

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

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Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: Cosmopolitan, Redbook, McCall's, Family Circle, The Denver Post, The National Enquirer, The Globe/ National Examiner, The Star, Woman's Day, Woman's Own, Diets & Exercise, Grit, Woman's World, Soap Opera Weekly, Capper's, Soap Dish, Soap Opera Digest, True Story, Weekly World News, The Sun, First For Women, Craft Works, Senior Citizens, Flower & Garden, TV Host, Soap Opera Magazine, Popular Magazine Group, Family, Woman's Day Low Fat Meals, USAir, American Legion, Walking Magazine, Good Cooks' Companion, Northwest, Retired Military Family, TV Blue Print, Almanac for Farmers, Farmers Almanac and Blum's Almanac, and have been distributed as free standing inserts through Valassis FSI and News America.

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

5. Respondents have disseminated or have caused to be disseminated advertisements for Slimming Soles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "The discovery of a German Doctor has revolutionized the field of weight loss!...

LOSE WEIGHT FAST AS YOU WALK!

SEE HOW DOCTOR METZ' SLIMMING SOLES CAN MAKE YOU LOSE OVER 15 LBS WITHOUT THE SLIGHTEST EFFORT!

...and without dieting! You walk all the time... When you go shopping, at home, at work... Well did you know that just by walking, you can lose over 15 lbs without any diet or without doing any extra exercise? And that's what Dr. Robert Metz, a German weight loss expert and inventor of the first Slimming Soles, has discovered!

Guarantee

In asking to use Dr. Metz' Slimming Soles on a trial basis, you are not taking any risk except to see your body, day after day, becoming healthier and rejuvenated, (excess weight is dangerous to your health). However, if for any reason whatsoever, you were not 100% satisfied with the results obtained, all you have to do is to return your pair of Slimming Soles in its original box, and you will be immediately reimburse [sic], no questions asked. This is a full Guarantee.

A revolutionary discovery...

You certainly know the basic principles of Reflexology. It's that Chinese technique that consists of stimulating specific points on the sole of the feet, which correspond to a specific organ of the body.

A wide variety of disorders can be treated in this way: headaches, back pain and many other symptoms.

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But what you don't know, it's what Dr. Robert Metz, a weight loss expert, has discovered.

This doctor has discovered that under your feet existed certain points that make you lose weight automatically if you stimulate them!

* These points "force" your body to get rid of its surplus fat.

* These points can make you lose over 15 lbs in just 6 weeks without dieting or doing any extra exercise!

From these observations, Dr. Metz invented and designed the first pair of Slimming Soles based on the technique of Reflexology. These sole [sic] will make you lose weight with every step you take!

Amazing results, scientifically proven!

A recent medical test has been conducted with 478 people who had all failed to lose weight using any known method. After 6 weeks, 58% of these people had lost 15 lbs or more, 27% had lost between 13 and 15 lbs., and 15% had lost 13 lbs. None of these people altered their eating habits, they didn't do any exhausting exercises or any particular form of gymnastics; all they did was slip Dr. Metz' Slimming Soles into their shoes!

And now put your body in a constant weight loss mode without any effort and without any diet, by Dr. Metz.

Now, you too can lose weight rapidly, without going on a special diet and without having to do any extra exercise. All you have to do is slip Dr. Metz' Slimming Soles into your everyday shoes and live normally.

Every time you walk, whether you're going shopping or you're simply around the house or at work, you'll be losing weight!

You don't have to change a thing in your eating habits, all you have to do is walk as you normally do, (without excess).

6 weeks to lose 16 lbs.

After 6 weeks, you should have already lost between 13 and 16 pounds (as proven by the tests!). And no one will know your secret since you were not on a diet!

...
By simply slipping the new Dr. Metz' Slimming Soles into your shoes, you should quickly lose between 13 to 16 lbs. If it's not the case and you lost only between 6 and 8 lbs instead of the 16 lbs you were looking for, all you have to do is to return your Dr. Metz' Slimming Soles in their original box and we will reimburse you immediately, no questions asked. It means that the trial won't have cost you a penny. But believe me with the Dr. Metz' Slimming Soles you will [sic] thrilled about the weight you have lost."

[In red type:] COUPON TO LOSE 16 LBS NO EFFORT!"

(Exhibit A - Print Advertisement)

B. [Large script:] "Lose 13 to 15 lbs.! With no Effort!

IT IS FINALLY POSSIBLE, THANKS TO DR. METZ' ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!

(script) and without dieting!

...

[A]re you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?

Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

...

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

* Points which "compel" your body to get rid of excess fat.

* Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology; they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

'I lost 9 pounds in six weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!' Mr. Peter Wintherthur

'I have had your insoles now for 7 days. I have lost 5 lbs.' BFB, Norristown, PA
AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE, WITHOUT EFFORT, AND WITHOUT DIETING!

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solum" Slimming soles, all you have to do is walk, just walk normally.

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it). You should find a new zest for life and a new energy.

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

...
Our Guarantee for a 90 Day Risk Free-Trial

In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge." (Exhibit B - Direct Mail Advertisement).

C. "COUPON TO LOSE 15 LBS. WITH NO EFFORT!"

Yes, I want to lose 13 to 15 lbs. With no effort, just by slipping Dr Metz' Slimming Soles into my shoes.

I understand that I don't have to do anything else - no diet, no workout.

....
Allow 2-3 weeks for delivery."

(Exhibit C - Direct Mail Advertisement).

6. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that:

A. Slimming Soles cause significant weight loss.

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

C. Consumers using Slimming Soles will lose 13 to 16 pounds within six weeks, and will do so without changes in diet or exercise.

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

7. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six, at the time the representations were made.

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

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that scientific studies demonstrate that Slimming Soles cause significant weight loss,

including 13 to 16 pounds within six weeks, without changes in diet or exercise.

10. In truth and in fact, scientific studies do not demonstrate that Slimming Soles cause significant weight loss, including 13 to 16 pounds within six weeks, without changes in diet or exercise. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In connection with the sale of Slimming Soles to consumers, respondents have represented, expressly or by implication, that Slimming Soles would be delivered to purchasers within a reasonable period of time.

12. In truth and in fact, in numerous instances, the Slimming Soles that were sold to purchasers have not been delivered to such purchasers within a reasonable period of time. Further, in numerous instances, respondents have failed to provide refunds of money paid by such purchasers within a reasonable period of time. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. 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.

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EXHIBIT B

EXHIBIT B

Page 1

A BodyWell USA Exclusive. . .

**A German Doctor Revolutionizes
everything we believe about weight loss!**

*Lose 13 to 15 lbs.!
With no effort!*

**IT IS FINALLY POSSIBLE, THANKS TO DR. METZ'
ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU
LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!**

and without dieting!

Dear Friend,

Allow me to ask you this question:

You walk, don't you?

When shopping, or, perhaps, when going to work...

Well, are you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?



Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

Slim down as you walk. . . that's the claim made by Dr. Robert Metz, a German weight-loss specialist and inventor of the first "Erina Solum" Slimming Soles!

AN ORIGINAL DISCOVERY...

This discovery is based on the principles of reflexology, the ancient Chinese technique which consists of stimulating certain points on the soles of the feet, points which correspond to specific body organs.

It is thus actually possible to treat various ailments, such as digestive problems, migraine headaches, stomach aches, and many other afflictions as well. . .

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

- * Points which "compel" your body to get rid of excess fat.
- * Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

Please turn the page

BODY WELL USA, 175 FIFTH AVE., SUITE 2151, NEW YORK, NY 10010

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In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology: they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

**READ WHAT THOSE WHO LOST WEIGHT
WITH THESE SOLES HAVE TO SAY...**

"I've never felt as good as I feel now..."

"...At first, I was skeptical, because, when it comes to losing weight, I have found that I was often dealing with charlatans. But after several weeks of use, I was completely convinced that Dr. Metz' Slimming Soles actually work. I've lost weight without having to use chemical products, whose ingredients and side effects are unknown. I've never felt as good as I feel now..."

Mrs. Erna U., Lucerne, Switzerland

"What you are writing is true!"

"...A co-worker told me that he was losing weight easily thanks to a massage of the reflexive zones. At first, I made fun of him. However, as the weeks went by, I was won over. I then ordered a pair of Slimming Soles myself...I must admit that I am quite impressed. I carefully followed the instructions, which are quite clear. I lost 9 pounds in 6 weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!"

Mr. Peter M., Wintherthur

"The points you make have changed my life!"

"...The points you make have changed my life. It's quite true that your Slimming Sole have a positive influence on my entire system. The pills, powders, and other products which I had taken in the past often made me nauseous and dizzy...If this amazing natural weight-loss method had been available 10 years earlier, I would have been able to avoid a number of painful and sometimes risky treatments..."

Mrs. Sabrina S., Baden, Switzerland

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"I can heartily recommend this wonderful invention!"

"...I've tried several diets. But I gained back the weight as quickly as I lost it. Since I have been using your slimming soles, I have lost weight... find these soles perfect, and I can only recommend this ingenious invention!"

Mrs. Nicole W., St. Gall

"Not only did I lose weight, but they help my feet!"

"...I have had your insoles now for 7 days. I have lost 5 lbs. I also have spurs of the heels, these insoles help my feet also. I don't have to take T-----l for my feet. Would you please send me Two more pairs of your insoles."

BFB, Norristown, PA

**AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE,
WITHOUT EFFORT, AND WITHOUT DIETING!**

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

And whenever you walk, whether at home, doing your errands, or on your way to work, you will lose weight.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

With each step, the slimming reflexology points in the soles of your feet will be stimulated, and your body will naturally free itself of its excess fat.

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solum" Slimming Soles, all you have to do is walk - just walk normally.

6 WEEKS TO LOSE 15 POUNDS

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it!). You should find a new zest for life and a new energy. You can once again slip into your favorite slinky dress. You can astound your friends with your new figure! You can become another person, someone who will be noticed! And, since you didn't diet, no one will guess your secret!

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

*Go to the other side for
an extraordinary offer —*

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EXHIBIT B

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**HERE'S HOW TO GET A PAIR OF SLIMMING SOLES
RISK FREE TRIAL:**

In order to receive a pair of Dr. Metz's Slimming Soles with no obligation on your part, all you have to do is fill out the enclosed Special Order Form, including your shoe size, and send it, along with your payment to:

**Body Well USA
175 Fifth Ave. Suite 2151
New York, NY 10010**

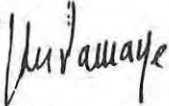
Act now, in order to be sure that you don't miss this remarkable opportunity to experience the delight that will be yours when you lose weight easily and naturally.

And one last thing...

Your Slimming Soles will fit all kinds of shoes. You can wear them in your finest dress shoes or in your most casual loafers. As soon as you get them, slip them into your regular shoes, and walk. You'll find yourself losing weight in just a few days!

I look forward to hearing from you.

Sincerely,



Gerard du Passage
President

P.S. Beware: Watch out for cheap imitations. Only the Slimming Soles carrying Dr. Metz's name give you the guarantee of a healthy and lasting weight loss.

Our Guarantee for a 90 Day Risk Free-Trial

In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge.

US81001C
Printed in Canada

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EXHIBIT C

COUPON TO LOSE 15 LBS. WITH NO EFFORT!

to return very quickly to:

BODY WELL INC. 175 Fifth Ave., Suite 2151 New York, NY 10010

Yes, I want to lose 13 to 15 lbs. with no effort, just by slipping Dr. Metz' Slimming Soles into my shoes.

I understand that I don't have to do anything else - no diet, no workout. If, at the end of my 90 day trial period, I haven't lost at least 15 lbs, all I have to do is return the soles to you, with no explanation necessary, in order to be immediately and fully refunded. In this way, this trial won't cost me a single penny.

Under these conditions, please send me:

☐ 1 Pair of Dr. Metz' Slimming Soles at the special price of only \$19.95 + \$3.95 Shipping & Handling. For a total of \$23.90

☐ SPECIAL OFFER: Save \$4

2 Pairs of Dr. Metz' Slimming Soles at the special price of only \$35.90 + \$4.95 Shipping & Handling. For a total of \$40.85

DR. METZ' SLIMMING SOLES are made of a special material which is designed to massage your feet and stimulate your metabolism. They are made in Germany and are available in the U.S. only.

ELISABETH FROST
27 W. 20TH ST. STE#1001
NEW YORK, NY 10011

SEMMS1

Mail to: **Body Well, Inc.**
175 Fifth Avenue, Suite 2151
New York, NY 10010

1-800-382-9090

US81001A048ET
Printed in Canada
Allow 3-4 weeks for delivery

Featured in one of the more famous women's magazines published in an article on the subject of Dr. Metz' Super Acupressure Slimming Soles

Lose weight as you walk with the super slimming soles

Your daily diet will give you a better result if you bring your metabolism to heel. Simply slip the super slimming insoles down into your shoes. Through each step the reflex zones on the soles of your feet will receive massage and help to stimulate your digestion.

You will experience a pleasant feeling while walking as well as when you are sitting.

You will feel as though the circulation in your feet has increased. This is due to Dr. Metz' amazing insoles, to be more exact - the inlaid small green rubber knobs, that correspond precisely to the reflex zones on the bottom of your feet. These specific areas represent different organs of your digestive system.

This is the secret of the super slimming soles by Dr. Robert Metz. For each step you take the zone area will receive gentle massage and at the same time stimulate your metabolism.

Dr. Metz, a family practitioner from



You walk all the time...when you go shopping, around the house, in the office...Now with every step you take the result will be better with the super slimming insoles.

Merzalb in Germany, is the inventor of the Erinasolum insoles. He helps many people to beat their weight problems.

The efficiency of the insoles is based on the principle of massage on the soles of your feet. Each of the organs in your body - whether it is the liver or the stomach - has a reflex zone on the sole of the foot. On massaging this specific area you will stimulate the corresponding organ.

Dr. Metz discovered that the same effect could be obtained through walking. The knobs are positioned so that they give massage to areas corresponding to the liver, stomach, kidneys, bladder and intestines. Certain zones are to be found on the right foot, others on the left. This is why two insoles are necessary.

The slimming insoles show the best result when used for firm walking in the morning and evening, each time for about two hours. It is possible to lose several pounds in a few weeks through sheer stimulation of your metabolism.

You can wear the insoles all day if your work requires you to remain in a constant sitting position.

DECISION AND ORDER

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

The respondents, their attorneys, 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 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 BodyWell, Inc., also doing business as BodyWell U.S.A., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 27 West 20th Street, Suite 1001, New York, New York.

Respondent Gerard du Passage is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his office and principal place of business is located at the above stated address.

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 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. Unless otherwise specified, "*respondents*" shall mean BodyWell, Inc., a corporation, its successors and assigns and its officers; Gerard du Passage, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

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

I.

It is ordered, That respondents, 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;

B. Such product causes weight loss at any particular rate or speed, or within any time period; or

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

unless, at the time the representation 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not use the name "Slimming Soles" 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, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, 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, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, 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 respondents, 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, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not violate any provision of the Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 Fed. Reg. 49095.

VI.

It is further ordered, That respondents shall pay to the Commission as consumer redress the sum of one hundred thousand dollars (\$ 100,000.00) no later than the date this order becomes final. Such payment shall be deposited into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Slimming Soles 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.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account to

the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

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.

VII.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage 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 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.

VIII.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage 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. 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. Respondents 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 BodyWell, Inc. 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 Gerard du Passage, for a period of four (4) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment whose activities relate to the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any dietary supplement, drug, device, or weight loss product or program, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, for which any health or weight loss claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his 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.

XI.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage 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 they have complied with this order.

XII.

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.

Complaint

123 F.T.C.

IN THE MATTER OF
DEAN DISTRIBUTORS, INC.

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

Docket C-3755. Complaint, June 16, 1997--Decision, June 16, 1997

This consent order requires, among other things, the California-based company to substantiate any weight-loss and weight-loss maintenance claims, sets out the standards for the type of evidence required to support various weight-loss maintenance claims, requires a specified statement for advertisements with maintenance claims, and a disclosure statement regarding the need for physician monitoring to minimize potential health risks.

Appearances

For the Commission: *Walter Gross and James Dolan.*

For the respondent: *Ted J. Hannig, Miller, Starr & Regalia,*
Redwood City, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Dean Distributors, Inc., a corporation, through Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has 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 Dean Distributors, Inc. (hereinafter "respondent"), is incorporated in California, with its offices and principal place of business located at 1350 Bayshore Hwy., Suite 400, Burlingame, California. Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has its offices and principal place of business located at 2801 Salinas Hwy., Building F, Monterey, California. Advanced Health Care Systems also does business as Cambridge Direct Sales and as MediBase.

PAR. 2. Respondent advertises, offers for sale and sells, and otherwise promotes throughout the United States, weight loss and weight-loss maintenance services and products, including the "Food for Life Weight Management System" and "MediBase," and makes them available to the public through a multilevel distribution system and through direct sales to physicians and medical clinics.