medium*" shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any order-required disclosure in a print medium to be made "*clearly and prominently*" or in a "*clear and prominent*" manner, it must be given both in the same type style and in: (1) twelve (12) point type where the representation that triggers the disclosure is given in twelve (12) point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve (12) point type. For any order-required disclosure given orally in a broadcast medium to be made "*clearly and prominently*" or in a "*clear and prominent*" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A "*short broadcast advertisement*" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

## I.

*It is ordered*, That respondents, The Diet Workshop, Inc. and The Diet Workshop of Boston, Inc., corporations, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in

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

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and .

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Diet Workshop makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Workshop program.";

Provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our clinics for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)-(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

#### MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes  
hereXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX]  
For many dieters, weight loss is temporary.

I have read this notice. \_\_\_\_\_  
(Client Signature) (Date)

- (b) Require each potential client to sign such document; and
- (c) Give each client a copy of such document; and

Provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondents shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

- (3) Retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that:

- (i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

- (ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term"; and

Provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants in respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

- (1) What the generally expected success would be for Diet Workshop customers in losing weight or maintaining achieved

weight loss; provided, however, that in determining the generally expected success for Diet Workshop customers respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

- (a) "You should not expect to experience these results."
- (b) "This result is not typical. You may not do as well."
- (c) "This result is not typical. You may be less successful."
- (d) "\_\_\_\_\_'s success is not typical. You may not do as well."
- (e) "\_\_\_\_\_'s experience is not typical. You may achieve less."
- (f) "Results not typical."
- (g) "Results not typical of program participants.";

Provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and

Provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Diet Workshop clients lose an average of \_\_\_\_ pounds over an average \_\_\_\_- week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, the rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making

such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

G. Representing, directly or by implication, that participants or prospective participants in respondents' weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

H. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

I. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

J. Misrepresenting, directly or by implication, the performance, efficacy, or benefits of any weight loss program or weight loss product.

## II.

*It is further ordered,* That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of this order.

## III.

*It is further ordered,* That for three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon

request make available to the Federal Trade Commission for inspection and copying:

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

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

#### IV.

*It is further ordered,* That respondents shall distribute a copy of this order to each of their officers, agents, representatives, independent contractors and employees, who is involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this order; and, for a period of five (5) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

#### V.

*It is further ordered,* That:

A. Respondents shall distribute a copy of this order to each of their franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this order; respondents may satisfy this contractual requirement by incorporating such order requirements into their current Operations Manuals or, if they do not have a current Operations Manual, by notifying their franchisees and licensees that failure to comply with the provisions of this order is at variance with respondents' methods, standards, and specifications for proper conduct of the franchisee's business under the franchise agreement; and

B. Respondents shall further make reasonable efforts to monitor their franchisees' and licensees' compliance with the order provisions; respondents may satisfy this requirement by: (1) taking reasonable steps to notify promptly any franchisee or licensee that respondents

determine is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchise or licensee fails to comply promptly with the relevant order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under their franchise or license agreements and applicable state law to bring about a cessation of that conduct by the franchisee or licensee;

Provided, however, that respondents' compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondents' franchisees or licensees that violates this order where respondents: a) have not authorized, approved or ratified that conduct; b) have reported that conduct promptly to the Federal Trade Commission under this Part; and c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, have diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

## VI.

This order will terminate on the third day of June, 2016, 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 respondents 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.

## VII.

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

Complaint

121 F.T.C.

IN THE MATTER OF

RXCARE OF TENNESSEE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3664. Complaint, June 10, 1996--Decision, June 10, 1996*

This consent order prohibits, among other things, a Tennessee-based pharmacy service administrative organization and an unincorporated trade association from: entering into, maintaining or enforcing a "most favored nations" clause in any participation agreement with any pharmacy firm; auditing any pharmacy firm for the purpose of enforcing a "most favored nations" clause; or inducing, suggesting, urging, encouraging, or assisting any person or entity to take any action in violation of this order.

*Appearances*

For the Commission: *Randall D. Marks* and *Michael McNeely*.

For the respondents: *W. Ovid* and *Blakeley D. Matthews*,  
*Cornelius & Collins*, Nashville, TN.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents RxCare of Tennessee, Inc., and the Tennessee Pharmacists Association have violated and are violating the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent RxCare of Tennessee, Inc. (RxCare), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at 1226 17th Avenue South, Nashville, Tennessee. RxCare is a pharmacy service administrative organization ("PSAO"), a group of pharmacies that offer themselves as a pharmacy network to pharmacy benefits managers ("PBMs") and third-party payers, such as managed care