

IN THE MATTER OF

UNIVERSAL MERCHANTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3707. Complaint, Jan. 23, 1997--Decision, Jan. 23, 1997*

This consent order prohibits, among other things, a California-based dietary supplement manufacturer and its president from claiming, without competent and reliable scientific substantiation, that any food, dietary supplement or drug reduces body fat, causes weight loss, increase lean body mass, or controls appetite or craving for sugar; 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: *Rosemary Rosso, Maureen Enright, Anne V. Maher and Jill Samuels.*

For the respondents: *Ed Glynn and Gary Hailey, Venable, Baetjer, Howard & Civiletti, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Universal Merchants, Inc., a corporation, and Steven Oscherowitz, 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 Universal Merchants, Inc. is a Delaware corporation with its principal office or place of business at 4727 Wilshire Blvd., Suite 510, Los Angeles, CA.

2. Respondent Steven Oscherowitz is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls 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 Universal Merchants, Inc.

3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including ChromaTrim and ChromaTrim-100 ("ChromaTrim"), chewing gums containing chromium picolinate. ChromaTrim is a "drug," and/or "food," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

5. Respondents have disseminated or have caused to be disseminated advertisements for ChromaTrim, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements and depictions:

A. "100% natural, ChromaTrim™ is the sugar-free, fat-reducing chewing gum that is proven to reduce body fat and decrease your appetite (especially sugar cravings). ChromaTrim works fast and is extremely safe. ChromaTrim's active ingredient Chromium Picolinate is so unique, it's patented by the U.S.D.A."

"No special diets, no tiring exercise, and no harmful chemicals, ChromaTrim is simply the secret to successful fat loss. Guaranteed. The fact is, thousands of formerly over-weight men and women have successfully changed their lives."

"I lost 40 pounds with ChromaTrim-100." [The advertisement depicts a slender woman with the caption Belinda Woodruff.]

"I lost 35 pounds using ChromaTrim." [The advertisement depicts a woman in a two-piece bathing suit with the caption Nicky Peters.] (Exhibit A)

B. Susan Ruttan: "This is not another fad diet or crash program. ChromaTrim is a chewing gum that contains chromium picolinate, a very special form of chromium. Now chromium is an essential mineral like iron and zinc. Your body needs it every day. It's important. And scientific research has shown that chromium works with your body's insulin, helping it to burn fat, preserve and build muscle, and control cravings and hunger. And when your body gets the chromium it needs by chewing ChromaTrim, listen to what can happen." (Exhibit B, p. 2)

Veronica Hall: "I lost 80 pounds. And I went down from a size 28, to a size 18." (Exhibit B, p. 2)

Donna Allison: "I've lost 36 pounds and I still have 20 or so more to lose." (Exhibit B, p. 2)

Susan Ruttan: "So how do you know it can work for you? Well, according to the U.S. Department of Agriculture, nine out of ten of us don't get enough chromium in our diet....And if you don't get enough chromium in your diet, your body's natural system for burning fat, building muscle, and controlling cravings isn't going to work as well as it should." (Exhibit B, p. 3)

Susan Ruttan: "And with this system you don't have to starve yourself, or sweat buckets to see a real change." (Exhibit B, p. 3)

Susan Ruttan: "The real goal is to keep and even build muscle, and burn off that fat. And that's where ChromaTrim comes in because it helps your body's natural fat burning and muscle building system work better. So, how do we know? Well, there have been studies, many of them testing what chromium does." (Exhibit B, p. 4)

Susan Ruttan: "ChromaTrim helps your body by helping it work better to burn fat, preserve and build muscle and to help control hunger and cravings. And it's so easy." (Exhibit B, p. 4)

Rick Gordon: "In the afternoon when I get this craving for a candy bar or sweets, I just grab the gum, throw it in my mouth. Cuts the craving just like that." (Exhibit B, pp. 4-5)

Wendy Wilburn: "I did notice that my cravings for chocolate and things like that changed. But I didn't go out of my way to make this a diet plan whatsoever." (Exhibit B, p. 5)

Susan Ruttan: "Look, your body needs chromium to work properly. And nine out of ten people don't get enough from their daily diet. In fact, in order to get enough chromium it's been estimated that the average person if they didn't change their diet would have to consume as much as 13,000 calories a day." (Exhibit B, p. 5)

Female Announcer Wearing Lab Coat: "Nine out of ten of us don't get enough chromium from our daily diet. And chromium . . . is an essential mineral. You need it to survive. So, what does chromium do? Scientists have shown that chromium plays a key role in helping your body's insulin work better. And insulin is your body's key to burning fat and preserving and building muscle. Insulin is also known as the hunger hormone. It helps control cravings and hunger. So you need to get enough chromium in your diet every day to help your insulin work the way it should. And remember, chances are nine out of ten you're not getting enough chromium right now." (Exhibit B, pp. 5-6)

Announcer in Lab Coat: "In a double blind study of 150 people conducted in conjunction with the University of Texas, . . . people who were given a chromium picolinate supplement lost an average of 4.2 pounds of body fat . . . [a]nd gained 1.2 pounds of muscle mass. . . . Now you can get the chromium advantage with ChromaTrim. . . . You simply chew two to three pieces of the mint flavored gum every day. That way your body gets the chromium it needs to help your insulin work better, to burn fat, preserve muscle and control cravings." (Exhibit B, p. 11)

6. Through the means described in paragraph five, respondents have represented, expressly or by implication, that:

- A. ChromaTrim significantly reduces body fat.
- B. ChromaTrim causes significant weight loss.
- C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
- D. ChromaTrim increases lean body mass and builds muscle.
- E. ChromaTrim controls appetite and craving for sugar.
- F. Testimonials from consumers appearing in the advertisements for ChromaTrim reflect the typical or ordinary experience of members of the public who use the product.

G. Nine out of ten people do not consume enough chromium to support normal insulin function, resulting in decreased ability to burn fat, preserve muscle, and control hunger and cravings.

7. Through 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:

- A. ChromaTrim significantly reduces body fat.
- B. ChromaTrim causes significant weight loss.
- C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
- D. ChromaTrim increases lean body mass and builds muscle.
- E. ChromaTrim controls appetite and craving for sugar.

10. In truth and in fact, scientific studies do not demonstrate that:

- A. ChromaTrim significantly reduces body fat.
- B. ChromaTrim causes significant weight loss.
- C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
- D. ChromaTrim increases lean body mass and builds muscle.
- E. ChromaTrim controls appetite and craving for sugar.

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

11. 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.

EXHIBIT A

The Ultimate Fat Loss System.

Speed Your Way To A Leaner Body.

100% natural, ChromaTrim™ is the sugar-free, fat-reducing chewing gum that is proven to reduce body fat and decrease your appetite (especially sugar cravings). ChromaTrim works fast and is extremely safe. ChromaTrim's active ingredient Chromium Picolinate is so unique, it's patented by the U.S.D.A.

No special diets, no tiring exercise, and no harmful chemicals. ChromaTrim is simply the secret to successful fat loss. Guaranteed. The fact is, thousands of formerly over-weight men and women have successfully changed their lives.

And if you are involved in a diet or weight control program, ChromaTrim will immeasurably increase your results. If you don't see results with ChromaTrim, just mail it back within 30 days for a refund.

Order now and get a 2 month supply for only \$39.95 plus \$5.95 s&h.

Credit card orders call toll free 24 hrs.

1-800-446-4771

Or send check or money order to: U.M. Gum Offer Dept. #100 302 North La Brea Avenue Suite 304 Los Angeles, California 90006 30-day money back guarantee. California res. cents and 8.25% sales tax.

Everything you need to successfully speed your way to a leaner body is supplied in this all-inclusive ChromaTrim 100™ fat loss system...

Complaint

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EXHIBIT B

VOICE OVER: The following is a paid advertisement for ChromaTrim presented by Universal Merchants.

RICK GORDON: I'm probably in better shape now than I was in high school or college.

["Testimonials describe best case results and are not intended to represent typical results," displayed on screen for approximately two seconds during Gordon testimonial.]

ROSEANNE WALKEY: That day that I put some pants on and they fell off, then I thought ooooh, that's a clue.

["Testimonials describe best case results and are not intended to represent typical results," displayed on screen for approximately two seconds during Walkey testimonial.]

KATHLEEN DEEMS: The last time I looked this trim and fit I was in my 20's. ["Individual results will vary based on personal commitment and other factors," displayed on screen for approximately two seconds during Deems testimonial.]

MELISSA LINDSAY: People ask me all the time what do you use? How did you do it?

DONNA ALISON: Every time I get on the scale I can see it go down another pound or two.

VERONICA HALL: I haven't worn jeans in over 13 years.

ROSEANNE BRADSHAW: The last time my body looked this good was back when I was married.

ADRIENNE ANTOINE: I looked in the mirror, and I'm like, oh my God! Can I get over how slim I am now.

DAVID ALVARADO: If someone would have told me a year ago that hey, you could chew this gum and it's going to help you lose weight, I would have said yeah, right.

VOICE OVER: Coming up next, discover how you can lose fat and get fit the smart way, with ChromaTrim. The breakthrough chewing gum and fat loss system with chromium picolinate.

DR. GARY EVANS: Americans have reduced their fat intake. And what's happened? We continued to find that more and more are overweight. So something else is wrong. The something else is probably a lack of chromium in the diet.

DR. GIL KAATS: And here's a product that can potentially help the burning of excess fat without depleting any muscle. And may even be adding muscle mass.

SUSAN RUTTAN: Hi, I'm Susan Ruttan. Now when you hear the word struggle and weight, do you say that's me? Well, a recent poll showed that almost three out of four people are overweight. Look, diets don't work. We've all lived through them. Exercise fads and machines come and go. And fat grams have become an obsession. Are you depressed yet? Well here's something that's very new and very exciting. The ChromaTrim system. Over the next half hour you're going to learn how to finally get control of your body, and your weight with this. Keep your hands off that clicker. This is not another fad diet or crash program. ChromaTrim is a chewing gum that contains chromium picolinate. A very special form of chromium. Now chromium is an essential mineral like iron and zinc. Your body needs it every day. It's important. And scientific research has shown that chromium works with your body's insulin, helping it to burn fat, preserve and build muscle,

and control cravings and hunger. And when your body gets the chromium it needs by chewing ChromaTrim, listen to what can happen.

RICK GORDON: I had to get all my suits altered now. That's the biggest thing. Going down from 34 down to 31 and a half inch waist.

["Weight loss varies with individuals. Adherence to the complete ChromaTrim system including exercise and a sensible diet is necessary for success," displayed on screen for approximately five seconds during Gordon testimonial.]

VERONICA HALL: I lost 80 pounds. And I went down from a size 28, to a size 18. And that's a new person.

DONNA ALLISON: I've lost 36 pounds and I still have 20 or so more to lose. But it's not like I've got to get to the top of the mountain. I just go along and it just keeps happening.

ROSEANNE WALKEY: I have a cat and the litter box comes in eight things, eight pound things. And I carried all three of them in and I thought that's what I used to carry around with me.

MELISSA LINDSAY: Well I was wearing like a 24-W, and now I'm only down to size 14 and my goal was a size 13, 14, because that's what I wore in high school.

WENDY WILBURN: I was a size 9. And I'm a size one to three right now. There's a big difference between a nine and a three.

ADRIENNE ANTOINE: I had plateaued at 195, and I stayed right there and wasn't budging, wasn't going anywhere. So I started using the gum and it was just a gradual weight loss.

DAVID ALVARADO: Some where between 10 to 15 pounds overall weight loss. But in the body changes I've noticed there's definitely been here in what they call the "love handles."

BELINDA WOODRUFF: You're getting people saying, you know you're looking better. What are you doing? And I have to say, well, I'm chewing gum. You know? They go, what are you doing? I'm chewing gum. And it's just that simple.

SUSAN RUTTAN: ChromaTrim really works. Have you noticed I can't stop talking about it? And neither can magazines like Newsweek, Prevention, The Los Angeles Times, Longevity and many more. So how do you know it can work for you? Well, according to the U.S. Department of Agriculture, nine out of ten of us don't get enough chromium in our diet. You get chromium from foods like brewers yeast, broccoli, lobster, calves liver, oysters and wheat germ. And surprise, we just don't eat enough of these foods. And if you don't get enough chromium in your diet, your body's natural system for burning fat, building muscle, and controlling cravings isn't going to work as well as it should. Are you starting to get the picture? So here's what you do. You follow the ChromaTrim system and every day you chew a few pieces of ChromaTrim. The chromium is in the gum. And with this system you don't have to starve yourself, or sweat buckets to see a real change.

["Individual results vary," displayed on screen for approximately three seconds while Susan Ruttan is speaking.]

JOYCE CURZON: The skin just sort of sagged off of me. And I never had the muscle tone that I do now. Never. Not even in my 20's.

ROSEANNE BRADSHAW: I just saw muscle developing all over my body. And the fat was disappearing. And I couldn't believe it.

KATHLEEN DEEMS: I know I have the muscle, but I think I lost the cellulite, the fat that dimpled. The look that you sometimes get when you get heavier.

RUSS MANNEX: I'm not Adonis, but I'm on my way. I don't have a six pack, but I definitely have more definition than I have before. Definitely.

ADRIENNE ANTOINE: I just really started to see definition in my arms, my body, my waist, my thighs and everything. I just -- I was being sculpted. Gum was sculpting my body.

DONA HEIDER: There's not that sense of I'm on a diet. I have to deprive myself. I have to watch everything I eat. It was working. It all came together. And I was eating better because I felt better.

SUSAN RUTTAN: When you use the ChromaTrim system, you choose to lose the smart way. And fat loss, not scale weight, is the key. With ordinary dieting you may lose pounds, but pounds of what? Low calorie diets often cause your body to lose muscle, but muscle gives your body shape and burns calories. You don't want to lose it. But that's what you lose on the dieting roller coaster. The real goal is to keep and even build muscle, and burn off that fat. And that's where ChromaTrim comes in because it helps your body's natural fat burning and muscle building system work better. So, how do we know? Well, there have been studies, many of them testing what chromium does. One of the largest and most dramatic ones was conducted by Dr. Gil Kaats of the Health and Medical Research Foundation, along with the University of Texas. It was double blind, which means that nobody knew who was getting chromium in their diet, and who was getting nothing, a placebo, until the end of the study.

DR. GIL KAATS: What we did in the beginning was we measured how much fat and how much lean they had using underwater technology -- the displacement method, the most accurate measurement we could get. Then we had them use this supplement over a sixty day period of time and they followed whatever program they wanted. Then we measured them again. And when we measured them again, then we compared how much change occurred in the body fat they had, and how much change occurred in the lean that they had. And then we sent the statistics over to the medical school and said now, here's the statistics of what happened. Call this third party and break the code and so forth. And we'll find out whether or not this stuff really works. And what we found was when we compared the two groups, those who didn't get any chromium at all, what happened was that they stayed pretty much the same. But the people who took the chromium had some dramatic losses over a two month period -- we see them as dramatic in body fat they lost. They lost over four pounds of body fat and gained over a pound of lean. Even more importantly to us, is we went out then and measured a variety of different products over the past four years containing chromium picolinate and again and again we find out those products containing the chromium typically produce results very similar to what we found here.

SUSAN RUTTAN: ChromaTrim isn't a magic pill or gum, but it can become your secret weapon to finally help you lose fat and get fit. Remember, diets starve your body and can end of [sic] doing more harm than good. ChromaTrim helps your body by helping it work better to burn fat, preserve and build muscle and to help control hunger and cravings. And it's so easy.

["Individual results vary," appears at bottom of screen for approximately 2 seconds while Susan Ruttan is speaking.]

RICK GORDON: In the afternoon when I get this craving for a candy bar or sweets, I just grab the gum, throw it in my mouth. Cuts the craving just like that.

WENDY WILBURN: I did notice that my cravings for chocolate and things like that changed. But I didn't go out of my way to make this a diet plan whatsoever.

DONNA ALISON: I just realized one day after I had been on the gum for about three weeks that I wasn't having that bowl of ice cream at 10:00 at night any more.

BELINDA WOODRUFF: You don't notice you have lost those cravings until you're sitting down and you're eating a piece of pie, not the whole pie.

RUSS MANNEX: The gum was a great idea because I tend to be very hand to mouth. When I'm just sitting there in my office I've got a bag of chips or something. It's a easy thing to do. And grabbing for the gum was a lot easier and it did the trick.

ADRIENNE ANTOINE: Well, I would just pop in a piece of gum whenever I felt this urge to have a piece of chocolate. Instead of the chocolate I substituted the gum.

SUSAN RUTTAN: Look, your body needs chromium to work properly. And nine out of ten people don't get enough from their daily diet. In fact, in order to get enough chromium it's been estimated that the average person if they didn't change their diet would have to consume as much as 13,000 calories a day. It would kind of defeat the purpose. And by the way, doctors agree that taking chromium to supplement your diet is extremely safe. So here's how the system works. You chew a few pieces of ChromaTrim a day. Many people chew before or after meals, or when they get cravings for sweets or just when they want fresh breath. It's mint flavored and tastes great. By chewing ChromaTrim you know your body can get the chromium it needs. You'll also get the ChromaTrim no diet nutritional program that tells you how to figure out your optimum calorie intake for maximum fat loss. And the smart exercise program that shows you how to tone those areas of your body, your hips, thighs, stomach, where fat loss is key. Now you can help your body do what it's supposed to do. Take control. Win the battle of the bulge. And lose the fat the smart way. With ChromaTrim.

FEMALE ANNOUNCER WEARING LAB COAT: Hi. You've heard the facts. Nine out of ten of us don't get enough chromium from our daily diet. And chromium, like iron or zinc, is an essential mineral. You need it to survive. So, what does chromium do? Scientists have shown that chromium plays a key role in helping your body's insulin work better. And insulin is your body's key to burning fat and preserving and building muscle. Insulin is also known as the hunger hormone. It helps control cravings and hunger. So you need to get enough chromium in your diet every day to help your insulin work the way it should. And remember, chances are nine out of ten you're not getting enough chromium right now. That's where ChromaTrim comes in. It seems almost too simple. You chew a few pieces of ChromaTrim every day. The gum contains a very special type of chromium, called chromium picolinate that gets released when you chew. You follow a simple diet and exercise program you create. And you're done. No starvation, no sweat. It seems almost too good to be true, but it works.

RICK GORDON: I'm probably in better shape now than I was in high school or college.

["Lost 25 pounds with ChromaTrim," displayed on screen during Gordon testimonial.]

KATHLEEN DEEMS: The last time I looked this trim and fit I was in my 20's.

ROSEANNE WALKEY: Having the weight off I feel younger.

["Weight Loss varies with individuals. Adherence to the complete ChromaTrim system including exercise and a sensible diet is necessary for success," displayed on screen for approximately five seconds during testimonials of Kathleen Deems and Roseanne Walkey.]

VERONICAL HALL: You don't have to mix any powders or you know anything like that. And that's what makes it so good. Just pop some gum and go.

["Lost 81 pounds with ChromaTrim," displayed on screen during Hall testimonial.]

DONNA ALISON: Every time I get on the scale I can put down another pound or two.

["Lost 36 pounds with ChromaTrim," displayed on screen during Alison testimonial.]

WENDY WILBURN: From a size nine to a size three in three to four months is pretty drastic.

["Lost 15 pound with ChromaTrim," displayed on screen during Wilburn testimonial.]

ADRIENNE ANTOINE: And this skirt is a size -- ye gads -- it's 26, 28. And now I'm a size 8.

LAB COAT ANNOUNCER: Listen to this. In a double blind study of 150 people conducted in conjunction with the University of Texas, people who were not given a chromium picolinate supplement -- the placebo group -- saw little fat loss or muscle gain over two months. But people who were given a chromium picolinate supplement lost an average of 4.2 pounds of body fat. The bad stuff. And gained 1.2 pounds of muscle mass. The good stuff. Again in just two months. Now you can get the chromium advantage with ChromaTrim. When you call right now we'll rush you a sixty day supply of ChromaTrim. You simply chew two to three pieces of the mint flavored gum every day. That way your body gets the chromium it needs to help your insulin work better, to burn fat, preserve muscle and control cravings. You'll also get ChromaTrim's no diet nutritional program that allows you to maximize fat loss without starving yourself. And the ChromaTrim smart exercise program to target and tone as you lose the fat. You'll get it all. The complete ChromaTrim system for just \$39.95. And when you call right now you'll also get this ChromaTrim travel case so you'll never be without ChromaTrim when you are on the go. And it all comes with ChromaTrim's choose to lose money back guaranty. Try ChromaTrim in your own home for a full 30 days. See the results for yourself. And if for any reason you're not satisfied just return the system for a full refund. The only thing you have to lose is fat. Here's how to get your own ChromaTrim right now.

[SILENT STILL SHOT OF HOW TO ORDER INFORMATION]

SUSAN RUTTAN: Welcome back. I'm Susan Ruttan. You know we've all struggled with our weight at some time. And for many it's a constant battle. For me, the weight always came back when I went off a diet or got busy with work or taking care of my son. The problem with diets is that you often feel hungry and deprived. ChromaTrim takes a different approach. And that's what is so exciting. It explains why it's been so hard for so many people to get rid of excess weight. And it offers a solution too. When you get enough chromium in your diet, your body's natural mechanism to burn fat and preserve muscle works better. The way it's supposed to. And when it works better, you can win the battle and see a real change. ChromaTrim was recently given to a group of people who were tired of

RUSS MANNEX: I'm not Adonis, but I'm on my way. I don't have a six pack, but I definitely have more definition than I have before. Definitely.

ADRIENNE ANTOINE: I just really started to see definition in my arms, my body, my waist, my thighs and everything. I just -- I was being sculpted. Gum was sculpting my body.

DONA HEIDER: There's not that sense of I'm on a diet. I have to deprive myself. I have to watch everything I eat. It was working. It all came together. And I was eating better because I felt better.

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DR. GIL KAATS: What we did in the beginning was we measured how much fat and how much lean they had using underwater technology -- the displacement method, the most accurate measurement we could get. Then we had them use this supplement over a sixty day period of time and they followed whatever program they wanted. Then we measured them again. And when we measured them again, then we compared how much change occurred in the body fat they had, and how much change occurred in the lean that they had. And then we sent the statistics over to the medical school and said now, here's the statistics of what happened. Call this third party and break the code and so forth. And we'll find out whether or not this stuff really works. And what we found was when we compared the two groups, those who didn't get any chromium at all, what happened was that they stayed pretty much the same. But the people who took the chromium had some dramatic losses over a two month period -- we see them as dramatic in body fat they lost. They lost over four pounds of body fat and gained over a pound of lean. Even more importantly to us, is we went out then and measured a variety of different products over the past four years containing chromium picolinate and again and again we find out those products containing the chromium typically produce results very similar to what we found here.

SUSAN RUTTAN: ChromaTrim isn't a magic pill or gum. but it can become your secret weapon to finally help you lose fat and get fit. Remember, diets starve your body and can end of [sic] doing more harm than good. ChromaTrim helps your body by helping it work better to burn fat, preserve and build muscle and to help control hunger and cravings. And it's so easy.

["Individual results vary," appears at bottom of screen for approximately 2 seconds while Susan Ruttan is speaking.]

RICK GORDON: In the afternoon when I get this craving for a candy bar or sweets, I just grab the gum, throw it in my mouth. Cuts the craving just like that.

type of chromium that's found in ChromaTrim. Dr. Evans has continued his research at the university level. He's a professor whose discovery and research has given new hope to millions of us.

DR. GARY EVANS: When insulin is not working right two bad things happen. One, more fat goes into the fat cells and far less comes out. Insulin does not work 100 percent efficiently without chromium. And I think that that's why people often times think that this is too good to be true because they don't realize that all of a sudden insulin is working right and the body metabolism is now doing what it's supposed to, so the body is working the way Mother Nature intended. Americans have reduced their fat intake. And what's happened? We continue to find that more and more are overweight. So something else is wrong. The something else is probably the lack of chromium in the diet.

SUSAN RUTTAN: What I love most about ChromaTrim is that it takes something that has been so hard and so negative for so many people, losing fat, and makes it much easier. And when you finally start seeing results and start feeling good about your body, you want to eat right. And you want to exercise and you start feeling better. Your clothes fit. It's really exciting.

["Individual results vary," displayed on screen for approximately two seconds while Susan Ruttan is speaking.]

ROSEANNE WALKEY: I got rid of things that had elastic waste lines. Now I have pants that you can fasten.

["Lost 25 pounds with ChromaTrim," displayed on screen during Walkey testimonial.]

VERONICA HALL: I'm trying on clothes. I like looking at myself now. I used to just walk by a mirror and not even look.

["Lost 81 pounds with ChromaTrim," displayed on screen during Hall testimonial.]

DONNA ALISON: I don't even look at the tent dresses any more. I just walk right by them. Over to the skirts and blouses and slacks and things.

["Lost 36 pounds with ChromaTrim," displayed on screen displayed on screen during Alison testimonial.]

MELISSA LINDSAY: While we say outfits are cute, but you can never get back in to them usually. And I am able to get back in to them.

["Lost 40 pounds with ChromaTrim," displayed on screen during Lindsay testimonial.]

ADRIENNE ANTOINE: Now it's a breeze, it's a joy to get dressed and look in the mirror and say, wow, I look really great.

["Lost 65 pounds with ChromaTrim," displayed on screen during Antoine testimonial.]

DONA HEIDER: I remember putting on a leotard and going wow. This is great. I can wear one of those thong things. And taking it off immediately. Because I didn't want to go out in public with it.

["Lost 18 pounds with ChromaTrim," displayed on screen displayed on screen during Heider testimonial.]

RUSS MANNEX: The jeans had about an extra two inches in the waist. And I knew that jeans don't normally gain size. You can't add to the size of jeans. You can only shrink them by washing them. So I thought well, it's got to be the ChromaTrim.

LAB COAT ANNOUNCER: Now you can make the decision to lose fat the smart way. Once and for all with ChromaTrim. The chewing gum with chromium picolinate. Discovered and patented by the U.S. Department of Agriculture, chromium picolinate is a highly bioavailable source of chromium. In simple terms, that means your body absorbs and uses it better than ordinary chromium found in foods and other supplements. Chromium is an essential mineral that makes your body's insulin work better. And when your insulin works better, you lose fat and preserve muscle. Insulin is also known as the hunger hormones. And when it works better people report that those cravings for sweets disappear. So all you have to do is chew a few pieces of ChromaTrim everyday. It's so easy and so safe. And when you see what the entire system can do for you, you'll say good-bye to yo-yo dieting once and for all.

["Adherence to the complete ChromaTrim system including exercise and a sensible diet is necessary for success," displayed on screen for approximately five seconds while spokesperson is speaking.]

KATHLEEN DEEMS: ChromaTrim definitely helped me take off the weight and take off the fat.

TESTIMONIALIST #A: I was completely impressed with the fact that it worked, and it worked so quickly.

MELISSA LINDSAY: Dave asks me all the time, what do you use? How did you do it? God you know, you're a new person.

VERONICA HALL: It's a new me now. It's a different me. It's a happier me. It's the same me I could have had years ago.

TESTIMONIALIST #B: You kind of get into a mind set where you don't think anything is going to happen. And then suddenly you take something that works and it's wonderful.

ADRIENNE ANTOINE: You just chew the gum and that's it. It's that simple.

LAB COAT ANNOUNCER: Listen to this. In a double blind study of 150 people conducted in conjunction with the University of Texas people who were not given a chromium picolinate supplement -- the placebo group -- saw little fat loss or muscle gain over two months. But, people who were given a chromium picolinate supplement, lost an average of 4.2 pounds of body fat. The bad stuff. And gained 1.2 pounds of muscle mass. The good stuff. Again, in just two months. Now you can get the chromium advantage with ChromaTrim. When you call right now we'll rush you a 60 day supply of ChromaTrim. You simply chew two to three pieces of the mint flavored gum every day. That way your body gets the chromium it needs to help your insulin work better, to burn fat, preserve muscle and control cravings. You'll also get ChromaTrim's no diet nutritional program that allows you to maximize fat loss without starving yourself. And the ChromaTrim smart exercise program to target and tone as you lose the fat. You'll get it all. The complete ChromaTrim system for just \$39.95. And when you call right now you'll also get this ChromaTrim travel case, so you'll never be without ChromaTrim when you're on the go. And it all comes with ChromaTrim's choose-to-lose money back guaranty. Try ChromaTrim in your own home for a full 30 days. See the results for yourself. And if for any reason you're not satisfied just return the system for a full refund. The only thing you have to lose is fat. Here's how to get your own ChromaTrim right now.

[SILENT STILL SHOT OF HOW TO ORDER INFORMATION]

SUSAN RUTTAN: Hi. Welcome back. I'm Susan Ruttan. It seems too easy doesn't it? After years of struggling with your weight, here we are telling you that chewing some gum can help you get control? Yeah, I had the same reaction when I heard about ChromaTrim. It's so simple. But, by understanding how our bodies work, it offers a whole new way to approach losing fat. No, you can't go out and eat a whole box of cookies. You can't be a couch potato and expect to see dramatic results. But once you start seeing results with ChromaTrim, you realize that you've been trying to force your body to lose weight. Rather than working with it. And wait until you see what happens when the people in your life start noticing the new you.

MELISSA LINDSAY: Everybody likes to have someone tell them they look good. But when you actually hear it from people who have seen you big and reduced to little, and they've actually seen your progress on a day-to-day basis, it feels really good.

WENDY WILBURN: A girlfriend was looking at my pictures and she didn't know it was me. She was like who is this? That was me. I was that big.

BELINDA WOODRUFF: Not to have to want to get dressed in another room, you know, to be able to have him appreciate how I look. Those are wonderful experiences. And those are things you don't ever, ever, ever forget.

VERONICA HALL: And there are days sometimes when for people -- man, you look so great. What are you doing? How do you feel? You know? And everybody wants to know how much weight I lost. I don't really mind telling them because it's an encouragement for other people.

TESTIMONIALIST #A: I think they think that I spend a lot more time than I really do. And that's the best part. Because it's kind of like my secret.

SUSAN RUTTAN: You've heard the stories over and over on this program. When you follow the ChromaTrim system and your body gets what it needs, the chromium, you start seeing results. And you'll want to eat healthy. You'll start getting those cravings under control. And you'll look forward to exercise, and with that you'll see that you can feel young again.

RICK GORDON: I feel great. I mean every day when I watch myself on the rebroadcast of the newscast and stuff, I personally can see the results.

ROSEANNE WALKEY: Yeah, I used to be very active. And then there was a period of just kind of giving up. And now it's like I'm getting going.

VERONICA HALL: Sometimes when you have these people act like you're not even in the room, you know. But now, not only am I in the room, they are looking at me and wanting to know what's her secret.

KATHLEEN DEEMS: I have a new boy friend. And I attribute it to the weight loss. I like how I look.

DONNA ALISON: I'm back in the mainstream. I'm doing things that I hadn't done for years. I go dancing. I go out. I go to the movies. I go to plays. I literally stayed in my house when I was carrying all that weight.

WENDY WILBURN: Back when I was a little heavy it was harder for me. It was harder for me to look in the mirror and like myself. To the point where I wanted to get out of bed and motivate myself. Now it's easier. I can motivate myself and get my job done and motivate others.

ADRIENNE ANTONIE: It's really just made me come out of this shell. I was hiding inside this big person.

SUSAN RUTTAN: I want you to know how proud I am to have the opportunity to bring ChromaTrim to you. I know you're sitting out there wondering if it can really work for you. I had the same feeling. But all the people you've seen on the show today are real. The ChromaTrim system worked, really worked for them. And with ChromaTrim's money back guarantee you've got nothing to lose. Remember, order ChromaTrim right now. Try it out for a full 30 days. And if you don't start feeling better and start losing the fat and keeping and even building muscle, you'll get your money back. No questions asked. And please take before pictures of yourself so you can show the world your results too. Here's to losing fat the smart way with ChromaTrim.

BELINDA WOODRUFF: I see again the person full of hope that I was when I was in my 20's. I see that same person. I don't see a person now who is 40 some years old. I mean I just don't see that. And losing the weight has done that for me. The ChromaTrim has helped me get that back.

RUSS MANNEX: Now when I come in in the morning and take a shower, I look in the mirror. Whereas before it might have been a little scary. Now I can look in the mirror and see how I'm doing and say hey, this is working. We're on our way down now.

LAB COAT ANNOUNCER: ChromaTrim. It really is exciting isn't it? You've heard all of the stories and heard what the scientists have discovered too. And now finally you can get control of your body and lose fat the smart way. Doctors agree that taking a chromium picolinate supplement is extremely safe. And with our money back guarantee all you have to lose is unwanted and unhealthy fat. Our ChromaTrim operators are standing by right now to take your order. Just have your credit card ready, and call the toll free number that appears on your screen. If the lines are busy, please try back in a few minutes. Here's to looking and feeling great with ChromaTrim. Bye-bye.

VOICE OVER: This has been a paid advertisement for ChromaTrim. Presented by Universal Merchants.

DISCLOSURES:

- 1) Testimonial participants have been remunerated for their appearances.
- 2) David Alvarado and Belinda Woodruff are employees of a company affiliated with the producer of this advertisement.

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

The Commission having thereafter considered the matter and 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 Universal Merchants, Inc. is a corporation organized, existing and doing business under by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4727 Wilshire Blvd., Suite 510, in the City of Los Angeles, State of California.

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

2. The Federal Trade Commission has jurisdiction of the subject matter of the 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 Universal Merchants, Inc., a corporation, its successors and assigns and its officers; Steven Oscherowitz, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

3. "*In or affecting 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 ChromaTrim or ChromaTrim-100 ("ChromaTrim") or any food, dietary supplement, or drug, as "food" and "drug" 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:

- A. ChromaTrim significantly reduces body fat;
- B. ChromaTrim causes significant weight loss;
- C. ChromaTrim significantly reduces body fat or causes weight loss without dieting or exercise;
- D. ChromaTrim increases lean body mass or builds muscle;
- E. ChromaTrim controls appetite or craving for sugar; or
- F. Nine out of ten people do not consume enough chromium to support normal insulin function, resulting in decreased ability to burn fat, preserve muscle, and control hunger and cravings,

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 ChromaTrim or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, efficacy, or safety of such product, 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 product or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

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 product or program in or affecting commerce, shall not represent, in any manner, expressly or by implication, that any endorsement of the product represents the typical or ordinary experience of members of the public who use the product or program, unless:

A. At the time the representation 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).

V.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI.

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

VII.

It is further ordered, That respondent Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz 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 Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz 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 Universal Merchants, 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 less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified

mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Steven Oscherowitz, 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 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 Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz 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 23, 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 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

TIME WARNER INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3709. Complaint, Feb. 3, 1997--Decision, Feb. 3, 1997

This consent order requires the restructuring of the acquisition by Time Warner of Turner Broadcasting Systems, Inc. by, among other things, requiring Tele-Communications, Inc. ("TCI") to divest its interest in Time Warner to a separate company, requiring TCI, Turner and Time Warner to cancel long-term carriage agreements, barring Time Warner's programming interests from discriminating in carriage decisions against rival programmers, and requiring Time Warner's cable interests to carry a rival to CNN.

Appearances

For the Commission: *William Baer, George Cary, James Fishkin, Thomas Dahdouh and Phillip Broyles.*

For the respondents: *Christopher Bogart, Cravath, Swaine & Moore, New York, N.Y. Kathryn Fenton, Jones, Day, Reavis & Pogue, New York, N.Y. and Neal Stoll, Skaddens, Arps, Slate, Meagher & Flom, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondents Time Warner Inc., Turner Broadcasting System, Inc., Tele-Communications, Inc., and Liberty Media Corporation, all subject to the jurisdiction of the Commission, have entered into various agreements in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that if the terms of such agreements were to be consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: