

IN THE MATTER OF

COMPUTER BUSINESS SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3705. Complaint, Jan. 21, 1997--Decision, Jan. 21, 1997*

This consent order prohibits, among other things, an Indiana home-based computer business opportunity firm and three principals from misrepresenting the earnings or success rate of investors; the existence of a market for their products or services; the amount of time it would take investors to recoup their investments and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless they possess reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements. In addition, the consent order requires that advertisements for automatic telephone dialing systems disclose federal restrictions on their use and requires the respondents to pay \$5 million in consumer redress.

Appearances

For the Commission: *C. Steven Baker, Catherine Fuller, Mary E. Tortorice and Evan Siegel.*

For the respondents: *Lewis Keiler, Sonnenschein, Nath & Rosenthal, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Computer Business Services, Inc. ("CBSI"); Andrew L. Douglass, individually and as an officer of CBSI; Matthew R. Douglass, individually; and Peter B. Douglass, individually ("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 CBSI is an Indiana Corporation with its principal place of business at CBSI Plaza, Sheridan, Indiana.
2. Respondent Andrew L. Douglass is an officer of CBSI. 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 CBSI.

3. Respondent Matthew R. Douglass is a supervisory employee of CBSI. 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 CBSI.

4. Respondent Peter B. Douglass is a supervisory employee of CBSI. 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 CBSI.

5. Respondents have advertised, offered for sale, sold, and distributed to the public home-based business ventures. Prospective consumers who purchase home-based business ventures from CBSI come to be known by the company as "Center Owners." A "center" ordinarily consists of computer hardware, software, training manuals, marketing materials, and available technical assistance which, together, are represented to enable the owner to create products and services that can be resold profitably to the general public.

6. Beginning no later than April 1988, and continuing through the present, respondents have disseminated or have caused to be disseminated magazine, newspaper and postcard advertisements, including but not necessarily limited to the attached Exhibit A, to induce consumers nationwide to call a toll-free number to order a free information kit. Respondents represent through these advertisements that consumers can expect to earn \$4,000 per month using CBSI's "proven turnkey business." Exhibit A.

7. Respondents have also disseminated or have caused to be disseminated advertisements for their home-based business ventures through commercial online services, including, but not limited to, CompuServe and America Online. Respondents represent through these advertisements that consumers can expect to earn \$4,000 per month through CBSI's home-based business ventures. Exhibit B.

8. Respondents have disseminated or have caused to be disseminated several information packets containing brochures and an audio cassette tape recording by the co-founders of CBSI, George and Jeanette Douglass. These materials, which are sent to prospective purchasers of home-based business ventures, contain the following statements:

(a) In the last 13 years, we've identified over 30 needs and wants. Each one of them is easy to run, helps other people, and provides you a good profit. Computer Business Services has not only identified these 30 needs, but has developed the technology to perform these services easily and profitably. Along with the technology, we've developed all the strategies to perform these services, plus the ways to find the people that need these services, and you can do it all from your home.

(b) Most of the couples and individuals that we've helped start their business have been extremely successful. . . .

(c) Each one of the programs I'm about to explain to you provides a needed service to the people or organizations in your community. Each service adds value to the people's lives you serve, and you can be proud to provide these services. Each program is a proven money-maker, and is now being operated successfully by our present center owners.

(d) Once you start to advertise your CBSI center, people know about it immediately and start coming to you for your services. Every business or organization needs to contact people and you have the only way to contact people quickly, inexpensively and effectively. Once this word gets out, you'll have to expand your services very rapidly, just as we did.

(e) Now we've already helped thousands of couples and individuals turn into successful business people, and we believe we can help you, too.

(f) If you get our CBSI computer program and follow our proven strategies, I really don't believe that you can do it badly enough not to be successful. Once you get the word out that you've got these programs available, people will come to you.

(g) We right now have 30 services you can perform. We have thousands of center owners already earning good money, and I believe you can, too.

(h) Now you have 24 hours in a day. You work 8, sleep 8, and have 8 free hours. If you take 8 free hours times 7 days a week, you have 56 hours. Divide that by two, and you have 28 hours that you can use in this business. Now I realize I've not included weekends. If you use 28 hours per week to do this program, you will be extremely successful.

(i) I can't guarantee your success. I can't guarantee that you'll make \$4,000 to \$10,000 a month. I don't know what's inside of you. But I do know this. Our services are needed in every community in the United States. Our programs really work, and you can earn more money than you ever dreamed possible if you will work our programs.

(j) Most of the couples and individuals that we've helped start their business have been extremely successful and our relationship with them has been exhilarating.

(k) This is a business that you can build a few customers at a time and reap the profits for a long time to come. I call it stack up income. You set it up once and get paid for it every month. So after a few years, you have big money coming in every month, even if you take a month off.

(l) Each of these services is a proven money-maker in large cities, small towns and rural communities throughout the country.

(m) Now some of our center owners use the computer dialing equipment for telemarketing on the unattended mode. Some just don't like to use the computer for telemarketing at all, and in some states, there are regulations that limit the use in the unattended mode. . . . Again, you must make the decision how you use your

equipment. Some center owners do very well using their computer dialing equipment for finding people who want their products. Others use the unattended mode to find qualified prospects for insurance, real estate, chimney cleaning and so forth. If they call from 9:00 a.m. to 9:00 p.m., they usually can call around 1,000 people a day.

9. Respondents also have disseminated or have caused to be disseminated materials containing endorsements by and photographs of purported Center Owners who convey the impression that ordinary consumers can successfully start and operate one or a combination of respondents' home-based business ventures. These materials include but are not necessarily limited to the attached Exhibit C. For example, these materials contain the following statements and depictions:

(a) "LEE STOUT: I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point where I can make \$100,000+ per year. . . . If I can be successful at this, anyone can!"

(b) "DOUG STROUD: I earned \$101,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available."

(c) "CURTIS MAPP: I now have 258 subscribers to the CBSI Computerized Monitor Service program. Each subscriber is billed at \$30.00 per month, which means I'm earning over \$7,700 per month with this program alone."

10. Beginning no later than January 1991, and continuing through the present, respondents have sold their home-based business ventures to approximately 15,000 consumers. Center Owners ordinarily spent between \$3,000 and \$16,000 on respondents' products and services.

PROFITABILITY

11. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that CBSI Center Owners ordinarily operate profitable businesses out of their own homes.

12. In truth and in fact CBSI Center Owners do not ordinarily operate profitable businesses out of their own homes. Indeed, it is rare for CBSI Center Owners to recoup even their initial investments.

13. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

SUBSTANTIAL INCOME

14. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that:

- a. CBSI Center Owners ordinarily earn substantial income.
- b. CBSI Center Owners can reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month.

15. In truth and in fact:

a. CBSI Center Owners do not ordinarily earn substantial income. Indeed, the vast majority of Center Owners never even recoup their initial average investments of approximately \$9,000.

b. CBSI Center Owners can not reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month. Indeed, the vast majority of Center Owners not only never earn \$4,000 per month, but never earn \$4,000 over the duration of their businesses.

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

ENDORSEMENTS: ACTUAL EXPERIENCES

17. Through the means described in paragraph nine, respondents have represented, expressly or by implication, that CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials reflect the actual experiences of those Center Owners.

18. In truth and in fact, in numerous instances, CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials do not reflect those Center Owners' actual experiences.

19. Therefore, the representation set forth in paragraph seventeen was, and is, false or misleading.

ENDORSEMENTS: TYPICALITY AND ORDINARINESS

20. Through the means described in paragraph nine, respondents have represented, expressly or by implication, that CBSI Center

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Owner endorsements appearing in respondents' advertisements and promotional materials reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

21. In truth and in fact, CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials do not reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

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

SUBSTANTIATION FOR EARNINGS CLAIMS

23. Through the use of the statements and depictions contained in the respondents' advertisements and promotional materials referred to in paragraph fourteen, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph fourteen, at the time the representations were made.

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

AUTOMATIC TELEPHONE DIALING SYSTEMS

25. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that consumers can successfully utilize automatic telephone dialing systems to market their businesses.

26. Respondents have failed to disclose in their advertisements and promotional materials for the outbound telemarketing programs that federal law prohibits the use of an automatic telephone dialing system in the unattended mode to initiate a telephone call to any residential telephone line to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party. This fact would be material to consumers in their purchase or use of respondents' home-based business ventures. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

27. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

**FREE CBSI 486 Computer**

Earn \$4,000 Per Month From Your Home With A Computer!

Begin part-time and still retain the security of your present position. This is a proven turnkey business an individual or couple can run. If you purchase our software and business program, we will give you the computer and printer. If you already own a computer, you may receive a discount. You do not need to own, or know how to run, a computer—we will provide free, home office training. Financing available.

Learn how other couples, and individuals like yourself, are building a lifetime income!

To receive free cassettes and color literature, call toll-free: **1-800-343-8014, ext. 145**

(in Indiana: 317-358-4415) Or Write

COMPUTER BUSINESS SERVICES, INC., 2500 PLAZA, STE. 145, SHERIDAN, INDIANA 46069

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EXHIBIT B

EXHIBIT B

EARN \$4,000 PER MONTH ON THE NEW INSTANT INFORMATION SUPERHIGHWAY

All you need is a kitchen table, computer, modem and a telephone

There is an exploding worldwide need for instant information. You can now be part of the start of a revolutionary new industry.

Computer Business Services Inc. the world leader in instant information immediately needs couples and individuals to provide these services from their homes. You may start part time and retain the security of your present job. Quit spending money on your computer and let it earn money for you. We provide a complete operation including everything you need to start plus the complete training to be a success.

If you purchase our software and training material you need a computer, modem, color monitor and printer at no extra cost. If you already own a computer we will give you a discount. Financing available.

Call 1-800-343-8014 ext. 2050

24 hours a day to receive FREE color literature and five cassette tapes that tell you how you can profit from and be a part of the new instant information superhighway.

WORLD'S LARGEST POSTCARD

**WARNING: Statistics show that reading this card
can change your life!**



"I earned \$1,000 in one week selling personalized children's books part time. I'm also running the Financial Aid for College program, and I sell a lot through high schools. I have started on Voice Mail and Voice Messages Center. I now have 30 accounts, and I'm growing about 20 new accounts per week. I'm doing very well. I'm doing the limit for me."



"I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities I'd have become realities would not have been possible. The CBSI telecommunication program has enabled me to grow my business to the point I where it can make its way to all at CBSI, from the best support to customers. Thanks to all at CBSI, I'm able to get the support I need. With your help, I can be successful at this company."



“George (Douglas), thank you for giving me the strength to ‘go out on a limb.’ It was because of the people that I came to know from listening to your tapes that I came to that I have now had to drive to Sheridan, Indiana, to meet you. For years, just the thought of you and the thought of the dream you and Jeanne and so many other people I have read the morning papers to start my own business, I had a hunching job making an excellent living, a beautiful home, cars, etc., etc. I was not happy because my dream was getting further and further away from me. So here I am, working, working, working to build my dream. Please give my best to your entire staff. Everyone has been most helpful, and I look forward to working with all of you for many years to come.”



I purchased a CBSI-1000 Monogram & Embroidery machine and went into business. I now have more business than I can actually handle. I try to get at least \$24 per hour from my machine. Most days I get \$400 and spend \$100 for shirts, thread, etc. I can literally put my machine up anywhere and do lots of business. Announcements, logos, names, etc. The business is very exciting and very profitable. I am now



Your company gave me the chance to do something I didn't think was possible. Without your company, I would be stuck in a 9.5 job, sitting at my desk, thinking about taking my children to school every day, and coming home when the area isn't safe. With a doctor for staying home when we are sick, a home-based business, I can also make a difference in the lives and education of the children in my community. Without your movie, our company, none of this would be possible.



I couldn't believe what I read at J Head on the tapes. It was just so good to be in it. But it is true. Everything you find and the wisdom that's given I have 23 doctors' notes and I set them for \$60 to help 23 doctors' notes and I set them for \$60 to help Paralyzed Children's Book. I am also said \$70,000 worth of computer systems I believe in fact and the matter I wish the like.



"My name is Mark Gynn and I'm running the CBSI video Billboard program. I recently signed a major cable company for advertising, 10,000 coupons each month and plan to do much more. I also signed up three video stores as well. The concept is great and the business is great!"



I earned \$107,865 in one year with my own CBS business. I am running Voice Mail and Computer Home Monitor. CBSI software is the first available to believe CBSI serves as Great Grief! The design take challenge, one of the best business models in



My husband and I have given Center for the Homeless and we just want to say thank you in a million ways for the support and help you have given us. It is completely overwhelming and we are so grateful for the help you have given us. We hope to be able to help others in the future.



Conquering it's "step up the special teamwork." We need you, the people in the frontlines. If Big Brothers/Big Sisters is not the best fit for you, we can help you find the best fit for you. We have the flexibility of volunteers that Big Brothers/Big Sisters has, the ongoing support that World's Best Workplaces has, the focus on social goals that we have, and the 401K that CBS* provides. So don't leave your current job for a job that is just as good as the one you're in now. www.bbs-s.org



I now have 218 subscribers to the CBSI's Low Income Monthly Service program. Each subscriber pays \$7.50 per month, which means the earnings are \$1,635 per month, and the program alone means that we're eligible at CBSI for tax assistance, especially at the end of Service and Insurance Service. We don't have to give up anything of value, as I have the program.

[illegible]

Call your program advisor **TODAY** at
1-800-545-2274, ext. 347.

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EXHIBIT C

**For Further Information
Listen to the Tapes**

**They Explain All Of The Following
Services In Detail**

[illegible]

and telephone services. You can also call your computer maker to make sure it is OK. It is a good idea to have a backup of all the information that you have stored on the computer. This is a copy of all the information that you have stored on the computer. You can make a backup of your information by using a program called Backup. This program will make a copy of all the information that you have stored on the computer. You can then store this copy on a floppy disk or a hard disk. This way, if you ever lose your information, you will have a backup that you can use to restore it.

[illegible]

...and
... ..
... ..
... ..

As your program advisor within seven (7) days from the date you receive this card and place an order for one of our jackets, you will receive one of our limited edition jackets. (Part one of our limited packages (5 or 10 programs), or pick several programs you like and call us at 1-800-648-2774. Your program advisor's job is to try and work out a way you can start your own business today!

[illegible]

B. _____

patients' satisfaction. Adults (10 and 15 years and older) for doctors' and dentists' visits.

9. Individuals and small business owners of your large firms, their families

10. All students and employees of all firms

1. $\mathcal{A}$ is a σ -algebra on Ω .
 2. $\mathbb{P}$ is a probability measure on $\mathcal{A}$.
 3. $\mathbb{P}(\Omega) = 1$.
 4. $\mathbb{P}(\emptyset) = 0$.
 5. $\mathbb{P}(A \cup B) = \mathbb{P}(A) + \mathbb{P}(B)$ if $A \cap B = \emptyset$.
 6. $\mathbb{P}(A \cap B) = \mathbb{P}(A) \mathbb{P}(B)$ if A and B are independent.

Q. Now, I understand that you were not only subject to, but also a victim of, the mob around the world?

provide the same services.
b. If this does not allow your practice, informally, to continue providing services for weddings.
d. ... will charge the ... Your intention to ... the ...

5. 11. 1944. Road, all travel for 4000 ft. on road to the westward, very abundant.

6. 11. 1944. Rd. all the road, very abundant, through tall grass and abundant in the trees.

1. *Icon Museum Machine required*
2. *View sign Machine required*

Non-line required

PROGRAM

the more you understand about the company, the more you can help it grow. And that's the only way to win.

THE NEW YORK PUBLIC LIBRARY
ASTOR LENOX TILDEN FOUNDATION
500 5TH AVENUE
NEW YORK 10017

* *Geopelia striata* (Linn.) and *G. striata* (Linn.) are common in the coastal areas of the island.

the following year in 2004, the P. variabilis found with the 2003-2004 survey, 30 (60%) had been identified in 2003, indicating there is overlap with the 2003-2004 survey data and that it is changing with time.

Source: Your Name is in 1. g. Delaney Day - no longer a
When you are

COLOR LITERATURE You should have received your literature. If you haven't, please call us.

1

You should have received your literature packet. If you haven't, please call what is on the back of the packet.

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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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 respondents that the law has been violated as alleged in such complaint, 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 complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 CBSI is an Indiana Corporation with its principal place of business at CBSI Plaza, Sheridan, Indiana.

2. Respondent Andrew L. Douglass is an officer of CBSI. 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 CBSI.

3. Respondent Matthew R. Douglass is a supervisory employee of CBSI. 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 CBSI.

4. Respondent Peter B. Douglass is a supervisory employee of CBSI. 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 CBSI.

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

6. 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. "*Business venture*" means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436, and which consists of payment of any consideration for:

A. The right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

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 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 sufficient for an ordinary consumer to hear and comprehend it.

C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, 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.

3. Unless otherwise specified, "*respondents*" shall mean Computer Business Services, Inc., a corporation, its successors and assigns and its officers; Andrew L. Douglass, individually and as an officer of the corporation; Matthew R. Douglass, individually; and Peter B. Douglass, individually; and each of the above's agents, representatives and employees.

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

5. "*Automatic telephone dialing system*" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. 227(a)(1).

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

A. That consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;

B. That consumers who purchase or use such business ventures ordinarily earn substantial income;

C. The existence of a market for the products and services promoted by respondents;

D. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;

E. The amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or

F. By use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from using hypothetical examples which do not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it 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.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

A. Use, publish, or refer to any user testimonial or endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or

B. 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:

1. The representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation; or

2. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

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

b. 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.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further, however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

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 advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any

manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

V.

It is further ordered, That respondent Computer Business Services, Inc., directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product or service, shall not make any false or misleading statement or representation of fact, expressly or by implication, material to a consumer's decision to purchase respondents' products or services.

VI.

It is further ordered, That:

A. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall pay to the Federal Trade Commission by electronic funds transfer the sum of five million dollars (\$5,000,000) no later than fifteen (15) days after the date of service of this order. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be jointly and severally liable.

B. Payment of the sum of five million dollars (\$5,000,000) in accordance with subpart A above shall extinguish any monetary claims the FTC has against Jeanette L. Douglass and George L. Douglass based on the allegations set forth in the complaint as of the date of entry of this order. Nothing in this paragraph or any other paragraph of this order shall be construed to prohibit the FTC from seeking administrative or injunctive relief against Jeanette L. Douglass or George L. Douglass.

C. The funds paid by respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, pursuant to subpart A above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to purchasers of Computer Business Services, Inc. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. If the FTC 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. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, 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. Customers of respondents, as a condition of their receiving payments from the Redress Fund, shall be required to execute releases waiving all claims against respondents, their officers, directors, employees, and agents, arising from the sale of Computer Business Services, Inc. business ventures by respondents prior to the date of issuance of this order. The Commission shall provide respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, with the originals of all such executed releases received from respondents' customers.

VII.

It is further ordered, That respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall for a period of 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 Computer Business Services, Inc., and its successors and assigns, and respondent Andrew L. Douglass, for a period of five (5) years after the date of issuance of this order, 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.

IX.

It is further ordered, That respondent Computer Business Services, 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, 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 the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn fewer 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.

X.

It is further ordered, That respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass, for a period of five (5) 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. The notice shall include respondents' new business addresses and telephone numbers 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 Computer Business Services Inc. and its successors and assigns, and respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass 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 January 21, 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 affect the duration of:

A. Any Part in this order that terminates in fewer 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

VICTORIA BIE

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

Docket C-3708. Complaint, Jan. 22, 1997--Decision, Jan. 22, 1997

This consent order prohibits, among other things, a California-based dietary supplement manufacturer, Victoria Bie d/b/a Body Gold, from making certain claims for dietary supplements, without competent and reliable scientific evidence to support them; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

Appearances

For the Commission: *Janice Charter and Sohni Bendiks.*

For the respondent: *H. Patrick Noonan, Woodland Hills, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Victoria Bie doing business as Body Gold ("respondent") 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 Victoria Bie is the sole proprietor of Body Gold, a California company with its principal office or place of business located at 5930 La Jolla Hermosa, La Jolla, California. Respondent formulates, directs, and controls the acts and practices of Body Gold, including the acts and practices alleged in this complaint.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed nutritional supplements, including, but not limited to, Chromium Picolinate (200 and 400 mcg), 24K with Chromium Picolinate, Daily Energy Formula (with Chromium Picolinate), and CitriGold (with Chromium Picolinate and Hydroxycitric Acid), collectively referred to as "Chromium Picolinate," as weight loss, fat loss, muscle enhancing and/or muscle building aids. Respondent has