

IN THE MATTER OF

KCD HOLDINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3752. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based companies, which market cellulose-bile products, and its officers to have scientific substantiation for claims regarding the benefits or safety of any product or program, including claims that it reduces the body's absorption of fat or sugar; provides any weight loss benefit, allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems; reduces the risk of these health problems; or can be used safely and beneficially in amounts sufficient to cause diarrhea. The consent order also prohibits the respondents from misrepresenting the existence or results of any test or study, and requires KCD, KCD Holdings and Richards to pay \$150,000 in redress over a period of one year.

Appearances

For the Commission: *Nadine Samter* and *Patricia Hensley*.

For the respondents: *Geoffrey Levitt, Venable, Baetjer, Howard & Civiletti*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that KCD, Incorporated, KCD Holdings, Inc., and Deerfield Corporation, corporations, and Clark M. Holcomb, individually and as a former officer of KCD, Incorporated, and KCD Holdings, Inc., and Bonnie L. Richards, individually and as a current officer of KCD, Incorporated, and KCD Holdings, Inc., and Gerald E. Hatto, individually and as an officer of Deerfield Corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent KCD Holdings, Inc. ("KCD Holdings"), is a Nevada corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California.

2. Respondent KCD, Incorporated ("KCD"), is a California corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California. KCD is a wholly-owned subsidiary of KCD Holdings.

3. Respondent Deerfield Corporation ("Deerfield") is a California corporation with its principal office or place of business at 1455 Valley High Avenue, Thousand Oaks, California. Respondent Deerfield is now and has been at all times relevant to this complaint an advertising agency of KCD and KCD Holdings.

4. Respondent Clark M. Holcomb ("Holcomb") was the president, director and a majority shareholder of KCD Holdings and KCD from November 1993 through April 1996. Individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of KCD Holdings.

5. Respondent Bonnie L. Richards ("Richards") is vice president, secretary, and director of KCD Holdings and KCD. Individually or in concert with others, she formulates, directs, controls or participates in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of KCD Holdings.

6. Respondent Gerald E. Hatto ("Hatto") is an officer and the owner of Deerfield. Individually or in concert with others, he formulates, directs, controls or participates in the acts and practices of Deerfield Corporation, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Deerfield.

7. Respondents have advertised, labeled, offered for sale, sold and distributed products to the public, including SeQuester, an over-the-counter fat reduction and weight-loss tablet. SeQuester is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

8. Since at least May 1994, respondents KCD, KCD Holdings, Holcomb and Richards ("KCD respondents") have advertised, distributed and sold an over-the-counter fat reduction and weight-loss product to the public through, among other means, newspaper and radio advertisements disseminated nationally. The KCD respondents have wholesaled this product to retail drug stores and other retailers for resale to the general public. The product, sold under the name "SeQuester," is a combination of fiber and ox bile extract.

9. 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.

Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say, "no." So consider your choices:

Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this coupon and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and effortlessly through the digestive tract. Just take one or more tablets 30 minutes before meals.

This season, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drugstores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of sensible nutrition and moderate exercise. By following this program, studies suggest that SeQuester contributes to a safe, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

(Exhibit C -- newspaper advertisement)

D.

Q. SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

(Exhibit D -- product package insert)

E.

SeQuester

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

(Exhibit E -- product package label)

The KCD Respondents

11. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

A. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

B. SeQuester significantly reduces the body's absorption of sugar from consumed food.

C. Scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that SeQuester causes significant weight loss.

12. In truth and in fact:

A. SeQuester does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. SeQuester does not significantly reduce the body's absorption of sugar from consumed food.

C. Scientific research does not demonstrate that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that SeQuester causes significant weight loss.

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

13. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and(B), at the time the representations were made.

14. In truth and in fact, the KCD respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph thirteen was, and is, false or misleading.

15. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. SeQuester causes significantly greater loss of weight and body fat than diet and exercise alone.

D. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease, and other health problems associated with a high-fat diet.

F. Use of SeQuester in amounts sufficient to cause diarrhea is beneficial and safe.

16. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph fifteen, at the time the representations were made.

17. In truth and fact, the KCD respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph fifteen, at the time the representations were made. Therefore, the representation set forth in paragraph sixteen was, and is, false or misleading.

Respondents Deerfield and Hatto

18. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

D. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

F. SeQuester significantly reduces the body's absorption of sugar from consumed food.

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19. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eighteen, at the time the representations were made.

20. In truth and in fact, respondents Deerfield and Hatto did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eighteen, at the time the representations were made. Therefore, the representation set forth in paragraph nineteen was, and is, false or misleading.

21. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that scientific research demonstrates that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

22. In truth and in fact, scientific research does not demonstrate that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

Therefore, the representation set forth in paragraph twenty-one was, and is, false or misleading.

23. Respondents Deerfield and Hatto knew or should have known that the representations set forth in paragraphs eighteen, nineteen and twenty-one were, and are, false or misleading.

24. 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.

Complaint

123 F.T.C.

EXHIBIT A

THIS IS WHAT SEQUESTER DOES TO

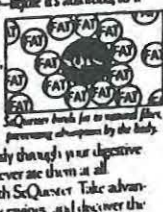
**THE FAT
IN FOOD
YOU
EAT**

Introducing
SeQuester—the revolutionary
tablet that “shrinks” the amount
of dietary fat your body absorbs.

SeQuester is a lab-tested formula
that neutralizes fat in the food you eat—
safely and naturally—before it’s absorbed, so it
won’t wind up on
your body.

SeQuester’s unique,
patented ingredi-
ents bind fat mole-
cules to vegetable
fiber, passing them
gently and harmlessly through your digestive
tract. It’s like you never ate them at all.

Shrink fat with SeQuester. Take advan-
tage of untold savings, and discover the
safe, natural approach to fat reduction.
It’s in the diet section, today.




(STORE IMPRINT)

AD #2

SQ-141

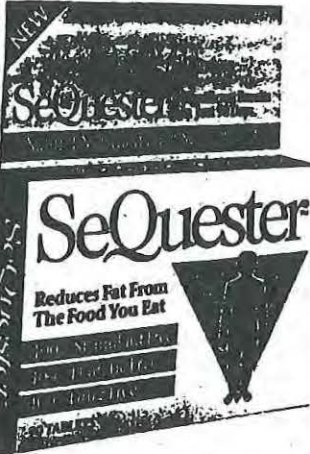
COMPLAINT EXHIBIT A

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EXHIBIT B

THE EAT STOPS HERE



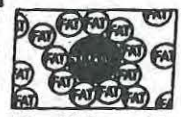
NEW
SeQuester
Reduces Fat From
The Food You Eat

100% Natural Fiber
100% Fat Inhibitor
100% Fat Free

Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "shrink" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "remove" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy, just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.



SeQuester binds fat to natural fiber, promoting excretion by the body.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.

SeQuester
Reduces Fat From
The Food You Eat

\$2.00 OFF

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy, just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester binds fat to natural fiber, promoting excretion by the body.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.

8001-94

MAKES ACTUAL SAVINGS COUPON

Expires 8/31/94

(STORE IMPRINT GOES HERE.)

SQ-142

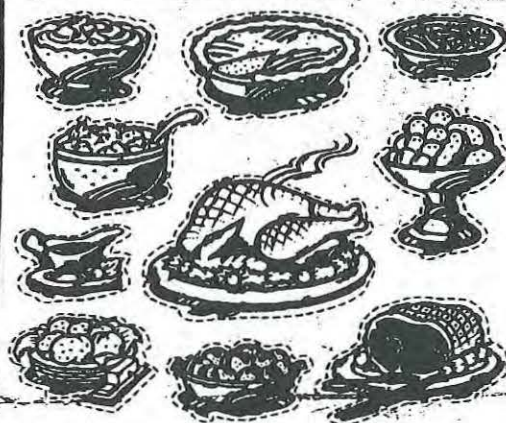
AD #3

COMPLAINT EXHIBIT B

Complaint

123 F.T.C.

EXHIBIT C



**For the holidays, don't cut it all out.
Just take SeQuester.**

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are going on as. So many parties, so much good food, so hard to say "no." So consider your choices. Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this craps and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and efficiently through the digestive tract. Just take one or more tablets 30 minutes before meals.

This means, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drug stores and supermarkets, everywhere.

NOTE: SeQuester is included for use as part of a complete program of healthy nutrition and moderate exercise. By following this program, studies suggest that SeQuester may help to reduce the risk of body fat and weight significantly more than dieting and exercise alone.

SeQuester
Before you make a diet, take SeQuester.



**SeQuester is
now available at
Rite Aid.**

RA-43

COMPLAINT EXHIBIT C

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EXHIBIT D



SeQuester.

A guide to a healthy lifestyle

INSIDE:
Valuable tips on SeQuester use.
Plus: sensible eating & exercise habits.

NOTE: The following is the copy for the SeQuester Insert

COMPLAINT EXHIBIT D

SQ-22

RETURN TO: KCI CORPORATION • 2800 TOWNSHIP ROAD • SUITE 100 • WEST HAVEN, CONNECTICUT 06490
860-494-0687 • FAX 860-494-4120

Complaint

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EXHIBIT D

Page 2
SeQuester

Thank you for purchasing SeQuester™. This natural patented product helps reduce fat absorption and let's you lose weight naturally and comfortably.

Take hold of the fat, before the fat takes hold of you!

Please study the Important Information contained in this pamphlet. It is designed to help you get the maximum benefit from SeQuester. It contains many tips on food selection, food preparation, exercise and how to use SeQuester most effectively.

THE REAL ENEMY: Your real enemy is not *weight*. Your real enemy is *fat*. SeQuester helps fight fat.

HEALTHY HEART OBJECTIVE:

Number 1: To feed my body less fat.

Number 2: To train my body to burn fat more efficiently.

PROBABLE BENEFITS:

- Improved Health • Reduced fat intake • Reduced body weight
- Increased energy level and productivity

THE EFFECTIVE, HEALTHY WAY TO TAKE YOUR SEQUESTER:

SeQuester is a tested product that will help you lose fat. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of those programs cause us to lose water weight, and even muscle weight. But, weight is not our number one enemy – fat is. SeQuester fights fat, and *losing fat takes time*. Read and follow these instructions carefully. Make SeQuester a consistent part of your weight loss program. *Give yourself 90 or more days to see measurable results. (The initial few days of your SeQuester program may even show some weight increase. Don't panic. This is normal.)* Follow our GoodFood dietary guidelines and get into the good exercise habit. Good luck!

Q: HOW SHALL I BEGIN?

A: Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking SeQuester during or after a meal will not produce satisfactory results. *Just be sure that before you take your first bite, take your SeQuester.*

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EXHIBIT D

Page 3
SeQuester

Q: HOW MANY TABLETS SHOULD I TAKE PER DAY?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3 to 6 tablets per day to see which is most effective for them.

Q: HOW WILL I KNOW MY DOSAGE IS SATISFACTORY?

A: You're on the right track when one or more of the following occur: (1) Stools appear lighter in color; (2) Stools appear bulkier; (3) Stools may float in water. These indications result from fats being passed through your digestive tract and eliminated in the stool.

Q: SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: IF I EAT A 100% FAT-FREE MEAL, SHOULD I STILL TAKE MY SEQUESTER?

A: If one of your meals contains absolutely no fat, it is not necessary to take SeQuester for that particular meal.

Q: SHOULD I TAKE VITAMINS SUPPLEMENTS WHILE TAKING SEQUESTER?

A: If you wish to take vitamin supplements, we advise doing so 1 hour prior to taking your SeQuester or 2 hours after taking SeQuester. We have observed no evidence of fat-soluble vitamin deficiency during our human testing, however taking a multiple vitamin/mineral supplement is always a good idea.

Q: WHAT ABOUT ADDITIONAL SIDE EFFECTS?

A: Three out of 10 people in our test group experienced excess gas when taking SeQuester. If this is a concern we strongly recommend that you get some activated charcoal tablets. They are very inexpensive and can be found

Complaint

123 F.T.C.

EXHIBIT E

SeQuester™

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

The combination of special ingredients, through our patented manufacturing process, negatively affects the availability of fat and sugar. The mechanism that produces this action remains unclear.

100% money back guarantee.

Sequester should be used with a properly balanced diet and exercise program.

NUTRITIONAL INFORMATION PER TABLET (ONLY 2 CALORIES EACH)

Protein	35.0 mg	Fiber	180.0 mg
Fat	0.06 grams	Carbohydrates	340.0 mg
Vitamins & Minerals = less than 25% RDA		Total Tablet Weight = 700 milligrams	

RECOMMENDED USE: For adults only. Take 1 or 2 tablets 3 times per day 1/2 hour before meals with a *FULL* glass of water.

NOTICE: Before considering any weight loss program, it is advisable to consult with your physician. This product, when used in excess, may cause diarrhea, abdominal cramping, or gas. If this occurs, product dosage should be temporarily reduced or discontinued. Store in a cool dry place.

INGREDIENTS: Activated-Fiber Complex (Barley/Rice Fiber, Sodium Choleate Complex), Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicone Dioxide, Methylcellulose, Magnesium Stearate, Acerola and Propylene Glycol.

Manufactured Exclusively For:
KCD, Inc. Westlake Village, CA 91361

Made in the USA
U.S. Patent #4,865,850

COMPLAINT EXHIBIT E

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle 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; and

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

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

1. Respondent KCD Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

2. Respondent KCD, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

3. Respondent Deerfield Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business

located at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

4. Respondent Clark M. Holcomb was an officer of KCD Holdings, Inc., and KCD, Incorporated. He formulated, directed and controlled the policies, acts and practices of these corporations. His home address is at 2190 Upper Ranch Road, in the City of Westlake Village, State of California.

5. Respondent Bonnie L. Richards is an officer of KCD Holdings, Inc., and KCD, Incorporated. She formulates, directs and controls the policies, acts and practices of these corporations. Her home address is at 4791 Parma Lane, in the City of Agoura Hills, State of California.

6. Respondent Gerald E. Hatto is an officer of Deerfield Corporation. He formulates, directs and controls the acts and practices of this corporation. His home address is at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

7. 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

It is ordered, That for purposes of this order, the following definitions shall apply:

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

2. "*KCD respondents*" shall mean KCD Holdings, Inc. ("KCD Holdings"), KCD, Incorporated ("KCD"), corporations, their successors and assigns and their officers; Clark M. Holcomb ("Holcomb"), individually and as a former officer of the corporations; Bonnie L. Richards ("Richards"), individually and as an officer of the corporations; and each of their agents, representatives and employees.

3. "*Deerfield respondents*" shall mean Deerfield Corporation ("Deerfield"), a corporation, its successors and assigns and its officers; Gerald E. Hatto ("Hatto"), individually and as an officer of the corporation; and each of their agents, representatives and employees.

4. Unless otherwise specified, "*respondents*" shall mean KCD Holdings, KCD and Deerfield, corporations, their successors and assigns and their officers; Holcomb, Richards and Hatto, individually and as officers or former officers of the corporations; and each of the above's agents, representatives and employees.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. Section 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product or program prevents or reduces the body's absorption of fat or sugar from consumed food, unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program:

- A. Provides any weight loss benefit;
- B. Causes greater loss of body fat than diet and exercise alone;
- C. Allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems associated with a high-fat diet; or
- D. Reduces, or reduces the risk of, high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That the KCD respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea, unless, at the time the representation is made, the KCD respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product or program unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That with respect to the Deerfield respondents, it shall be a defense to Sections I, II and V of this order

that they neither knew nor had reason to know of an inadequacy of substantiation for any such representation; provided further that it shall be a defense to Section IV of this order that they neither knew nor had reason to know that the test, study or research did not prove, demonstrate or confirm that representation.

VII.

It is further ordered, That KCD Holdings, Inc., KCD Incorporated and Bonnie L. Richards, their successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of one hundred and fifty thousand dollars (\$150,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in thirteen installments, the first installment of twenty-five thousand dollars (\$25,000) to be made no later than the date that this order becomes final; the next eleven payments of ten thousand, four hundred and sixteen dollars (\$10,416) to be made no later than the first day of each of the following eleven months; and the final installment of ten thousand, four hundred and twenty-four dollars (\$10,424) to be made no later than one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondents' indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondents shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of one hundred and twenty-five thousand dollars (\$125,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondents in Part VII(A) of this order. The respondents shall, within seven (7) days of the date that this order becomes final, file all documents necessary

to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The respondents shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected and recorded. The Commission will release this security interest upon receipt of all payments required by Part VII(A) of this order.

D. The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of SeQuester in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

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

VIII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any drug under any tentative final or final standard promulgated by the Food

and Drug Administration ("FDA"), or under any new drug application approved by the FDA.

IX.

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

X.

It is further ordered, That respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable written request make available to the Commission for inspection and copying:

A. All advertisements or promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI.

It is further ordered, That respondents shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, such statements to be retained by respondents for a period of five (5) years. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

It is further ordered, That respondents KCD Holdings, KCD and Deerfield, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

It is further ordered, That respondents Holcomb, Richards, and Hatto shall, for a period of five (5) years after the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of their current business or employment, and of their affiliation with any new business or employment. The notice shall include the respondents' new business addresses and telephone numbers, current home addresses, and a description of the nature of the business or employment and their duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIV.

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

XV.

This order will terminate on June 16, 2017, 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 Part in this order that terminates in less than twenty (20) 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 Part.

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 Part as though the complaint had never been 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.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

Complaint

123 F.T.C.

IN THE MATTER OF

GUILDWOOD DIRECT LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3753. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the use of the name "Slimming Insoles" to represent that a product causes weight loss without scientific substantiation. The consent order requires the respondents to have scientific evidence to substantiate any claims regarding the effectiveness, benefits, and efficacy of any weight loss or fat loss product. In addition, the consent order requires testimonials to represent the typical experience of consumers or to clearly and prominently disclose the generally expected results. Furthermore the order prohibits the respondent from representing that Advance Bio/Natural Research Labs is an independent research organization and from misrepresenting the existence or results of any test or study. In addition the consent order requires the respondent to pay \$40,000 in consumer redress, of which all but \$7,500 is suspended.

Appearances

For the Commission: *Beth Grossman and Jeffrey Bloom.*

For the respondent: *Sheldon S. Lustigman, Lustigman Law Firm,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Guildwood Direct Limited ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Guildwood Direct Limited is a Delaware corporation with its principal office or place of business at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

2. Respondent has advertised, labeled, offered for sale, sold and distributed to the public Slimming Insoles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Insoles are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: The Salt Lake Tribune, The Denver Post, The Modesto Bee, The New York Post, The St. Louis Post, American Woman, Crochet World, Soap Opera Update, Women's Own, Low Fat Meals and Beautiful Brides, and have been distributed as free standing inserts by News America.