

IN THE MATTER OF

KAVE ELAHIE

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3770. Complaint, Sept. 19, 1997--Decision, Sept. 19, 1997*

This consent order requires, among other things, the California-based proprietor of M.E.K. International to have competent and reliable scientific evidence to substantiate any claims he makes in the Spanish-language advertisements that certain products reduce or eliminate cellulite and fat, cause weight loss or reduce cholesterol, as well as any other claims concerning the performance, benefits, efficacy or safety of any food, drug or dietary supplement in the future. The consent order also prohibits the respondent from misrepresenting the existence or results of any test or study, and requires any testimonials used in the advertisements either to represent the typical experience of consumers or to be accompanied by a disclosure of the generally expected results.

Appearances

For the Commission: *Erika Wodinsky and Jeffrey Klurfeld.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Kave Elahie doing business as M.E.K. International ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kave Elahie is the sole proprietor of M.E.K. International, a California company with its principal office or place of business at 1669 Emeric Street, Simi Valley, California. Individually or in concert with others, he formulates, directs, or controls the policies, acts or practices alleged in this complaint.

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including the "NutraTrim Bio-Active Cellulite Control Cream" (with aminophylline), and the "NutraTrim Weight Loss" tablets (with chromium picolinate) collectively referred to as the NutraTrim products. The NutraTrim products are advertised in Spanish-language magazines, such as *Buenhogar*. The NutraTrim products are "foods" and/or "drugs"

within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

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

A. "Love handles, cellulite and fat. Now you can eliminate it with NutraTrim Bio-activa cream." (Exhibit A)

B. "Eliminate cellulite. Lose weight in 15 days beginning with the first application." (Exhibit A)

C. "The results are instantaneous and permanent." (Exhibit A)

D. "Imagine a bunch of ice melting under the sun. This is how the cellulite in your body will be disappearing thanks to Bio-Active action of NutraTrim cream." (Exhibit A)

E. "The potent action helps to eliminate the excess water and fat and other wastes that are responsible for cellulite and orange skin. But this is not all. Once you have the perfect body that you have always wanted, you'll have to apply the NutraTrim Bio-Activa only once in awhile and that way you can keep the results that you have always wanted." (Exhibit A)

F. "Until today this is the most secure and beneficial method to eliminate fat and cellulite from your body." (Exhibit A)

G. "Remember the results are guaranteed." (Exhibit A)

H. "Lose up to 35 pounds without having to diet." (Exhibit B)

I. "Yes today you can eliminate fat and cellulite from your body without having to diet and exercise that are impossible." (Exhibit B)

J. "Clinical test results in hospitals and labs have confirmed the actions of chromium formulated with other natural ingredients." (Exhibit B)

K. "NutraTrim is a new treatment that is 100% natural and will help your metabolism to process and eliminate fat and control your appetite." (Exhibit B)

L. "The results are real: You will lose fat and cellulite in the areas that you wish to lose the most. You will feel more active and energetic. It lowers the level of cholesterol in your blood." (Exhibit B)

M. "These results that have been obtained by real multiple tests by scientists and hospitals have proven that the qualities and the ingredients from NutraTrim help to notably eliminate fat and to lessen the level of cholesterol in your blood. Besides, they will not bring down your metabolism. This is very important because it ensures that the weight that you will lose during your treatment will not come back." (Exhibit B)

N. "Call today and see for yourself how easy it is to lose weight forever with NutraTrim. Without dieting and without extraneous exercises or secondary effects. NutraTrim works for real." (Exhibit B)

O. Consumer testimonial: "How I lost 34 pounds in little time, without regimens or diets. Its great. I'll bet you anything that in 4 or 5 weeks you'll be skinny as me. Anabella Torres C." (Exhibit C)

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that one or more of the NutraTrim products:

- A. Significantly reduce body fat.
- B. Cause significant and rapid weight loss.
- C. Reduce serum cholesterol.
- D. Increase human metabolism.
- E. Cause weight loss without diet or strenuous exercise.
- F. Control appetite.
- G. Eliminate cellulite or fat.
- H. Increase energy.

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

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

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that scientific studies demonstrate that the NutraTrim products:

- A. Significantly reduce body fat.
- B. Cause significant and rapid weight loss.
- C. Reduce serum cholesterol.
- D. Eliminate cellulite or fat.

9. In truth and in fact, scientific studies do not demonstrate that the NutraTrim products:

- A. Significantly reduce body fat.
- B. Cause significant and rapid weight loss.
- C. Reduce serum cholesterol.
- D. Eliminate cellulite or fat.

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

10. Through the means described in paragraph four, respondent has represented, expressly or by implication, that a testimonial from

a consumer appearing in the advertisements for a NutraTrim product reflects the typical or ordinary experience of members of the public who use the product.

11. Through the means described in paragraph four, respondent has represented, expressly or by implication, that he possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph ten, at the time the representation was made.

12. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph ten, at the time the representation was made. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

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

407

Complaint

EXHIBIT A

EXHIBIT A

Ltantas, flacidez, piel de naranja, celulitis, grasa ... Ahora puede eliminarlas con la crema NutraTrim Bio-Activa. Pruebe y convéncase.

¡ ELIMINE la celulitis ! ¡ ADELGACE en 15 días y desde la primera aplicación !

Imagínesse un montón de nieve derritiéndose al sol. Así es como la grasa de su cuerpo irá desapareciendo gracias a la acción Bio-Activa de la crema NutraTrim. No piense que es una exageración. Desde su primera aplicación, usted podrá comprobar los fantásticos resultados.

¿ Qué tiene que hacer ?

Muy fácil. Sólo tiene que aplicarse la crema NutraTrim Bio-Activa, con un suave masaje, en la zona deseada, hasta que desaparezca absorbida totalmente por la piel. Repita la aplicación 2 veces al día y ya está. Así de fácil.

Los resultados son instantáneos y permanentes.

No necesitará esperar meses para comprobar los resultados. Desde las primeras aplicaciones usted podrá medir los resultados. La cinta medidora no engaña. NutraTrim no es una crema mágica, sino científica. Gracias a sus componentes Bio-Activos, actúa sobre la lípida, humor acuoso que se halla en diversas partes del cuerpo. Su potente acción ayuda radicalmente a eliminar el exceso de agua, grasa y otros desechos que son los responsables de la celulitis y de la piel de naranja.

Pero esto no es todo. Una vez conseguida la figura deseada, sólo tendrá que aplicar la crema NutraTrim Bio-Activa de vez en cuando y así podrá mantener los resultados para siempre.

La opinión de una Doctora. La doctora Christine Viviani de Suiza está encantada con los resultados de la Crema NutraTrim Bio-Activa. Es completamente natural y además muy fácil de aplicar. No tiene contraindicaciones y realmente ayuda a eliminar los depósitos de grasa en el cuerpo humano. "Yo lo recomiendo a todos mis pacientes, ya que hasta hoy es el método más seguro y eficaz que conozco para eliminar la grasa y la celulitis del cuerpo."

100% CALIDAD

No acepte imitaciones baratas. NutraTrim está elaborado con productos de alta calidad, garantizándole los resultados.



OFERTA ESPECIAL

50% + GRATIS

Compre ahora su crema NutraTrim Bio-Activa y consiga al precio normal de \$26.95 el 50% más de crema. Aprovechese y ahorre.

¡ No lo dude más !

Ahora usted tiene la oportunidad de lucir una silueta bonita y atractiva que cause admiración. Imagínese la cara de sus amigas cuando vean su cambio de aspecto. Más atractiva, más juvenil, más segura de sí misma. Recuerde que los resultados están garantizados. Dese prisa y envíe hoy mismo el cupón de prueba gratuita y aproveche esta oferta de promoción para mejorar en poco tiempo su aspecto. No se arrepentirá.

GARANTIA TOTAL

Pruebe NutraTrim Bio-Activa durante 30 días y si no está satisfecho, devuélvalo y le reintegramos su dinero, menos los gastos de envío.

CUPON DE PRUEBA GARANTIZADA

Recorte y envíe este cupón junto con su cheque o

money order a:

MEK INTERNATIONAL

9514-2 Avenida Blvd., Suite 115

Northridge, CA 91324

información y pedidos

por Teléfono Reser:

(818)888-0224

Pedidos por tarjeta de Crédito:

Número:

Fecha de expiración:

Firma:

1 crema NutraTrim Bio-Activa 4 oz. \$26.95

(Oferta especial 50% + Gratis 2 oz)

2 crema NutraTrim Bio-Activa 4 oz. \$48.90

(Oferta especial 50% + Gratis 4 oz)

Gastos de manejo y envío afilador \$5.95

Envío urgente 2 días \$14.50 (opcional)

*NO COD *CA Residencia 20% Tax Total

Nombre:

Dirección:

Ciudad:

Estado:

País:

Used
by Famous
Hollywood
Stars

EXHIBIT A

ENGLISH TRANSLATION OF EXHIBIT A

Love handles, cellulite and fat. Now you can eliminate it with NutraTrim Bio-activa cream. Try it and convince yourself.

Eliminate cellulite. Lose weight in 15 days beginning with the first application.

Imagine a bunch of ice melting under the sun.

This is how the cellulite in your body will be disappearing thanks to Bio-Active action of NutraTrim cream. Do not think that this is an exaggeration. From your first application you will see the fantastic results.

What do you have to do?

Very simple. All you have to do is apply the NutraTrim Bio-activa cream with a soft massage in the area you want until the cream disappears and it is absorbed totally into the skin. Repeat the application 2 times a day and that is it. It is that simple.

The results are instantaneous and permanent.

You don't need to wait months to compare the results for yourself. Since the first application you will be able to see results. Your measuring tape doesn't lie. NutraTrim is not a magic cream. But it is scientific. Thanks to the components of Bio-Active Cream it works over the linfa. This is something that you'll find over different parts of your body. The potent action helps to eliminate the excess water and fat and other wastes that are responsible for cellulite and orange skin. But this is not all. Once you have the perfect body that you have always wanted, you'll have to apply the NutraTrim Bio-Activa only once in awhile and that way you can keep the results that you have always wanted.

The opinion of one doctor, Dr. Christine Vivienne from Switzerland, loves the results the NutraTrim Bio-Active has given. It is completely natural and very easy to apply. There is no side effects and in reality it does help to eliminate the deposits of fat in the human body. I recommend it to all my patients. Until today this is the most secure and beneficial method to eliminate fat and cellulite from your body. 100% Quality.

Do not accept cheap imitations. NutraTrim is made of high quality products guaranteeing best results.

Special offer 50% more for free.

Buy your NutraTrim Cream today and get it at the regular price of \$26.95 with 50% more cream. Take advantage now and save.

Do not question it any longer.

Now you have the opportunity to have a beautiful silhouette. You'll be so attractive you'll cause admiration. Imagine your friends faces when they see the change in your body. More attractive more younger looking and more secure of yourself. Remember that the results are guaranteed. Hurry and mail your coupon today and take advantage of the promotional offer to look better in less time than you expect. You will not regret it.

Total Guarantee.

Try NutraTrim Bio-Active for 30 days and if you are not happy with the results you can return it and we will return your money minus shipping and handling.

EXHIBIT B

NOVEDAD MUNDIAL

EXHIBIT B

Adelgace hasta 35 lbs. Sin ninguna dieta!

Este revolucionario tratamiento le ayuda verdaderamente a quemar la grasa

Si, ahora usted puede eliminar la grasa y la celulitis de su cuerpo sin necesidad de dietas y ejercicios imposibles. Las pruebas clínicas realizadas en los Hospitales y Laboratorios han confirmado que la acción del Chromium, formulado con otros ingredientes naturales, permite:

- Controlar su apetito, incluso por dulces.
 - Ayudar al metabolismo a quemar grasa.
 - Preservar el tejido muscular aun sin ejercicio.
- Con estos resultados esta vez no puede fallar. Usted adelgaza seguro o le devolvemos su dinero!

No pierda más tiempo ni dinero en productos y dietas milagrosas. NutraTrim es el nuevo tratamiento 100% natural que ayuda a su metabolismo en el proceso de eliminar grasa y control del apetito. Por su composición (minerales, vitaminas y extractos de plantas) NutraTrim es apto para personas de todas las edades y sexos.

Los resultados son reales:

- Pérdida de grasa y celulitis en las zonas deseadas.
- Ayuda a conseguir su peso ideal.
- Sentirse más activo y energético.
- Reduce los niveles de colesterol en la sangre.

Estos resultados obtenidos en las múltiples pruebas realizadas, por científicos y hospitales, demuestran que las cualidades de los ingredientes de NutraTrim ayudan notablemente a eliminar la grasa y a disminuir los niveles de colesterol en la sangre. Además no retrasa su metabolismo. Este aspecto es muy importante, pues le asegura que el peso que vaya a perder durante el tratamiento no lo recuperará de nuevo.

Las ventajas de Nutra Trim:

- 100% natural. Es apto para todo tipo de personas.*
- No contiene excitantes ni anfetaminas.
- No produce mal estar, ni dolores de cabeza, ni mareos o nerviosismo.
- No requiere compra de comida especial.
- No hay que seguir planes o dietas exageradas.
- No produce estrías en la piel.
- No produce flacidez o agumamiento de los tejidos.

* Si usted tiene problemas de salud debe consultar primero con su doctor. Para obtener mejores resultados deberá controlar sus comidas y su estilo de vida.

NutraTrim es un producto registrado y solo se puede comprar a través de esta oferta, o dirigiéndose directamente a MEK INTERNATIONAL.

MEK INTERNATIONAL Tel 818-888-0224

NutraTrim es el sistema mas rapido y eficaz para adelgazar. Compruebe como el peso desaparece y ya no vuelve. (sin receta medica)

Lláme ahora mismo y compruebe que fácil es perder peso para siempre con NutraTrim. Sin dietas, sin ejercicios exagerados, sin efectos secundarios. NutraTrim funciona de verdad.



¡Definitivo!

Envíe este cupón junto con su cheque o money order a:

MEK INTERNATIONAL
9514-2 Reseda Blvd. Suite 115
Northridge, CA 91324

Visa & MC llamar:
818-888-0224

☐ Money Order ☐ Cheque ☐ Visa/MC Deseo perder:

0-15 lbs	15-35 lbs
-1 tratamiento NutraTrim	\$26.95
-Manejo y envío	\$3.00
	\$29.95
Numero _____	32.90
Envío urgente 2 días (opcion)	3.50
	\$36.40
Fecha de expiración _____	No COD
	\$39.40

Firma _____ Residencia de CA añade 6.25% tax

Nombre _____

Ordene! Ahora

Dirección _____

Ciudad _____ Estado _____ ZIP _____ Teléfono _____

EXHIBIT B

ENGLISH TRANSLATION OF EXHIBIT B

World News. Lose up to 35 pounds without having to diet. This revolutionary new treatment, in reality will help you lose fat. Yes today you can eliminate fat and cellulite from your body without having to diet and exercise that are impossible. Clinical test results in hospitals and labs have confirmed the actions of chromium formulated with other natural ingredients:

Will control your appetite including sweets.

Will help your metabolism to burn fat.

Will preserve your muscular tissue without having to exercise.

With these results this time you will not fail. You will lose weight or we will refund your money.

Do not lose more time or money with products or diets that promise you the world. NutraTrim is a new treatment that is 100% natural and will help your metabolism to process and eliminate fat and control your appetite. Because of this composition (minerals, vitamins, plant extracts) NutraTrim can be used by persons of all sexes and ages.

The results are real:

You will lose fat and cellulite in the areas that you wish to lose the most.

They will help to ensure your ideal weight.

You will feel more active and energetic.

It lowers the level of cholesterol in your blood.

These results that have been obtained by real multiple tests by scientists and hospitals have proven that the qualities and the ingredients from NutraTrim help to notably eliminate fat and to lessen the level of cholesterol in your blood. Besides, they will not bring down your metabolism.

This is very important because it ensures that the weight that you will lose during your treatment will not come back.

The advantages of NutraTrim:

100% natural.

Any person can use it.

Does not contain uppers or amphetamine.

Does not induce upset stomach, headaches, dizziness, nervousness.

This does not require a special diet.

You do not have to follow a diet plan.

Does not produce extra/hanging skin.

If you have any problems with your health you should consult your doctor first. For better results you should control your meals and try to help yourself with some type of exercise.

NutraTrim is a registered product and you can only buy it through MEK.

NutraTrim is the quickest and most convenient system to lose weight. You should see for yourself how the weight disappears and stays off (without a doctor's prescription).

Call today and see for yourself how easy it is to lose weight forever with NutraTrim. Without dieting and without extraneous exercises or secondary effects.

NutraTrim works for real.

100% guaranteed. Try NutraTrim and if you are not completely satisfied we will return your money less shipping and handling.

EXHIBIT C

“Cómo logre perder 34 libras en poco tiempo”

[illegible]

Cuando se mire al espejo se quedará estupefacto de ver que ha adelgazado precisamente en los lugares en que más lo necesitaba: el estómago, las piernas, las caderas. Su piel se volverá más suave y más

Feldbus		Cable = 200
()	-	

Utilice usted el sistema NutraTrim corriendo nosotros con todos los riesgos. Tiene usted que ver, día tras día, con el peso. Si no pierde usted todas las libras que le sobran, en 30 días para devolver el dinero y a vuelta de correo le devolveremos su dinero, sin ninguna condición alguna, sin hacerle ninguna pregunta.

Complaint

124 F.T.C.

EXHIBIT C

ENGLISH TRANSLATION OF EXHIBIT C

How I lost 34 pounds in little time, without regimens or diets.

All my life I have been gaining weight. When my baby was born I gained so much weight. Of course I tried so many different things. Nothing would work for me. I really thought that I was a lost cause. You could just say that I was swollen in all of my body, legs, stomach and face. I didn't even know how to dress. I looked horrible and I felt like my husband didn't see me as attractive as before.

I discovered something incredible.

I have a friend. I don't know what she does. She doesn't deprive herself from anything. She eats more than three and for the past year she lost her weight and maintained her body like a model.

One day I asked her what do you do to be so skinny? She confessed her secret to me. A product called NutraTrim that was distributed a couple of years ago.

Let me explain. With this I'm positive that you'll lose weight. Even if you eat a lot. Even if you have tried everything and it didn't work. There is no need to take any medication, no exercise. This product does not have anything to do with others in stores. It has nothing to do with the product you took before. She told me I wouldn't tell you more. You'll see it. Its great. I'll bet you anything that in 4 or 5 weeks you'll be skinny as me.

Without believing me too much, I promised her I would try it, and I bet her a good dinner, I was sure to win. I was sure that if it made her lose weight, it would make me lose weight.

I began to use the system the next day. If you don't want to, then don't believe me, but on the third day I had lost 4 ½ lbs. It seemed like a miracle! That morning, I was well, very light with soft skin. Even my husband noticed the difference he started to admire me, something he hadn't done for a long time.

The first week I had already lost 10 lbs.

I continued because it was really easy and very pleasing. After every NutraTrim session, I experienced the same delicious sensation of well-being, besides I had the joy of seeing how the scale marker kept moving to the left. As I saw myself in the mirror, I could see my shape toning, remodeling day after day. Regimes and deprivations have ceased, I ate everything I wanted and I lost weight like that. Imagine, I had lost pounds the first week! In over a month, I went from 173 lbs to 138 lbs, I had a complete change in form. I had literally "uninflated." My legs, my hips had uninflated and my stomach was very flat. My friend had won her bet and I haven't gained weight; the only thing I have gained is my husband because I think he fell in love again because he has begun to be attentive and delicate like when I knew him.

It also has to work for you!

I spoke with my doctor concerning the treatment. He explained that it was the ideal method truly efficient to lose weight because it works quickly, draining the fat out of the cells, above all on the body parts that mostly need thinning: stomach, legs, face. Besides I had the pleasant surprise that my skin had returned to being more firm, more soft and more flexible.

Anabella Torres C.

This system for weight loss really works.

Utilizing the NutraTrim system (easy work) obtain evident results from the first time. In 48 hours you could lose 2 to 4 pounds. Then you will lose weight day by day until you have your ideal weight.

When you look at yourself in a mirror you will be surprised. To see that you have lost weight in places where you need it. Stomach, legs, hips. Your skin will turn more soft and silky.

Would you like to be more seductive? Would you like to be able to wear those dresses that you like a lot? Would you like to have a husband who is proud of you and crazy in love with you, just like the beginning? It is up to you. Don't permit that your husband keep admiring other women. Like Anabella and all others who have done it, you will be absolutely delighted from the results which you will obtain from the treatment NutraTrim. You can lose from 5 to 10 pounds a week until you reach the weight you want.

If you are not 100% delighted and enthusiastic with your weight loss, simply return the container that had the treatment and we will return your purchase price without any conditions or any questions.

Don't you think that we wouldn't make you a proposition like this unless the results were real.

Don't wait any more. Return the coupon below, right now, today. Don't need to wait to start to lose weight.

Important: Satisfaction 100% guaranteed.

DECISION AND ORDER

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

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

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

1. Respondent Kave Elahie is the sole proprietor of M.E.K. International, a California company with its principal office or place of business at 1669 Emeric Street, Simi Valley, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the 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; and

2. Unless otherwise specified, "*respondent*" shall mean Kave Elahie, individually and doing business as M.E.K. International, his successors and assigns and each of his officers agents, representatives, and employees.

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

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the "NutraTrim Bio-Active Cellulite Control Cream," or "NutraTrim Weight Loss" tablets, or any other food, drug, or dietary supplement, 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:

- A. That such product causes, aids, facilitates or contributes to reducing body fat;
- B. That such product causes, aids, facilitates or contributes to causing rapid weight or body fat loss;
- C. That such product causes or assists in causing weight or fat loss without dieting or strenuous exercise;
- D. That such product reduces serum cholesterol levels;
- E. That such product increases human metabolism;
- F. That such product controls appetite;
- G. That such product increases energy or stamina; or
- H. That such product eliminates cellulite or fat;

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

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the "NutraTrim Bio-Active Cellulite Control Cream," or "NutraTrim Weight Loss" tablets, or any other food, drug, or dietary supplement, 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, regarding the performance, benefits, efficacy, or safety of such product, unless at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of the "NutraTrim Bio-Active Cellulite Control Cream," or "NutraTrim Weight Loss" tablets, or any other food, drug, or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any misrepresentation, in any manner, expressly or by implication, regarding the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

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

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

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

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

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

V.

Nothing in this order shall prohibit respondent 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.

VI.

Nothing in this order shall prohibit respondent 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.

VII.

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

IX.

It is further ordered, That respondent Kave Elahie, for a period of ten (10) 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 Regional Director, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California.

X.

It is further ordered, That respondent 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 he has complied with this order.

XI.

This order will terminate on September 19, 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.

Interlocutory Order

124 F.T.C.

IN THE MATTER OF

BUTTERWORTH HEALTH CORPORATION, ET AL.

Docket 9283. Interlocutory Order, September 25, 1997

ORDER GRANTING MOTION TO DISMISS

On July 22, 1997, respondents Butterworth Health Corporation and Blodgett Memorial Medical Center ("the Hospitals") filed a Motion to Dismiss the complaint in the above-captioned case pursuant to Section 3.26(d) of the Commission's Rules. Complaint counsel filed an Opposition to Respondents' Motion to Dismiss the Proceedings on August 5, 1997. On August 15, 1997, the Hospitals moved for leave to file a Reply Memorandum and on September 2, 1997, complaint counsel moved for leave to file a Response to Respondents' Reply Memorandum. Both motions for leave to file supplemental pleadings are granted.

These proceedings follow the Commission's filing of an action in the United States District Court for the Western District of Michigan seeking a preliminary injunction under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), to prevent a proposed merger of the Hospitals pending completion of an administrative proceeding to determine whether the proposed merger violates Section 7 of the Clayton Act, 15 U.S.C. 18. On September 26, 1996, the district court issued an opinion denying a preliminary injunction. *FTC v. Butterworth Health Corp.*, 946 F. Supp. 1285 (W.D. Mich. 1996). Thereafter, the United States Court of Appeals for the Sixth Circuit affirmed the district court's decision in an unpublished *per curiam* opinion. *FTC v. Butterworth Health Corp.*, No. 96-2440 (6th Cir. July 8, 1997) (*per curiam*).

The rationale for Rule 3.26(d), pursuant to which the Hospitals move, is that although denial of injunctive relief by the courts does not compel the Commission, as a matter of law, to terminate its administrative case, such judicial action justifies respondents in asking the Commission to review closely whether further proceedings are appropriate. The Commission's Policy Statement on Administrative Merger Litigation Following the Denial of a Preliminary Injunction, which was published with Rule 3.26(d), states that the Commission must determine whether to continue or terminate