

Complaint

IN THE MATTER OF

WEIDER NUTRITION INTERNATIONAL, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3983; File No. 9823035**Complaint, November 15, 2000--Decision, November 15, 2000*

This consent order addresses Weider Nutrition's advertisements claiming that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. The complaint alleges that the Respondent could not substantiate its claims regarding PhenCal and PhenCal 106. The consent order requires Weider Nutrition to pay \$400,000.00 in consumer redress and to have competent and reliable scientific substantiation for any future claims that PhenCal and PhenCal 106: (1) cause significant weight loss; (2) significantly increase a person's ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; (6) are safe when used to promote or maintain weight loss; (7) the safety of such product or program; (8) the effect of such a product on a condition or disease; (9) the comparative affect or their product to any other product. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. The order provides a safe harbor not prohibiting representations that permitted by a standard promulgated by the Food and Drug Administration for labeling or in a drug approval.

Participants

For the Commission: *Lemuel W. Dowdy, Laura D. Koss, Joni Lupovitz, Richard Cleland, Elaine D. Kolish, and BE.*

For the Respondents: *Claude C. Wild III, Patton Boggs.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Weider Nutrition International, Inc. ("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:

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1. Respondent Weider Nutrition International, Inc. is a Delaware corporation with its principal office or place of business at 2002 South 5070 West, Salt Lake City, Utah 84104.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including PhenCal and PhenCal 106, both of which contain DL-Phenylalanine, L-Tyrosine, L-Glutamine, L-5-Hydroxytryptophan, L-Carnitine, Chromium Picolinate, and Vitamin B6. PhenCal and PhenCal 106 are "foods" and/or "drugs," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for PhenCal 106 and PhenCal have appeared in numerous publications, including but not limited to, USA Today, the Washington Post, and the New York Times newspapers.
3. 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.
4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for PhenCal and PhenCal 106, including but not necessarily limited to the attached Exhibits A through C. These advertisements and promotional materials contain the following statements:

A. A newspaper advertisement (Exhibit A):

Proven: Effective As Prescription Treatments In a 90 day clinical trial, overweight subjects using PhenCal 106 and on a controlled diet and exercise regimen lost an average of 27 pounds. These results are comparable to results of similar studies performed on prescription weight loss treatments.

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Proven: To Decrease Food Cravings In a separate study, PhenCal 106 patients on a low calorie diet and exercise regimen reduced the average number of binges by 73%. . . .

Proven: Safe Without a Prescription PhenCal 106 was shown to work effectively and without any significant side effects during a two-year open controlled study.

- B. A brochure mailed to consumers who request information about PhenCal 106 (Exhibit B):

In a 90-day trial, participants using PhenCal 106 reduced carbohydrate binging and craving and lost an average of 27 pounds. When compared to similar studies of prescription treatments (Phen-Fen) PhenCal 106 was shown to be as effective.

In addition, a two-year clinical study showed that the PhenCal 106 user was 292% less likely to regain the lost weight than someone who had not used PhenCal 106. In fact, PhenCal 106 has been proven to help prevent weight regain after 2 years of use.

- C. A newspaper advertisement (Exhibit C):

Proven Safe Without a Prescription Unlike diet pills or prescription drug treatments, PHENCAL does not contain any stimulants or diuretics. It is not designed for you to skip meals or >burn fat=. Instead, it allows you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.*

Proven to Decrease Food Cravings Feelings of hunger are controlled by regulating the neurotransmitters in the brain. If there is an imbalance of these brain chemicals, cravings and feelings of distress can occur. PHENCAL actually helps normalize the amount of these chemicals

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and helps you resist the urge to splurge and regain, or yo-yo back and forth.*

Proven Safe & Effective in Clinical Trials In a human trial, PHENCAL promoted weight loss at levels comparable to those shown in other clinical trials for prescription drug treatments for weight loss. PHENCAL subjects had reduced carbohydrate bingeing and craving and lost an average of 27 pounds in 90 days.*

Fine print disclosure at bottom of page: "**These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat or prevent any disease."

5. Through the means described in Paragraph 4, respondents have represented, expressly or by implication, that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Significantly increase a person=s ability to maintain a reduced calorie diet and exercise regimen.
- C. Significantly reduce food cravings and eating binges.
- D. Prevent the regaining of lost weight.
- E. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- F. Are safe when used to promote or maintain weight loss.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the

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representations set forth in Paragraph 5, 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 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that clinical studies prove that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Prevent the regaining of lost weight.
- C. Reduce food cravings and eating binges.
- D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- E. Are safe.

9. In truth and in fact, the clinical studies referred to in respondent=s advertisements do not prove that PhenCal 106 and PhenCal:

- A. Cause significant weight loss.
- B. Prevent the regaining of lost weight.
- C. Reduce food cravings and eating binges.
- D. Are as effective as the prescription weight loss treatment commonly known as "Phen-Fen."
- E. Are safe.

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10. Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

11. 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.

THEREFORE, the Federal Trade Commission this fifteenth day of November, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits

**YOU NO LONGER NEED TO CHOOSE
BETWEEN THE DANGERS
OF BEING OVERWEIGHT
AND THE DANGERS
OF DIET DRUGS**



Regulation of neurotransmitters in the brain helps control feelings of hunger. PhenCaj[®] naturally helps normalize the levels of neurotransmitters in your brain and helps you resist the urge to overeat.

In a 90 day clinical trial, overweight subjects using PhenCal 106™ and on a controlled diet and exercise regimen lost an average of 27 pounds. These results are comparable to results of similar studies performed on prescription weight loss treatments.

In a separate study PhenCal 106™ patients on a low calorie diet and exercise regimen reduced the average number of binges by 73%.

The amino acids in PhenCal 106™ are precursors to the brain chemicals responsible for your appetite. In other words, PhenCal 106™ naturally helps normalize your desire for food, instead of synthetically suppressing it.

PhenCal 106™ was shown to work effectively and without any significant side effects during a two-year open controlled study.

Unlike prescription treatments, PhenCal 106™ contains all-natural ingredients and does not

contain any stimulants. This patented formula of amino acids, minerals and other nutrients promotes balanced levels of neurochemicals so that healthy eating patterns can be established.

PhenCal 106™ is not designed for you to skip meals or "burn" fat. Instead, it helps you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.

Why risk the potential side effects associated with prescription treatments when PhenCal 106™ can produce comparable weight loss results? Depend on the all-natural alternative to prescription treatments - PhenCal 106™

At 375 mg/kg body weight, it will only work when used in conjunction with an overall diet modification and exercise program. Offered with every bottle of PhenCae 106™ is a free diet and exercise plan.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

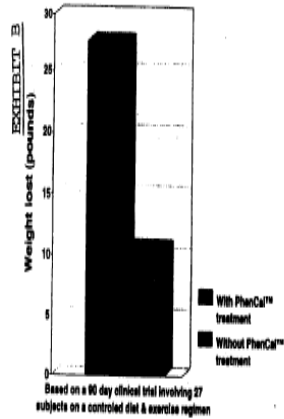
Need more proof? For free information or questions, call 1-888-PHENICAL. Exclusively from Weider Nutrition. U.S. Patent #4,761,429 & 5,189,064 & Patents Pending.



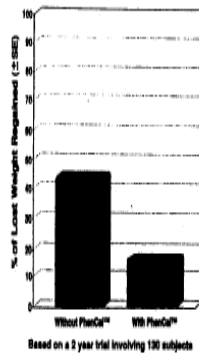
Complaint Exhibits

What Have the Studies Shown?

In a 90-day trial, participants using PhenCal 106™ reduced carbohydrate binging and craving and lost an average of 27 pounds.² When compared to similar studies of prescription treatments (Phen-Fen) PhenCal 106™ was shown to be as effective.



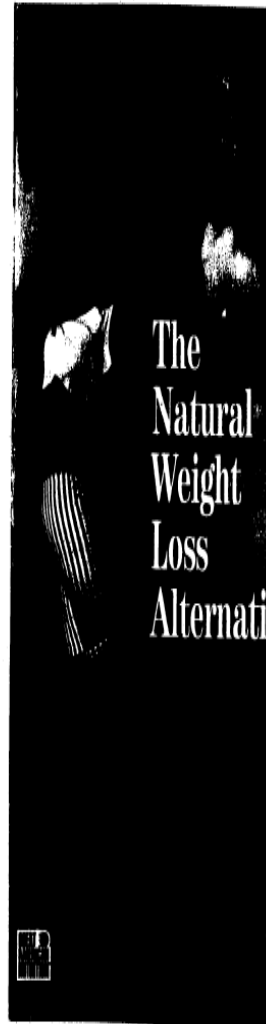
In addition, a two-year clinical study showed that the PhenCal 106™ user was 292% less likely to regain the lost weight than someone who had not used PhenCal 106™. In fact, PhenCal 106™ has been proven to help prevent weight regain after 2 years of use.¹



Great American Dietetics™
is another fine brand of
Weider Nutrition International
7901 North 193rd Street
San Jose, CA 95131

8/97 002

PHENCAL
DIETARY SUPPLEMENT
106
Diet and Exercise Pla



Complaint Exhibits

PHENCAL

DIETARY SUPPLEMENT

106

Diet and Exercise Plan

What Is PhenCal 106™?

PhenCal 106™ is a patented weight-loss dietary supplement containing amino acids and other nutrients that help regulate chemicals in the brain. These chemicals, called neurotransmitters, play a critical roll in appetite. When neurotransmitters are out of balance, cravings and feelings of distress can occur.

PhenCal 106™ helps balance levels of neurotransmitters, which are then utilized by the brain when needed. They normalize the body's "reward system," promoting feelings of satisfaction.

How Does PhenCal 106™ Work?

PhenCal 106™ contains the amino acids DL-Phenylalanine, L-5 Hydroxytryptophan, and others which are precursors to the neurotransmitters responsible for appetite.

Not enough of one chemical or too much of another has a profound effect on feelings of hunger and how much we eat. PhenCal 106™ actually helps normalize the levels of neurotransmitters and helps you resist the urge to overeat.

PhenCal 106™ enhances weight loss from diet and exercise by warding off cravings and impulses to binge, particularly carbohydrates. Studies show that it works as effectively as prescription weight-loss treatments without the side effects.

What Are The Risks Of PhenCal 106™?

The studies have not shown any significant side effects! A two-year, controlled study showed PhenCal 106™ to be effective and free of any significant side effects.¹

Even after two years of human clinical studies, PhenCal 106™ has never produced a single major side effect, no heart disease, no hypertension, not even fatigue. Additionally, because it contains no stimulants or diuretics, it doesn't produce the dry mouth, diarrhea, frequent urination, or feelings of anxiety often associated with "diet pills".

In contrast, Phen-Fen consists of Phenentermine (a weak amphetamine) and Fenfluramine. The combination of these drugs, some doctors and scientists believe, is responsible for primary pulmonary hypertension, valvular heart disease, and long term changes in brain cells.

Who Can Benefit From PhenCal 106™?

PhenCal 106™ can benefit anyone on a weight loss program consisting of proper diet and exercise. PhenCal 106™ is designed to help normalize, rather than suppress, the appetite so that healthy eating habits may be established. PhenCal 106™ is not designed to help skip meals or "burn" fat. Like any weight-loss product, it will only work with an overall diet modification and exercise plan, as is included with PhenCal 106™.

Who Should Not Use PhenCal 106™?

Do not use PhenCal 106™ if you are phenylketonuric or taking Monoamine Oxidase Inhibitor (MAOI) drugs. PhenCal 106™ is not intended for pregnant or lactating women. People with diabetes or hypoglycemia should use PhenCal 106™ only under the direction of a physician.

How Does PhenCal 106™ Compare to Prescription Treatments?

	PHENCAL 106™	PHEN-FEN
• Contains Stimulants	NO	YES
• Life-threatening side effects	NO	YES
• Reduces craving & bingeing	YES	UNKNOWN
• Normalizes "reward system"	YES	UNKNOWN
• Prevents weight regain after 2 years	YES	UNKNOWN
• Enhances weight loss*	YES	YES
• Supported by human clinical trials	YES	YES

* when used with a diet & exercise program

Where Can I Get PhenCal 106™?

PhenCal 106™ is a patented formula exclusively distributed by Great American Nutrition.

It is sold in fine drug, grocery, and health food stores throughout the U.S.

Where Can I Get More Information?

For more information or questions call 1-800-PHENCAL

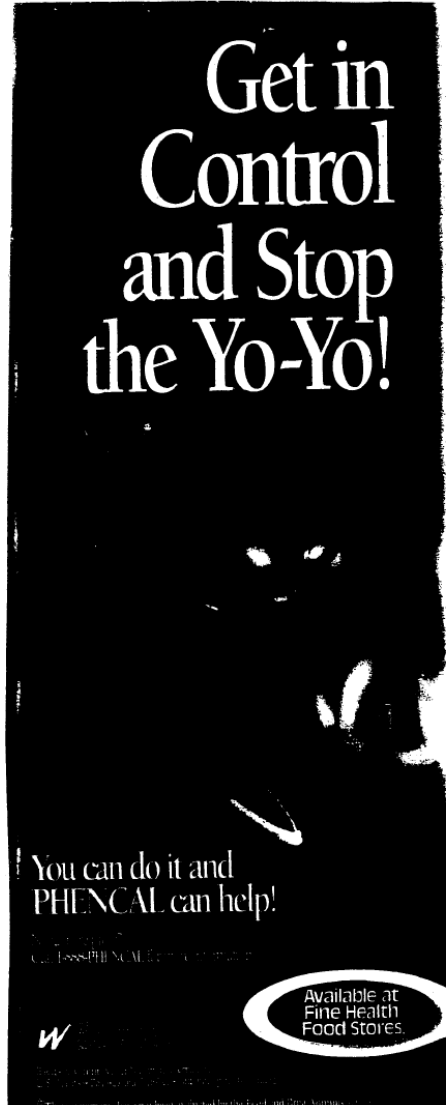
These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

1. *Ann. Com Ther Res* 1999; 40: 217-223

2. *Ann. Com Ther Res* 1997; in press 1997



Complaint Exhibits



Get in Control and Stop the Yo-Yo!

You can do it and PHENCAL can help!

Call 1-888-PHENCAL for more information.

W WEIDER NUTRITION INTERNATIONAL, INC.

Available at Fine Health Food Stores.

PHENCAL is a registered trademark of Weider Nutrition International, Inc. © 1997 Weider Nutrition International, Inc. All rights reserved.

EXHIBIT C

PHENCAL

AS EFFECTIVE AS
PRESCRIPTION TREATMENTS*

Proven Safe Without a Prescription

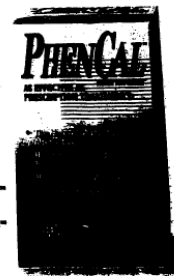
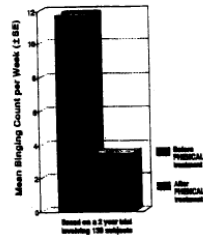
Unlike diet pills or prescription drug treatments, PHENCAL™ does not contain any stimulants or diuretics. It is not designed for you to skip meals or "burn fat". Instead, it allows you to maintain a healthy diet and exercise regimen by warding off cravings and impulses to binge.*

Proven to Decrease Food Cravings

Feelings of hunger are controlled by regulation of neurotransmitters in the brain. If there is an imbalance of these brain chemicals, cravings and feelings of distress can occur. PHENCAL™ actually helps normalize the amount of these chemicals and helps you resist the urge to splurge and regain, or yo-yo back and forth.*

Proven Safe & Effective in Clinical Trials

In a human trial, PHENCAL™ promoted weight loss at levels comparable to those shown in other clinical trials for prescription drug treatments for weight loss. PHENCAL™ subjects had reduced carbohydrate bingeing and craving and lost an average of 27 pounds in 90 days.*



Schiff

...ing the Way for Over 60 Years*

Decision and Order

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 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft 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 (30) days, now in further conformity with the procedure prescribed in ' 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Weider Nutrition International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2002 South 5070 West, Salt Lake City, Utah 84104.

Decision and Order

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.

ORDERDEFINITIONS

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 have 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, "respondent" shall mean Weider Nutrition International, Inc., a corporation, its successors and assigns, and its 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.
4. AFood@ shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. ' 55.
5. ADrug@ shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. ' 55.
6. ADisease@ shall mean damage to an organ, part, structure, or system of the body such that it does not function properly (*e.g.*, cancer, cardiovascular disease) or a state of health leading to such dysfunctions (*e.g.*, hypertension); except that diseases resulting from essential nutrient deficiencies (*e.g.*, scurvy, pellagra) are not included in this definition.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of PhenCal 106 or PhenCal or any other product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That such product or program causes, promotes, or assists in causing significant weight loss or fat loss;
- B. That such product or program significantly increases a person's ability to maintain a reduced calorie diet and exercise regimen;
- C. That such product or program reduces food cravings, eating binges, or the urge to overeat;
- D. That such product or program prevents the significant regaining of lost weight;
- E. That such product or program is as effective as the prescription weight loss treatment commonly known as "Phen-Fen" or any other prescription weight loss treatment; or
- F. That such product or program is safe when used to promote or maintain weight loss,

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

Decision and Order

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. The safety of such product or program;
- B. The effect of such product or program on any disease; or
- C. The comparative or superior health benefit of such product or program with respect to any other product or program,

unless, at the time the representation 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, drug, dietary supplement, or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study or research.

IV.

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.

Decision and Order

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.

IT IS FURTHER ORDERED that, no later than the date this order becomes final, respondent shall pay to the Federal Trade Commission the sum of four hundred thousand dollars (\$400,000), under the following terms and conditions:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.
- B. The funds paid by respondent, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of PhenCal in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein

Decision and Order

provided shall be deemed a payment of any fine, penalty or punitive assessment.

- C. Respondent relinquishes all dominion, control and title to the funds paid, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VII.

IT IS FURTHER ORDERED that respondent Weider Nutrition International, Inc., and its 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 its 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.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Weider Nutrition International, Inc., and its 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. 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 Weider Nutrition International, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Decision and Order

X.

IT IS FURTHER ORDERED that respondent Weider Nutrition International, Inc., and its 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 November 15, 2020, 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.

By the Commission.

*Analysis to Aid Public Comment***Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Weider Nutrition International, Inc. (hereinafter "Weider").

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement=s proposed order.

This matter involves advertisements for a dietary supplement called PhenCal or PhenCal 106. Advertisements claimed that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. These advertisements appeared in major newspapers such as the New York Times, the Washington Post, and USA Today.

The proposed complaint alleges that Weider could not substantiate claims that PhenCal and PhenCal 106: (1) cause significant weight loss; (2) significantly increase a person=s ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; and (6) are safe when used to promote or maintain weight loss. The complaint also alleges that Weider made false representations that claims (1), (3), (4), (5), and (6) above, had been scientifically proven.

Analysis to Aid Public Comment

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent, when advertising any food, drug, dietary supplement or program, to possess competent and reliable scientific evidence before making claims (1) through (6) above.

Part II of the proposed order requires respondent, when advertising any food, drug, dietary supplement, or program, to possess competent and reliable scientific evidence before making claims relating to:

- A. The safety of such product or program;
- B. The effect of such product or program on any disease; or
- C. The comparative or superior health benefit of such product or program with respect to any other product or program.

Part III prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study or research in an advertisement for any food, drug, dietary supplement or program.

Part IV allows the respondent to make representations for any drug that are permitted in labeling for that drug under any tentative final or final Food and Drug Administration ("FDA") standard or under any new drug application approved by the FDA.

Part V allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VI requires respondent to pay \$400,000 to the Commission. These funds will be used for consumer redress or, if that is impracticable, the funds will be paid to the United States Treasury.

Analysis to Aid Public Comment

Analysis to Aid Public Comment

Part VII requires respondent to retain, and make available to the Commission, upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

The remainder of the proposed order contains standard requirements that the respondent distribute the order to relevant personnel, that respondent notify the Commission of any changes in corporate structure that might affect compliance with the order and that the respondent file one or more reports detailing its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way its terms.

Complaint

IN THE MATTER OF

FIRSTPLUS FINANCIAL GROUP, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED
VIOLATIONS OF THE TRUTH IN LENDING ACT*Docket C-3984; File No. 9923121**Complaint, November 28, 2000--Decision, November 28, 2000*

This consent order addresses FirstPlus Financial's advertisements promoting high loan-to-value loans, home equity loans, and other types of consumer credit transactions. The complaint alleges that the advertisements are deceptive and misleading. The consent order prohibits FirstPlus from misrepresenting the comparative savings or benefits of consolidating debt, including the circumstances the circumstances under which consumers can save money when consolidating, the monthly saving from consolidation, the eligibility of a consumer to receive a loan, the amount of loan proceeds to be distributed to consumers or to third parties on behalf of consumers. The order also prohibits Respondent from stating the comparative benefit of their consolidation program in comparison to another without accurately, clearly, and conspicuously all of the information consumers need to evaluate the comparison and from giving examples of cost saving or benefits without basing the example on reasonable assumptions regarding average annual percentage rates and repayment terms for comparable transactions. In addition, the order requires Respondent to comply with disclosures requirements of the TILA and Regulation Z when stating the amount or percentage down required, the number or payments or period of repayment, the amount of any payment, or the amount of any finance charge.

Participants

For the Commission: *William Haynes, Ellen Finn, Rolando Berrelez, Hannah Stires, Jessica Rich, David Medine, and BE.*

For the Respondents: *Paul H. Schieber, Blank, Rome, Comisky & McCauley and Trey Monsour, Verner, Lipfert, Bernhard, McPherson & Hand.*