

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.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Slimming Insoles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR!"

"I LOST 74 POUNDS" Angela Meisel

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Erina Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to the under-performance of the dietary system, it should be stimulated to function effectively so the bodies [sic] metabolism works normally and does not store excess fat!

***No Dieting *No Pills**

***No Nervousness**

***No Frantic Exercising**

***No Strange Formulas**

***No Special Foods to Buy**

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal... You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU [sic] METABOLISM WORKING.

... This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the

reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great!
MEDICAL TEST RESULTS | VERY GOOD | 478 PEOPLE TESTED
TESTIMONIALS ABOUND

"During 4 weeks I lost 6 pounds, the same happened to all of my friends." Carmen Schlashter

"I lost 8 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight." Mrs. Petra Jung

"I have lost 10 pounds without torturing myself." Gabriele Geiger

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit." Carmen Steffens-Baum

"I'LL STAKE MY MEDICAL REPUTATION ON IT." R. Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight, and rid your body of the flab while aiding your dietary system. They WILL work for you, or we'll refund every cent you paid for them. NO questions asked." (Exhibit A - Print Advertisement).

B. [Heading at top of page:]

"ADVANCE BIO/NATURAL RESEARCH LABS RESEARCH REPORTS DATA
 CONTROL FILE NO 97644KC CASE HISTORIES [illegible] TEST GROUP
 NC-46009 CASE FILE REGARDING: DR. ROBERT METZ, M.D. SLIMMING
 INSOLES

STATEMENT: Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. [sic] Slimming Insoles

... CASE 2

Control Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

58% of the individuals tested lost 14 lbs. or more.

27% of the individuals tested lost 10 lbs. to 14 lbs.

15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

... CASE 7

Individual Success Story - Subject Gabriele Geiger

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone.

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals." (Exhibit B - Direct Mail Advertisement).

C. "Would you like to lose 10 lbs. like 15% of the test group did...or 14 lbs. like 27% did...or over 14 lbs. like 58% did? Or would you like to lose 20 lbs...30 lbs....50 lbs. or even 74 lbs. like Angela Meisel did -- without dieting or exercising?

Then you must read this important message and join the over 370,000 Europeans who have discovered a NEW secret to weight loss!

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Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 478 people, the medical test results were announced as "Very Good"! A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds" - with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

... Wouldn't you like to lose those extra pounds you put on over the years...And would you like to achieve all this without dieting or strenuous exercising?

...
Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy--Not Fat!

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat.

Dr. Metz's Slimming Insoles Are The First And Only Insoles That Reduce Weight And Regulate The Digestive System.

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund -- no questions asked." (Exhibit C - Direct Mail Advertisement).

5. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Slimming Insoles cause significant weight loss.

B. Slimming Insoles cause significant weight loss without changes in diet or exercise.

C. Testimonials from consumers appearing in the advertisements for Slimming Insoles reflect the typical or ordinary experience of members of the public who have used the product.

6. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

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

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that scientific studies demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise.

9. In truth and in fact, scientific studies do not demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. Through the means described in paragraph four, respondent has represented, expressly or by implication, that Advance Bio/Natural Research Labs is a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles.

11. In truth and in fact, Advance Bio/Natural Research Labs is not a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles. Advance Bio/Natural Research Labs is a fictitious trading name utilized by Guildwood Direct Limited in its advertising. Therefore, the representation set forth in paragraph ten was, and is, false or misleading.

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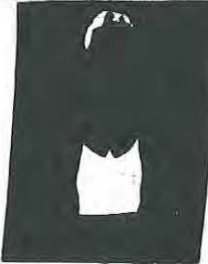
12. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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EXHIBIT A

REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR



"I lost 74 Pounds"

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Angela Meiser

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Enna Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to the under-performance of the dietary system, it should be stimulated to function effectively so the bodiless metabolism works normally and does not store excess fat!

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

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal. This happens without taking health-damaging medicines with



harmful side effects. You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU METABOLISM WORKING.

Your feet will tingle pleasantly when you walk and even when you sit they may feel more active than usual. This is due to the unusual massaging knobs on the insoles made of Nobamed. The knobs correspond exactly to the reflex zones in the soles of the



feet which reflect and stimulate the digestive organs.

This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great!



TESTIMONIALS ABOUT

"During 4 weeks I lost 6 pounds, the same happened to all of my friends!"

Carmen Schlushter

"I lost 6 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight."

Mrs. Petra Jung

"I have lost 10 pounds without torturing myself!"

Gabriela Geiger

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit."

Carmen Steffens-Baum



"I'll stake my medical reputation on it."

R Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight and rid your body of fat while aiding your dietary system. They WILL work for you or we'll refund every cent you paid for them. NO questions asked. Why wait one more day? Why not look and feel your absolute best?



INTERMED LABORATORIES, Dept. 3215
2101 West Lafayette, Detroit, MI 48216-1877

AA701

- I want to start losing weight immediately send me the Slimming Insoles indicated below:
 (Women's Sizes 6-10 Men's Sizes 8-13)
☐ One pair for only \$19.95 plus \$3.95 postage handling ☐ Women's ☐ Men's Size
☐ Two pair for only \$29.95 plus \$4.95 postage handling ☐ Women's ☐ Men's Size
 Enclosed is ☐ Cash ☐ Money order for \$
☐ Charge my ☐ Visa ☐ MasterCard Exp. Dt.
 Credit Card No.
 Card No.

Signature _____
 Name _____
 Address _____
 City _____
 State _____ Zip _____

CREDIT CARD ORDERS CALL TOLL FREE

1-800-922-2217

Monday to Friday 8:30AM TO 6:30PM EST

Sunday 10:00AM TO 5:00PM EST

Ask for Operator # AA702

EXHIBIT B



RESEARCH REPORTS

 EXHIBIT B
Page 1

DATA CONTROL

 FILE NO. 97644.KC
 CASE HISTORIES Metz
 TEST GROUP NC-46009

CASE FILE REGARDING:

DR. ROBERT METZ, M.D. SLIMMING INSOLES

STATEMENT:

Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. Slimming Insoles

CASE 1

Taken From the European Television Program "Market Information".

The Dr. Metz Slimming Insoles, which we have been offering to our customers, have now finally received the recognition they deserve. On the 29th of May, 1995, the consumer television program "Market Information" portrayed the Slimming Insoles as an effective method to fight off excessive pounds. The test person, Mr. Kohler, whom the program had picked to do this test, lost 14 lbs. during the trial period. This weight loss was verified by weighing before and after, in the presence of the broadcaster. The original commentary of this critical program "The Slimming Insoles are the absolute best!"

CASE 2

Control Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

- 68% of the individuals tested lost 14 lbs. or more.
- 27% of the individuals tested lost 10 lbs. to 14 lbs.
- 15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

CASE 3

Individual Success Story - Subject H.W., St. Gallen

"I have tried umpteen diets in the past..."

"Lost pounds came back just as fast as I'd lost them. Since I have been using Dr. Metz's Slimming Insoles my weight has slowly but steadily gone down. I think Slimming Insoles are perfect, and can recommend them to anyone!"

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EXHIBIT B

EXHIBIT B

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CASE 4**Individual Success Story - Subject H.V., Lucerne**

"I feel better than ever before...I was skeptical to start with because there are so many quacks claiming to help you lose weight. But only a few weeks of using Dr. Metz's Slimming Insoles changed my opinion. Without taking medication whose side effects are unknown, I lost weight and feel better than I ever did before."

CASE 5**Individual Success Story - Subject P.M., Winterthur**

"I've lost 8 lbs...A colleague told me how easily and comfortably he was slimming using reflex zone massage. At first I laughed at him. But week by week I was taught a lesson. So I too ordered a pair of Slimming Insoles and now I'm impressed. After following the clear instructions exactly, I've lost 8 lbs. in only 6 weeks. The claim in your ad "A fabulous figure by the most natural method" is true. Congratulations to Dr. Metz on his Slimming Insoles."

CASE 6**Individual Success Story - Name Withheld on Request**

"It is really true that your massage insoles have positively influenced my biological balance. The tablets, capsules and powders I used to take in the past always made me feel sick and dizzy. The egg diet even made me throw up on the third day. It's a pity that Dr. Metz's Slimming Insoles weren't available before. If this wonderfully gentle method of slimming had been available ten years ago, I would have been spared a lot of suffering."

CASE 7**Individual Success Story - Subject Gabriele Gaiser**

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone."

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals. The all natural application of the insoles does not upset the body's ability to function in it's normal manner and does not stress the nervous system. The gentle massage action may also aid the feet for individuals who are forced to spend long periods walking.

Permission has been granted for the reproduction and release of all facts and information in this report

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EXHIBIT C



INTERMED LABORATORIES
2101 West Lafayette
Detroit, MI 48216-1877

EXHIBIT C

Page 1

**Would you like to lose 10 lbs. like 15% of the
test group did...or 14 lbs. like 27% did...
or over 14 lbs. like 58% did? Or would you like
to lose 20 lbs...30 lbs...50 lbs...or even
74 lbs. like Angela Meisel did —
without dieting or exercising?**

**Then you must read this important message
and join the over 370,000 Europeans who have
discovered a NEW secret to weight loss!**

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 473 people, the medical test results were announced as "Very Good"! A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds"— with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

Wouldn't you like to lose those extra pounds you put on over the years ... effortlessly slide into that slinky dress or slacks ... be the object of attention and admiration? Would you like to regain control of your weight without buying pills month after month ... without joining expensive weight loss programs ... without buying costly "special foods"? Would you like to regain your youthful appearance ... put the spring back in your step and face each day with a renewed vigor and vitality for life? And would you like to achieve all this without dieting or strenuous exercising?

If your answer is yes to any of these questions then you must read the exciting details about this amazing NEW discovery on the other side!!

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EXHIBIT C

**Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy— Not Fat!**

EXHIBIT

Page 2

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat. When you walk you may feel a pleasant tingling sensation. Even when you sit your feet may still feel stimulated - confirming that the massaging action is working. Sounds simple? The most effective things usually are.

**Dr. Metz's Slimming Insoles Are The First And Only Insoles That
Reduce Weight And Regulate The Digestive System.**

Many doctors believe the body has the ability to cure itself when the conditions are right. Dr. Metz's Slimming Insoles work in exactly this natural, convenient manner. You lose weight naturally, without introducing foreign drugs or chemicals into your body, which may be more harmful than beneficial!

**GOOD NEWS—Now, For The First Time
Dr. Metz's Slimming Insoles Are Available In The U.S.!**

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund — no questions asked.

Yours for a slimmer, healthier, more active you,


Justin T. Winslow
Director

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent 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 respondent has 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 Guildwood Direct Limited, also doing business as Intermed Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that the ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or the first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "*respondent*" shall mean Guildwood Direct Limited, a corporation, its successors and assigns and its officers, agents, representatives and employees.

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

I.

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

A. Such product causes significant weight loss, with or without changes in diet or exercise; or

B. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not use the name "Slimming Insoles" or any other name in a manner that represents, expressly or by implication, that the product causes weight loss, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or

ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that Advance Bio/Natural Research Labs is a *bona fide*, independent research organization or that it has published a report containing the results of valid, independent testing of such product.

V.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research; or

B. The existence, nature, purpose or activities of any organization.

VI.

It is further ordered, That:

A. Respondent shall pay to the Commission as consumer redress the sum of forty thousand dollars (\$40,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of seven thousand and five hundred dollars (\$7,500) no later than the date this order becomes final. Such payment shall be deposited into an escrow account to be designated by the Commission for the purpose of receiving payment due under this order.

B. In the event of respondent's default on the \$7,500 payment set forth in subpart A above, the amount of forty thousand dollars (\$40,000), less the sum of payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondent, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. Any funds paid by respondent pursuant to subparts A and B above shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the Slimming Insoles. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. The Commission's acceptance of this order is expressly premised upon the financial statements and related documents provided by respondent to the Commission on November 18, 1996. After service upon respondent of an order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondent shall be given an opportunity to present evidence on this issue. If, upon consideration of respondent's evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of forty thousand dollars (\$40,000), less the sum

of any payments made under subpart A above, to become immediately due and payable to the Commission, and interest computed at the rate prescribed in 29 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Commission may initiate to enforce this order.

VII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and 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 its 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.

VIII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, 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. Respondent 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. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

IX.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a 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 the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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.

X.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

XI.

This order will terminate on June 16, 2017, or twenty (20) 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 effect 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.

IN THE MATTER OF

BODYWELL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3754. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the use of the name "Slimming Soles" 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 misrepresentations about the existence or results of any test or study, violations of the FTC Mail or Telephone Order Merchandise Rule, and requires the respondents to pay \$100,000 in redress.

Appearances

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

For the respondents: *Linda A. Goldstein and Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BodyWell, Inc., a corporation, and Gerard du Passage, individually and as an officer of the 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 BodyWell, Inc. is a New York corporation with its principal office or place of business at 27 West 20th Street, Suite 1001, New York, New York.

2. Respondent Gerard du Passage is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls or participates in the policies, acts or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of BodyWell, Inc.

3. Respondents have advertised, offered for sale, sold and distributed products to the public, including Slimming Soles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Soles are "devices," within the meaning of