

IN THE MATTER OF

WESTERN DIRECT MARKETING GROUP, INC., ET AL.

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

Docket C-3821. Complaint, July 28, 1998--Decision, July 28, 1998

This consent order prohibits, among other things, the two California-based advertising agencies, that created and produced infomercials for Cholestaway, from making efficacy, performance, or safety claims for any food, drug or dietary supplement, unless they possess competent and reliable scientific evidence that substantiates the claims. The consent order also prohibits the respondents from representing that any advertisement is something other than a paid advertisement and requires disclosures during the infomercials that they are advertisements. In addition, the consent order prohibits claims that the testimonials and endorsements are typical of the experiences of consumers who use the products, unless the claims are substantiated.

Participants

For the Commission: *Lisa Kopchik and Jeff Bloom.*

For the respondents: *Charles Chernofsky, Chernofsky & deNoyelles, New York, NY.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Western Direct Marketing Group, Inc. and Western International Media Corporation, corporations ("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. At relevant times herein, respondent Western Direct Marketing Group, Inc. was known as Television Marketing Group, Inc., a California corporation with its principal office or place of business at 8544 Sunset Boulevard, Los Angeles, California.
2. Respondent Western International Media Corporation is a California corporation with its principal office or place of business at 8544 Sunset Boulevard, Los Angeles, California.
3. Respondents, at all times relevant to this complaint, were advertising agencies of Bogdana Corporation, and prepared and

disseminated advertisements to promote the sale of Cholestaway wafers and capsules. Cholestaway is a product subject to the provisions 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 television advertisements for Cholestaway, including but not necessarily limited to the attached Exhibit A. This advertisement contains the following statements:

Consumer One: "My cholesterol level was 230 and now it's 179. That's great."

Consumer Two: "My cholesterol at this point is down more than a hundred points."

Consumer Three: "My cholesterol was 220. After three months, my cholesterol went down to 190."

Host One: "Just what is it that lowered these people's cholesterol levels so dramatically? This is it. (He puts two Cholestaway tablets in his hand) A new, completely safe scientifically proven method that is as simple as chewing two flavorful wafers with every meal. It is called Cholestaway. (Graphic: 'Guarantees to Lower Your Blood Cholesterol Level') It is not a prescription drug, not a chemical, but a simple all natural dietary supplement that guarantees to lower your blood cholesterol level or your money back. That is right. It guarantees to lower your cholesterol." (Exhibit A, Cholestaway Television Infomercial 2, p. 1).

....
Host One: "This is a cross-section of an artery. When there is too much cholesterol present in the bloodstream, it begins building up fatty deposits on the artery wall narrowing the opening, sort of like rust builds up on an old water pipe. When this opening becomes clogged, the blood flow to the heart is interrupted, causing a heart attack." (Exhibit A, p. 3).

....
Host One: "With all natural Cholestaway, you get proven results without drugs, and without side effects. Studies were done at several prestigious research institutes on the effects of adding dietary calcium and magnesium, the ingredients found in Cholestaway, to the diet. Although not every study was created to determine the effect on blood serum cholesterol, it was noted that cholesterol levels were reduced, and in one study, by as much as 25%. One study even measured a weight loss, while another reported no loss at all.

(Graphic: "PROVEN TO LOWER BLOOD CHOLESTEROL BY SCIENTIFIC RESEARCH STUDIES.")

It was concluded, however, that, taken in sufficient dosages, these dietary supplements will lower cholesterol levels. The results by users, while anecdotal, is [sic] proof positive." (Exhibit A, p. 4).

....

(A bottle of Cholestaway is shown on a table next to the "Physician's Desk Reference." Host Two picks up the bottle and holds it.)

Host Two: "And that is the beauty of Cholestaway. It lets you eat like you normally would. Of course, when I say normal, I don't mean pizza every night, or ice cream and cake with every meal. What you normally eat." (Exhibit A, pp. 4, 5).

....

Host Three: "Studies have proven Cholestaway's effectiveness in lowering cholesterol. Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It is that simple. And it is completely safe." (Exhibit A, p. 6).

....

Consumer Four: "I went for an annual check-up and had a blood test done, and found that my cholesterol was at 274. And they suggested that I start medication, if I don't do something about changing it. And I refused that. So in hearing about Cholestaway, I started taking it, and found that I dropped down to 208, which I think is fantastic."

(Graphic: "The Results of Using Cholestaway may vary from individual to individual.") (Exhibit A, pp. 6,7).

....

Host One: "Now, I would like to introduce you to the man who discovered Cholestaway, Dr. DeLamar Gibbons, former Director of Clinical Research for the Saturday Evening Post, and author of several books on cholesterol and diets."

....

Gibbons: "This is what I did. I ate a pound, I weighed it out, I had little scales, and I weighed out a pound of Kentucky Fried Chicken. I didn't peel the skin off or anything -- as fat as I could. And I took the same amount of Cholestaway that this inmate was taking. And for 60 days in a row, I ate a pound of Kentucky Fried Chicken."

Host Two: "You ate a pound of Kentucky Fried Chicken for sixty days?"

Gibbons: "Every day."

Host Two: "Every day?"

Gibbons: "Every day. And at the end of the sixty days, I checked, and my cholesterol had dropped remarkably. And my blood fat had gone down. And to my surprise, I had lost 25 pounds." (Exhibit A, p. 8).

....

Consumer Five: "I've been on Cholestaway for about two months now. And in the process of getting my cholesterol tested, my cholesterol has come down. At this point, my cholesterol is down over a hundred points. The pluses to this have been that I can eat almost whatever I want, within reason, eggs, corned beef sandwich for lunch occasionally, and I'm still showing improvement, plus I've lost weight." (Graphic: "The results of using Cholestaway will vary from individual to individual.")

(Graphic: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.") (Exhibit A, p. 10).

....

Dr. Dalton: "Dr. Gibbons and I were working together in the state correctional system in Virginia. And I was under the care of some physicians who were taking care of my health. I had a diabetic condition, which seemed to get out of hand. And my triglycerides as well as my cholesterol went so high, that it was very threatening. As a matter of fact, the triglycerides should only be around 200 as the cholesterol should. And my triglycerides were over 1600, and the cholesterol was over 500.

....

Dr. Dalton: So we started on Cholestaway. And within several weeks, my chemistry concerning the triglycerides and cholesterol had dropped to near normal. By one month, they were both within normal range. And it was one of the best things that had ever happened to me."

(Graphic: "The results of using Cholestaway will vary from individual to individual.") (Exhibit A, p. 13).

....

Consumer Three: "Yes, I had a side effect, an unusual side effect and a happy one. I lost 30 pounds."

Host Two: "You lost 30 pounds."

Dr. Dalton: "That's interesting Barbara, because I had the same experience. I lost 50 pounds over the past five years."

(Graphic: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

Host Two: "Fifty pounds?"

Consumer Three: "That's wonderful."

Dr. Dalton: "Exactly."

Host Two: "Just what in Cholestaway causes one to lose the weight?"

Dr. Dalton: "Again, as Dr. Gibbons explains, it's the calcium combining with the fat in food and it simply never goes into the system. It's a very simple, but very effective mechanism." (Exhibit A, pp. 14, 15).

....

Gibbons: "Cholestaway is perfectly safe for high blood pressure. In fact, there have been studies in the last year or two employing the ingredients of Cholestaway to treat high blood pressure. Some people with high blood pressure are found to be low on their calcium. And Cholestaway is an excellent source of calcium. And it would probably be very favorable to people with high blood pressure." (Exhibit A, p. 18).

....

Gibbons: "They put cholesterol in a machine that's like a cream separator. And it's the high density that stays in the milk part, and the low density that comes out of the cream part. The low density is thought to be the bad one and the high density is felt to be the good one. The ratio of one to the other is currently regarded as important. The Cholestaway seems to be getting rid of primarily the low density cholesterol and improving the ratio."

....

Host Two: "Yes, there is one major side effect while on Cholestaway. You will probably lose weight." (Exhibit A, p. 19).

6. Through the use of the trade name "Cholestaway," and through the means described in paragraph five, respondents have represented, expressly or by implication, that:

- A. Cholestaway significantly lowers serum cholesterol levels.
- B. Cholestaway significantly lowers serum cholesterol levels without changes in diet.
- C. Cholestaway significantly lowers serum cholesterol levels and causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza.
- D. Cholestaway substantially reduces or eliminates the body's absorption of dietary fat.
- E. Cholestaway lowers low density lipoprotein cholesterol and improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio.
- F. Cholestaway is effective in the treatment of hardening of the arteries and heart disease.
- G. Cholestaway causes significant weight loss.
- H. Cholestaway causes significant weight loss without changes in diet.
- I. Cholestaway significantly reduces blood triglyceride levels.
- J. Cholestaway significantly reduces elevated blood pressure.
- K. Testimonials from consumers appearing in the advertisements for Cholestaway reflect the typical or ordinary experience of members of the public who use the product.

7. Through the use of the trade name "Cholestaway," and 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:

- A. Scientific studies prove that Cholestaway significantly lowers serum cholesterol levels.
- B. Scientific studies prove that Cholestaway significantly reduces elevated blood pressure.

10. In truth and in fact:

- A. Scientific studies do not prove that Cholestaway significantly lowers serum cholesterol levels.
- B. Scientific studies do not prove that Cholestaway significantly reduces elevated blood pressure.

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

11. Respondents knew or should have known that the representations set forth in paragraphs seven and nine were, and are, false or misleading.

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

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"Transcript of Cholestaway Television Infomercial #2"

Graphic (with voiceover):

The following is a paid program brought to you by Television Marketing Group and contains testimonials from consumers relating their personal experiences using Cholestaway to reduce their cholesterol levels. These testimonials are personal accounts and have not been scientifically recorded. Although some users have also experienced a weight loss using Cholestaway, it is not intended as a weight loss product. Remember the results of taking Cholestaway will vary from individual to individual.

UNIDENTIFIED WOMAN #1:

My cholesterol level was 230 and now its 179. That's great.

UNIDENTIFIED MAN:

My cholesterol at this point is down more than a hundred points.

UNIDENTIFIED WOMAN #2:

My cholesterol was 220. After three months, my cholesterol went down to 190.

MR. MACHADO:

(Holding bottle of Cholestaway)

Just what is it that lowered these people's cholesterol levels so dramatically? This is it.

(Puts two Cholestaway tablets in his hand)

A new, completely safe scientifically proven method that is as simple as chewing two flavorful wafers with every meal. It is called Cholestaway.

(Graphics reading "NOT A DRUG," "NOT A CHEMICAL," "ALL NATURAL DIETARY SUPPLEMENT" and "GUARANTEES TO LOWER YOUR BLOOD CHOLESTEROL LEVEL" are shown to correspond with script.)

It is not a prescription drug, not a chemical, but a simple all natural dietary supplement that guarantees to lower your blood cholesterol level or your money back. That is right. It guarantees to lower your cholesterol.

"Mario Machado Television & Radio Commentator"

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Hello. I am Mario Machado. And welcome to our show. Here to help me tell you more about this revolutionary new breakthrough in controlling your cholesterol is a good friend of mine, Roni Margolis-Liddy.

(Roni Margolis-Liddy is shown and bottom of screen reads "Roni Margolis-Liddy.")

Hi, Roni.

MS. LIDDY:

Hi, Mario.

The three people you saw at the beginning of our program had, like more than 65 million Americans, a higher than normal blood cholesterol. In fact, there is a good chance that you have a high cholesterol level yourself.

Now I said that they had high cholesterol. But thanks to Cholestaway, their cholesterol levels have returned to an acceptable level. And just what is acceptable? Let's take a look.

A chart labeled "Cholesterol Levels" across the top is shown with subheadings: "Acceptable under 200," "Borderline 200 to 259" and High Above 260." A graph line rises as she continues to speak.

The National Cholesterol Education Program regards cholesterol levels under 200 as acceptable. Readings of 200 to 239 are considered borderline. And those of 240 and above are considered high.

Mario Machado writes the words "CHOLESTEROL" on a green board.

MR. MACHADO:

Now, first of all, let me explain that cholesterol has been getting a bad rap. You see, cholesterol, a wax-like substance processed in the liver, is essential to life. The human body needs cholesterol to manufacture cells, membranes, nerve tissues, hormones, and bile acids to digest food.

It is when there is too much cholesterol in our system that the trouble begins.

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Mario Machado writes "240" on the board.

If you have a blood cholesterol level of over 240, you are probably a good candidate for a heart attack. Here is why:

(Mario Machado draws a circle to represent an artery. He then colors in the circle to represent fatty deposits building-up.)

This is a cross-section of an artery. When there is too much cholesterol present in the bloodstream, it begins building up fatty deposits on the artery wall narrowing the opening, sort of like rust builds up on an old water pipe. When this opening becomes clogged, the blood flow to the heart is interrupted, causing a heart attack.

MS. LIDDY:

But heart disease isn't the only symptom linked to high cholesterol. It can cause visual problems, forgetfulness, leg cramps, and difficulty in hearing, just to name a few.

MR. MACHADO:

Now the real trick is to get rid of all of this excess cholesterol. To do this, most doctors prescribe drugs. But these can cause a variety of side effects that sometimes can be just as dangerous as having high cholesterol.

MS. LIDDY:

(Opens up a copy of the Physician's Desk Reference as she speaks)

Here is what the Physician's Desk Reference, a well-respected journal within the medical profession, says about the side effects of one of the more popular drugs prescribed for controlling high blood cholesterol:

"Caution: Can cause liver dysfunction, hypertension, ulcers, skin diseases, insomnia, thyroid abnormalities, vomiting, anorexia, cataracts, seizures," and on and on and on and on.

(Studies from the Laboratory of Biochemical Genetics and Metabolism, Rockefeller University, New York; the Arteriosclerosis Research Group, St. Vincent's Hospital, Montclair, New Jersey; the Department of Internal Medicine, University of Texas; and the Digestive Disease

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Center, Veterans Administration Medical Center, Houston, Texas are shown as Mr. Machado speaks.)

MR. MACHADO:

With all natural Cholestaway, you get proven results without drugs, and without side effects. Studies were done at several prestigious research institutes on the effects of adding dietary calcium and magnesium, the ingredients found in Cholestaway, to the diet. Although not every study was created to determine the effect on blood serum cholesterol, it was noted that cholesterol levels were reduced, and in one study, by as much as 25%. One study even measured a weight loss, while another reported no loss at all.

(The words "PROVEN TO LOWER BLOOD CHOLESTEROL BY SCIENTIFIC RESEARCH STUDIES are shown on the screen.)

It was concluded, however, that, taken in sufficient dosages, these dietary supplements will lower cholesterol levels. The results by users, while anecdotal, is proof positive.

MS. LIDDY:

Let's be honest. There is a simple, easy way to help lower your cholesterol. And that is by eating a proper diet. But just how many of us have the will power to stay on a fat-free diet? I know I don't. We all have good intentions. But because of our job, lack of time, too much work, whatever, we just cannot always eat correctly.

And just what is considered a high-cholesterol diet? Well, fats, of course, like butter, oils, cheese, pork, rich gravies, shell fish, whole milk, cream — all of the good stuff.

(The words "BUTTER," "OILS," "CHEESE," "PORK," "GRAVY," "SHELLFISH," and "WHOLE MILK" are shown on the screen as she mentions them.)

(A bottle of Cholestaway is shown on a table next to the PDR. She picks up the bottle and holds it.)

And that is the beauty of Cholestaway. It lets you eat like you normally would. Of course, when I say normal, I don't

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mean pizza every night, or ice cream and cake with every meal. What you normally eat. You simply take two Cholestaway wafers with each meal. They are vanilla flavored, and they actually taste good. And your blood cholesterol is lowered, guaranteed. It is that simple.

("Calcium carbonate and magnesium are generally recommended as safe by the FDA" is shown in small letters at the bottom of the screen.)

It is not only effective, it is all natural. That is what I especially like about it. It is not a drug. In fact, Cholestaway is actually good for you. It contains calcium and magnesium, both important to your health.

("This is a paid commercial" is shown at the bottom of the screen when she says the word "magnesium.")

JIM CHAPEL:
(Testimonial)

I've had a problem with my cholesterol for the past 10 years. It was up to 278 two months ago. I tried everything. I tried niacin. I tried getting my diet down to five percent fat -- nothing seemed to work. I saw Cholestaway on television, and I tried it and in two months it went from 278 to 258. I was very happy about it.

(As he speaks the words "The results of using Cholestaway will vary from individual to individual" appears at the bottom of the screen.)

FEMALE ANNOUNCER:

If you are one of the over 65 million Americans who suffer from high blood cholesterol, you will be happy to know that there is a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It is called Cholestaway.

(Scene fades and the woman appears in a garden holding a bottle of Cholestaway.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back. That is right. It's guaranteed.

But don't just take our word for it.

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(She holds up a study. At the bottom of the screen, in small letters, the words "All products have possible, but remote side effects. See product literature.")

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(She picks up the bottle, opens it and takes out two wafers.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It is that simple. And it is completely safe.

(The words "Calcium carbonate and magnesium are generally recognized as safe by the FDA" appear at the bottom of screen in small letters.)

So if you are concerned about cholesterol, call the number on the screen, and order Cholestaway now.

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax]. Under this "Not Available in Stores." In the middle of the screen "Send Check to: TMG/Cholestaway, P.O. Box 803377, Dallas, TX, 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8344 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

ROSLYN GERNSTADT:
(Testimonial)

I went for an annual check-up and had a blood test done, and found that my cholesterol was at 274. And they suggested that I start medication, if I don't do something about changing it. And I refused that. So in hearing about

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Cholestaway, I started taking it, and found that I dropped down to 208, which I think is fantastic.

(At bottom of picture you can read: "The Results of Using Cholestaway may vary from individual to individual.")

FEMALE ANNOUNCER:

Now, if you don't know if you have a high cholesterol level or not, have a pencil and paper handy, because later in the program we will give you a little quiz to see if you are at risk.

MR. MACHADO:

Now, I would like to introduce you to the man who discovered Cholestaway, Dr. DeLamar Gibbons, former Director of Clinical Research for the Saturday Evening Post, and author of several books on cholesterol and diets. Thank you for joining us, sir. Tell us about the genesis of the product. How did it come about? And I hear that it had something to do with prisons.

DR. GIBBONS:

At the time that I discovered Cholestaway, I was the medical director for a state prison in Virginia. And I had under my care an individual that I thought, the vessels under his skin all stood out. And I could even trace some of the nerves in his skin. I had never seen an individual look like this. He had good muscles, and he was obviously quite healthy.

I thought maybe he is on one of those special diets that many of the prisoners put themselves on. I went to the mess hall to watch him eat. And gosh, he gobbled up his tray, and half of his neighbor's. It wasn't the diet.

So I said pull his medical record for me. And interestingly enough, he had had thyroid cancer. And in taking his thyroid out, they took his parathyroid glands out.

MR. MACHADO:

And that causes what?

DR. GIBBONS:

It upsets --

MR. MACHADO:

A voracious appetite?

DR. GIBBONS:

No. It has to do with calcium metabolism. And to correct

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this problem, he was taking a crude form of Cholestaway. And my first love was chemistry. I thought, ah, I know why he looks so peculiar. He isn't able to absorb any of the fat in his diet. He is fat starved. This is interesting. As I thought about it, I decided that I would try it on myself.

MR. MACHADO:

You were going to be your own guinea pig?

DR. GIBBONS:

This is what I did. I ate a pound, I weighed it out. I had little scales, and I weighed out a pound of Kentucky Fried Chicken. I didn't peel the skin off or anything -- as fat as I could. And I took the same amount of Cholestaway that this inmate was taking. And for sixty days in a row, I ate a pound of Kentucky Fried Chicken.

MS. LIDDY:

You ate a pound of Kentucky Fried Chicken for sixty days?

DR. GIBBONS:

Every day.

MS. LIDDY:

Every day?

DR. GIBBONS:

Every day. And at the end of the sixty days, I checked, and my cholesterol had dropped remarkably. And my blood fat had gone down. And to my surprise, I had lost 25 pounds.

MS. LIDDY:

You lost weight?

DR. GIBBONS:

I lost 25 pounds. The beautiful thing about Cholestaway is it's all natural and it's even good for you. It isn't a drug. It isn't a medicine. What it is is the natural minerals from hard water.

MR. MACHADO:

And what does that do to the system?

DR. GIBBONS:

(A chart with the stomach, liver and intestines is shown. Cholic acid is labeled in the liver and little arrows show the process that Dr. Gibbons describes. When he mentioned Cholestaway by name, the word "Cholestaway" appears on the chart.)

Our livers process cholesterol, which is then excreted in the bile in the form of cholic acid. As the bile enters the intestine, the soluble cholic acid looks like food to the

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intestines and it's absorbed into the bloodstream. The absorbed cholic acid is carried back to the liver and is excreted in the bile and then reabsorbed again from the intestine. Cholestaway interrupts this cycle by combining with the cholic acid to form an insoluble residue that can't be reabsorbed.

MR. MACHADO: That's incredible.

DR. GIBBONS: It robs you of fat calories and with it it takes excess cholesterol.

MR. MACHADO: Two a day per meal?

DR. GIBBONS: With each meal. And you know, I like pizza. And if I'm going to have pizza I maybe take two or three extras.

(A pizza is shown and someone with a bottle of Cholestaway putting three wafers in the palm of the hand.)

MR. MACHADO: But the general regimen that you are stating is that you take two tablets per meal for how long a period of time?

DR. GIBBONS: Well, as long as you need it. It isn't going to hurt you. It's good for you.

MR. MACHADO: I want to thank you for being with us Dr. Gibbons, and for sharing your knowledge and also sharing Cholestaway with us. Thank you. We'll see you again later in the program. Stay tuned. We'll be right back with some satisfied users who each have an incredible success story to tell us.

("This is a paid commercial" at bottom of screen.)

MS. LIDDY: Thank you.

DR. GIBBONS: Thank you.

FEMALE ANNOUNCER: O.K. Do you have a paper and pencil handy? Here are five questions, the answers to which will tell you if you're at risk of having a high cholesterol level. Number 1: Does anyone in your family have high cholesterol? Number 2: Do you smoke? Number 3: Do you have a stressful job or

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do you often find yourself under a lot of pressure? Number 4: Do you eat a lot of foods high in fat? And Number 5: Do you seldom exercise?

(A chart, with the same five questions is shown on the screen. As the announcer reads each question, a check is put in the box before each question.)

(Announcer is shown holding a bottle of Cholestaway)

Now, if you answered 'yes' to any three of these questions, you're at risk of having a high cholesterol level and it would be a good idea to have it checked. Remember, high levels can lead to all kinds of health problems. But as you've seen, all natural Cholestaway is a safe and easy way to keep it under control.

STEVEN BRODY:
(Testimonial)

I've been on Cholestaway for about two months now. And in the process of getting my cholesterol tested, my cholesterol has come down. At this point, my cholesterol is down over a hundred points. The pluses to this have been that I can eat almost whatever I want, within reason, eggs, corned beef sandwich for lunch occasionally, and I'm still showing improvement, plus I've lost weight.

(As he talks "The results of using Cholestaway will vary from individual to individual" appears. As he says "I'm still showing improvement" the following statement appears at the bottom of the screen: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

FEMALE ANNOUNCER
#1:

If you're one of the over 65 million Americans who suffer high blood cholesterol, you'll be happy to know there's a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It's called Cholestaway.

(A bottle of Cholestaway is shown. She picks up the bottle.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

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That's right. It's guaranteed. But don't just take our word for it.

(She holds up a study. "All products have possible but remote side effects. See product literature." appears in small letters at the bottom of the screen.)

Studies have proven Cholestaway's effectiveness in lowering cholesterol. And just how does Cholestaway work? Let's take a look.

(A chart with the stomach, liver and intestines is shown. Cholic acid is labeled in the liver and little arrows show the process that announcer describes. When she mentions Cholestaway by name, the word "Cholestaway" appears on the chart.)

Our liver processes cholesterol, which is excreted in the bile in the form of cholic acid. As the cholic acid enters the intestines, it looks like food to your body and it's absorbed into the bloodstream. The absorbed cholic acid is carried back to the liver and is excreted in the bile and reabsorbed through the intestines again and again. Cholestaway interrupts this cycle by combining with the cholic acid to form an insoluble residue that can't be reabsorbed.

(Announcer is seated on a table in a room. She picks up the bottle and pours them into her hand.)

Just two flavorful wafers with every meal can lower you cholesterol count almost immediately. It's that simple. And it's completely safe. So if you're concerned about cholesterol call the number on the screen and order Cholesterol now.

("Calcium carbonate and magnesium are generally recognized as safe by the FDA" appears at the bottom of the screen when she says "completely safe.")

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [C.A. +

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tax.] Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway, P.O. 803377 Dallas, TX. 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069."

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

CAMILLA ROSENDE-
LOPEZ:
(Testimonial)

My cholesterol, it was very, very high. I diet. Everything that they say that is bad, I do not eat it. I exercise every day and even then, my cholesterol does not went down. Now one day, I was changing channels when I saw [the advertisement] on Cholestaway and I decided to try it. I did and from 286 to 235, very slowly, very surely, it works on me.

(As she speaks "The results of using Cholestaway will vary from individual to individual" appears at the bottom of the picture.)

FEMALE ANNOUNCER
#2:

If you order Cholestaway right now, you'll have the opportunity to purchase CholesTrak.

(Holds up box of CholesTrak and removes device from box. At bottom of screen "Manufactured by ChemTrak, the leader in home test medical products.")

CholesTrak is a unique home testing device that allows you to check your cholesterol level, quickly, easily and accurately right in the comfort of your own home. This same device is often used by doctors on their patients.

("97% ACCURATE" appears on the screen when she says "97% accurate.")

And it's 97% accurate when used as directed.

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(Picture of the CholesTrak box appears. To the left "\$19 Value Only \$12.95. Under the box to the left "One time use only.")

A \$19.00 value -- we're offering it to you for only \$12.95. Now with CholesTrak you can see exactly how much your cholesterol level has dropped using Cholestaway.

MS. LIDDY:

This is Dr. Fred Dalton. Dr. Dalton is a recognized forensic psychiatrist, and has had several papers published on the subject. Welcome, Doctor.

DR. DALTON:

Thank you.

MS. LIDDY:

I understand that your story has something to do with Dr. Gibbons, something about him saving your life.

DR. DALTON:

Dr. Gibbons and I were working together in the state correctional system in Virginia. And I was under the care of some physicians who were taking care of my health. I had a diabetic condition, which seemed to get out of hand. And my triglycerides as well as my cholesterol went so high, that it was very threatening. As a matter of fact, the triglycerides should only be around 200 as the cholesterol should. And my triglycerides were over 1600, and the cholesterol was over 500. My doctors had warned me, and they had put me on different types of medications. I had side effects to them, and it was a very unhappy situation.

And in talking with my friend, Dr. Gibbons, he suggested let's give it a try. So we started on Cholestaway. And within several weeks, my chemistry concerning the triglycerides and cholesterol had dropped to near normal. By one month, they were both within normal range. And it was one of the best things that had ever happened to me.

(As he speaks the words "The results of using Cholestaway will vary from individual to individual" appear at the bottom of the screen in small letters.)

MR. MACHADO:

I am sure your doctor was just as surprised if not more than you.

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DR. DALTON: Interestingly enough, several of the physicians who were caring for me at that time, and I still have those physicians, are taking Cholestaway themselves.

MR. MACHADO: How about side effects, did you experience any?

DR. DALTON: None whatsoever. However, as I mentioned, from the medications which were prescription only and which doctors frequently prescribe for hypercholesterolemia, there were numerous side effects. And unfortunately, I was a victim of that.

MR. MACHADO: Thank you for sharing your story with us, Doctor.

MS. LIDDY: This is Barbara Egyude. Hello, Barbara.

MS. EGYUDE: Hello.

MS. LIDDY: I heard that you have an unusual story to tell us concerning Cholestaway.

MS. EGYUDE: Yes, I had a side effect, an unusual side effect and a happy one. I lost 30 pounds.

MS. LIDDY: You lost 30 pounds.

DR. DALTON: That's interesting Barbara, because I had the same experience. I lost 50 pounds over the past five years.

("If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur" appears at the bottom of the screen in small letters.)

MS. LIDDY: Fifty pounds?

MS. EGYUDE: That's wonderful.

DR. DALTON: Exactly.

MS. LIDDY: Just what in Cholestaway causes one to lose the weight?

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DR. DALTON: Again, as Dr. Gibbons explains, it's the calcium combining with the fat in food and it simply never goes into the system. It's a very simple, but very effective mechanism.

MS. LIDDY: It sounds very effective.

DR. DALTON: It is.

MS. LIDDY: Remember, Cholestaway is not a weight-loss program. Any weight loss you experience is merely a side effect.

MS. EGYUDE: And may I say a very nice side effect.

MS. LIDDY: Yes, I agree.

("This is a paid commercial" appears at the bottom of the screen in small letters.)

MS. LIDDY: Thank you all for joining us, and sharing your experiences with our viewers. Thank you.

REGINE JOHNSON:
(Testimonial)

I had a very high cholesterol count. And my physician had recommended -- she was going to put me on medication. And someone told me about Cholestaway. And I have been taking it, and my cholesterol level is down to its normal level, and I have lost quite a bit of weight as a bonus to that.

("The results of using Cholestaway will vary from individual to individual" appears at the bottom of the screen in small letters.)

FEMALE ANNOUNCER
#1:

If you're one of the over 65 million Americans who suffer from high blood cholesterol, you'll be happy to know there's a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It's called Cholestaway.

(A bottle of Cholestaway is shown. She picks up the bottle.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

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That's right. It's guaranteed. But don't just take our word for it.

(She holds up a study. "All products have possible but remote side effects. See product literature." appears at the bottom of the screen.)

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(Announcer is seated on a table in a room. She picks up the bottle and pours them into her hand.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It's that simply. And it's completely safe. So if you're concerned about cholesterol call the number on the screen and order Cholestaway now.

("Calcium carbonate and magnesium are generally recognized as safe by the FDA" appears at the bottom of the screen when she says "completely safe.")

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax.] Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway, P.O. 803377 Dallas, TX. 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

EARDIE ANDERSON:

I was told that I had high cholesterol. And I was told about Cholestaway. And I started to take it. And after I guess

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about four months or so. I went to my doctor, and I was told that my cholesterol had gone really down. Because at first it was 286, and it went — she didn't tell me how much it went down. But she told me it was good, that it went all the way down: That is what I was told. And I was very glad.

FEMALE ANNOUNCER
#2:

If you order Cholestaway right now, you'll have the opportunity to purchase CholesTrak.

(Holds up box of CholesTrak and removes device from box. At bottom of screen "Manufactured by ChemTrak, the leader in home test medical products.")

CholesTrak is a unique home testing device that allows you to check your cholesterol level, quickly, easily and accurately right in the comfort of your own home. This same device is often used by doctors on their patients.

("97% ACCURATE" appears on the screen when she says "97% accurate.")

And it's 97% accurate when used as directed.

(Picture of the CholesTrak box appears. To the left "\$19 Value Only \$12.95. Under the box to the left "One time use only.")

A \$19.00 value — we're offering it to you for only \$12.95. Now with CholesTrak you can see exactly how much your cholesterol level has dropped using Cholestaway.

MR. MACHADO:

Rejoining us is Dr. Gibbons to help with this question and answer segment of our show. We recently went out onto the streets to get some of the most often-asked questions pertaining to cholesterol and Cholestaway, and let's listen in.

QUESTION:

How can I find out what my cholesterol level is?

DR. GIBBONS:

The simplest way is to go to your doctor, and have a physical check-up, and have your blood tested. A very quick and accurate way is to use the CholesTrak kit. It

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allows you to check your cholesterol level right in the comfort of your own home. Simply and easily.

MR. MACHADO:

Let's go see who this person is.

QUESTION:

I have a teenage daughter that has high cholesterol. Can she take Cholestaway?

DR. GIBBONS:

Cholestaway is safe for all ages. It is a perfectly natural preparation. And there is no problem giving it to children, if they have high cholesterol. There has been a lot of interest lately on children I would say in families that have a history of high cholesterol. It is important to check the children. Because some teenagers and some in their early twenties are dying of heart attacks.

QUESTION:

My father has high blood pressure and high cholesterol. Can he take Cholestaway?

MR. MACHADO:

That is a good question. In fact, I do have high blood pressure. A lot of people do. A lot of my friends do.

DR. GIBBONS:

Cholestaway is perfectly safe for high blood pressure. In fact, there have been studies in the last year or two employing the ingredients of Cholestaway to treat high blood pressure. Some people with high blood pressure are found to be low on their calcium. And Cholestaway is an excellent source of calcium. And it would probably be very favorable to people with high blood pressure.

QUESTION:

How long can you stay on Cholestaway?

DR. GIBBONS:

Indefinitely. It isn't a medicine. It is a food supplement. It is natural. You don't get too much of it. As I mentioned, it has calcium in it. Women should be taking Cholestaway anyway to keep their bones hard. So you can take it indefinitely.

MS. LIDDY:

So it would help in osteoporosis, perhaps?

DR. GIBBONS:

Definitely.

MS. LIDDY:

I'm curious, Doctor. What are these margarine companies

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talking about when they refer to, good cholesterol?

DR. GIBBONS:

They put cholesterol in a machine that's like a cream separator. And it's the high density that stays in the milk part, and the low density that comes out of the cream part. The low density is thought to be the bad one and the high density is felt to be the good one. The ratio of the one to the other is currently regarded as important. The Cholestaway seems to be getting rid of primarily the low density cholesterol and improving the ratio.

QUESTION:

What if you have an ulcer, or if you had an ulcer, could you still take Cholestaway?

DR. GIBBONS:

It is actually a good idea to take Cholestaway. It is an excellent antacid among other things. And ulcer patients will get considerable relief when they take the Cholestaway. Some people have told me that they took it as an antacid. But it is definitely safe for people with ulcers.

MR. MACHADO:

We have time for one more question. So let's listen here.

QUESTION:

Are there any side effects from Cholestaway?

MS. LIDDY:

I'll answer that one. Yes, there is one major side effect while on Cholestaway. You will probably lose weight.

(The following statement appears at the bottom of the screen in small letters: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

MR. MACHADO:

Now, the results of using Cholestaway varies with every individual. Your experience with Cholestaway might differ from what we've heard here today. I'd like to thank our incredible guest Dr. DeLamar Gibbons, the discoverer of this extraordinary cholesterol-reducing product, Cholestaway, for being on our program today. Remember, you can order Cholestaway right now by calling the 800-number no the screen.

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("This is a paid commercial" appears on the screen.)

MADELINE WALSH:
(Testimonial)

I originally had a cholesterol problem of 278 and now it has dropped down to 238.

("The results of using Cholestaway will vary from individual to individual" appears at bottom of screen in small letters.)

FEMALE ANNOUNCER
#1:

If you are one of the over 65 million Americans who suffer from high blood cholesterol, you will be happy to know that there is a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It is called Cholestaway.

(Scene fades and the woman appears in a garden holding a bottle of Cholestaway.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back. That is right. It's guaranteed.

But don't just take our word for it.

(She holds up a study. At bottom of screen, the words "All products have remote side effects. See product literature.")

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(She picks up the bottle, opens it and takes out two wafers.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It is that simple. And it is completely safe.

(The words "Calcium carbonate and magnesium are generally recognized as safe by the FDA.")

So if you are concerned about cholesterol, call the number on the screen, and order Cholestaway now.

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(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax]. Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway, P. O. Box 803377, Dallas, TX, 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Start your way on the road to a longer, healthier life. Pick up the phone and call the number on the screen now.

TOM CAMP:
(Testimonial)

Cholestaway has made a big difference in my life. Nowadays, there's a tremendous consciousness about fat intake. All the doctors speak about it, all the commercials, your labels, and many people are concerned about fat intake. And I find it's a very practical and convenient way to keep your fat intake down by using the Cholestaway product.

("The results of using Cholestaway will vary from individual to individual.")

Graphic (with voiceover):

The preceding program contained testimonials from consumers relating their personal experiences using Cholestaway to reduce their cholesterol levels. These testimonials are personal accounts and have not been scientifically recorded. Although some users have also experienced a weight loss using Cholestaway, it is not intended as a weight loss product. Remember, the results of taking Cholestaway will vary from individual to individual.

(TMG appears on the screen with music. Under TMG is a line and under the line the words "Television Marketing Group, Inc. A Division of Western International Media.")

(The preceding was a paid program brought to you by Television Marketing Group.)

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 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 the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the draft 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 or that the facts, as alleged in the complaint, other than jurisdictional facts, are true; and

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the 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. At relevant times herein, respondent Western Direct Marketing Group, Inc. was known as Television Marketing Group, Inc., a California corporation with its principal office or place of business at 8544 Sunset Boulevard, Los Angeles, California.

2. Respondent Western International Media Corporation is a California corporation with its principal office or place of business at 8544 Sunset Boulevard, Los Angeles, California.

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 Western Direct Marketing Group, Inc. and Western International Media Corporation, corporations, their successors and assigns and their officers, and each of the above's agents, representatives and employees.

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

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any other 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:

- A. That such product significantly lowers or has any other effect on serum cholesterol levels, with or without changes in diet;
- B. That such product significantly lowers serum cholesterol levels or causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza;
- C. That such product substantially reduces or eliminates or has any other effect on the body's absorption of dietary fat;
- D. That such product lowers low density lipoprotein cholesterol or improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio;
- E. That such product is effective in the treatment of hardening of the arteries or heart disease;
- F. That such product causes significant weight loss or has any other effect on weight, with or without changes in diet;
- G. That such product significantly reduces or has any other effect on blood triglyceride levels; or
- H. That such product significantly reduces or has any other effect on blood pressure levels,

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 labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any substantially similar product in or affecting commerce, shall not use the name "Cholestaway" or any other name that represents, expressly or by implication, that the product will lower serum cholesterol levels, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any product 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 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, 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 respondents Western Direct Marketing Group and Western International Media Corporation, and their successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in 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 respondents Western Direct Marketing Group and Western International Media Corporation and their successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

IX.

It is further ordered, That respondents Western Direct Marketing Group and Western International Media Corporation and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporations 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 respondents Western Direct Marketing Group and Western International Media Corporation and their

successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on July 28, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not effect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondents 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

INSTITUTIONAL PHARMACY NETWORK, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3822. Complaint, Aug. 11, 1998—Decision, Aug. 11, 1998*

This consent order prohibits, among other things, the respondents, who are providers of institutional pharmacy services in Oregon, from entering into, maintaining, or enforcing any agreement with any pharmacy concerning fees or fixing, raising, stabilizing, maintaining, or tampering with any fees.

Participants

For the Commission: *Randall Marks, Steven Levy, Michael McNeely, William Baer, and Jonathan Baker.*

For the respondents: *Douglas Ross and Pat Morris*, in-house counsel, Portland, OR.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Institutional Pharmacy Network; Evergreen Pharmaceutical, Inc.; NCS Healthcare of Oregon, Inc.; NCS Healthcare of Washington, Inc.; United Professional Companies, Inc.; and White, Mack and Wart, Inc., hereinafter sometimes referred to as respondents, have violated and are violating the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Respondent Institutional Pharmacy Network ("IPN") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon with its office and principal place of business located at 1300 SW 5th Avenue, Suite 2300, Portland, Oregon.

2. Respondent Evergreen Pharmaceutical, Inc. ("Evergreen"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington with its office and principal place of business located at 12220 113th Avenue, NE, Kirkland, Washington.