

Complaint

IN THE MATTER OF

NORM THOMPSON OUTFITTERS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4495; File No. 132 3094**Complaint, November 6, 2014 – Decision, November 6, 2014*

This consent order addresses Norm Thompson Outfitters, Inc.'s advertising, marketing, and sale of women's undergarments infused with microencapsulated caffeine and other ingredients. The complaint alleges that respondent represented that wearing the garments eight hours a day for 30 days eliminates or substantially reduces cellulite; causes a reduction of up to two inches in the wearer's hip measurements and up to one inch in the wearer's thigh measurements in one month or less; and that the reduction in thigh and hip measurements can be achieved without effort. The consent order requires respondent to pay two hundred thirty thousand dollars (\$230,000) to the Commission to be used for equitable relief, including restitution. The order also prohibits respondent from claiming that any garment that contains any drug or cosmetic or any drug or cosmetic causes substantial weight or fat loss or a substantial reduction in body size.

Participants

For the *Commission*: Eric Edmondson and David M. Newman.

For the *Respondent*: Bruce Hoffman and Mel Orlans, Hunton & Williams.

COMPLAINT

The Federal Trade Commission, having reason to believe that Norm Thompson Outfitters, Inc. ("Respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Oregon corporation with its principal office or place of business at 3188 NW Aloclek Drive, Hillsboro, Oregon 97124. Respondent has done business under the names Norm Thompson Outfitters, Sahalie, Solutions, Body Essentials and Body*Belle.

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2. Respondent advertises, offers for sale, sells and distributes women's undergarments under the brand name Lytess®, including bike shorts, tights and leggings (collectively the "Garments"), which incorporate microcapsules containing caffeine and other ingredients into the fabric. The Garments are "devices" and the encapsulated caffeine and other ingredients are a "drug" and/or "cosmetic" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

4. The retail price of the Garments ranges from \$49 to \$79, depending on the style. Respondent promotes the Garments as able to slim the body and reduce cellulite.

5. Beginning not later than early 2012, Respondent has disseminated or has caused the dissemination of promotional materials for the Garments, including, but not limited to, online and mail order catalogs excerpted in the attached Exhibits A to H. These promotional materials contain the following statements and depictions:

- a. (Exhibit A – Body Essentials catalog; Exhibit B – Solutions catalog)

Lose 2" off hips and 1" off thighs in less than a month.
The secret? Lytess® cellulite-slimming shorts.

Dr. Oz loves these. They're made of patented Lytess®, a unique fabric infused with micronized active ingredients. Caffeine metabolizes and dehydrates fat cells. . . . In less than a month, you'll be visibly slimmer and firmer.

Recommended by Dr. Oz for fighting cellulite.

- b. (Exhibit C – Solutions online catalog)

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Lose 2” off hips and 1” off thighs in less than a month....without effort. The secret? Lytess® cellulite-slimming shorts.

No diets or pills. Lose inches just by wearing these cellulite-slimming Lytess® leggings. The unique fabric is infused with caffeine to metabolize fat.

. . . In less than a month, you’ll be visibly slimmer and firmer.

c. (Exhibit D – Norm Thompson online catalog)

Look slimmer while becoming trimmer in our Women’s Slimming Leggings! Take up to 2” off hips and 1” off thighs in just weeks. The shapewear’s secret? Caffeine. Super stretchy, seamless knit nylon/spandex is infused with a microencapsulated formula that stimulates the breakdown of fats. . . .

- Caffeine helps break down fat; botanicals flush out toxins
- Slimming and firming results are visible in under a month

d. (Exhibit E – Body*Belle catalog)

Caffeinated slimmers take 2” off hips and 1” off thighs in just weeks

Made of a micromassaging fabric that holds a microencapsulated formula of powerful natural ingredients, these slimmers work wonders. As it is massaged into skin, caffeine metabolizes fat cells. . . . In under a month, you’ll be visibly slimmer and firmer.

“Say goodbye to the cellulite and the sag.” – Dr. Oz

e. (Exhibit F – Norm Thompson catalog)

Instant curve appeal

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Caffeine + botanicals are proven to take off inches now and later!

Take inches off hips, thighs and waist in just weeks...the secret is caffeine.

This is no ordinary shapewear! A unique, seamless knit fabric massages a skin-perfecting microencapsulated formula into skin. Caffeine breaks down fats....In under a month, you'll be visibly slimmer and firmer. For maximum benefit, wear 5 days a week, 8 hours a day for 28 days....

Lose 2" off hips and 1" off thighs.

f. (Exhibit G – Body*Belle catalog)

Effortless slimming cellulite blaster

Innovative fabric is infused with caffeine

Instant trimming when you wear them, plus take 2" off hips and 1" of thighs in 30 days.

Enhanced blood circulation flushes toxins while the active ingredients break down fat. In under a month, you'll be visibly slimmer and firmer.

g. (Exhibit H – Norm Thompson catalog)

Goodbye cellulite! Lose up to 2" off hips and 1" off thighs in 30 days.

We love these shorts and leggings! They're made of innovative Lytess® fabric infused with micronized active ingredients – caffeine metabolizes and dehydrates fat cells. . . . In less than a month, you'll be visibly slimmer and firmer.

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Efficacy Claims

6. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- a. the Garments contain caffeine, which causes a two-inch reduction in a wearer's hip size and a one-inch reduction in a wearer's thigh size in one month or less;
- b. the reductions in hip and thigh size can be achieved without effort;
- c. the Garments eliminate or substantially reduce cellulite.

7. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made.

8. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

Establishment Claims

9. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that

- a. scientific tests prove that the Garments substantially reduce a wearer's hip and thigh size; and
- b. scientific tests prove that wearing the Garments for five days a week, eight hours a day for twenty-eight days will trim two inches from the wearer's hips and one inch from the wearer's thighs.

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10. In truth and in fact,

- a. scientific tests do not prove that the Garments substantially reduce a wearer's hip and thigh size; and
- b. scientific tests do not prove that wearing the Garments for five days a week, eight hours a day for twenty-eight days will trim two inches from the user's hips and one inch from the user's thighs.

Among other things, the evidence relied on by Respondent for its representations concerning the Garments consisted primarily of results from two studies, one of which was unblinded and uncontrolled, and both of which contained significant methodological flaws. Moreover, Respondent exaggerated the results of the studies: the average reported reduction in hip circumference across both studies after 28 days of wearing the products was less than one-sixth of an inch and the average reported reduction in thigh measurement was about one-eighth of an inch. Only one participant out of the 55 in the two tests was reported to have achieved a reduction in hip measurement of two inches and only one participant in the two tests was reported to have achieved a reduction in thigh measurement of one inch. Therefore, the representations set forth in Paragraph 9 were, and are, false and misleading.

Endorsement Claims

11. In many instances, including but not limited to the promotional materials shown in Exhibits A, B and E, Respondent has prominently represented that the Garments are recommended by Dr. Oz.

12. In truth and in fact, the Garments are not recommended by Dr. Oz.

13. Therefore, the representation set forth in Paragraph 11 was, and is, false and misleading.

14. 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

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violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of November, 2014, has issued this complaint against Respondent.

By the Commission.

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Exhibit A

BodyEssential **CATALOG: BodyEssentials SWF11R**
in home Nov. 7, 2011



Recommended by Dr. Oz for fighting cellulite.

Lose 2" off hips and 1" off thighs in less than a month. The secret? Lytess® cellulite-slimming shorts.

Dr. Oz loves these. They're made of patented Lytass®, a unique fabric infused with micronized active ingredients. Caffeine metabolizes and dehydrates fat cells, while shea butter moisturizes and smooths. In less than a month you'll be visibly slimmer and firmer.

They're breathable and naturally stretchy like a second skin, so you can even wear them under tight skirts and pants...or while sleeping. Made in Italy. Machine washable nylon/spandex. Black. Sizes S/M (6-12), L/XL (14-18), XXL (20-24), XXXL (26-30).
55816 Slimming Bike Shorts \$49.98



Layering of microcapsules



Progressive release



Active ingredients penetrate

order toll free 1-877-44C-5025

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Exhibit B



Recommended
by Dr. Oz
for fighting
cellulite.

Here's how
they work:

Filling of
microcapsules

Progressive
release

Active
ingredients
penetrate

Lose 2" off hips and 1" off thighs in under a month. The secret is Lylless® cellulite-slimming shorts.

Dr. Oz loves these. They're made of patented Lylless®, a unique fabric infused with micro-sized active ingredients. Caffeine metabolizes and dehydrates fat cells, while shea butter moisturizes and smoothes. In less than a month, you'll be visibly slimmer and firmer. They're breathable and naturally stretchy like a second skin, so you can even wear them under tight skirts and pants...or while sleeping. Made in Italy. Machine washable nylon/spandex. Black. Sizes S/M(6-12), L/XL(14-18), XXL(20-24) and XXXL(26-30). **88594 Slimming Bike Shorts \$49.98**

48 ORDER ANYTIME 1-800-342-9968

 get the scoop...Solutions Catalog Facebook

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Exhibit C

Solutions – Slimming Leggings

3/11/13 1:19 PM

SOLUTIONS
products that make life easier®

Secure 1388911-NA1

Unconditional Lifetime GUARANTEE

Order Status Shopping Bag (0 items)

SEARCH Keyword or item Find It

SHOP BY CATALOG VIDEO CENTER NEW ARRIVALS TOP-RATED SOLUTIONS BLOG OUTLET

Today's Special Offers
Click for details >

Home > Shop By Category > Personal Care > View All Personal Care

Outdoor Living
Mosquito & Fly Traps
Decor & Accents
Furniture
Outdoor Lighting & Solar
Rugs & Doormats
Shedding & Furniture
Plagues & Signs
Tools & Gear
Planters & Pots
Pest Control & Wildlife
Grill & BBQ Gear
Dishes & Tableware
Pool & Beach
View All Outdoor Living

Shop by Category
Bed & Bath
Cleaning
Clothing & Footwear
Cooking & Kitchen
Dining & Entertaining
Electronics
Flooring
Furniture & Decor
Games, Toys & Books
Jewelry
Home Improvement
Lighting
Outdoor Living
Personal Care
Pets
Pintrest Favorites
Storage & Organization
Travel & Auto
Gift Center

Outlet
BodyBelle
Waterfront Living
Make Shopping Easier
Web List
Gift Finder
Product Finder
Gift Cards
Catalog Quick Order
Online Catalog
Request A Catalog

Lose up to 2" off hips and 1" off thighs in less than a month...without effort.

No diets or pills. Lose inches just by wearing these cellulite-slimming Lytess® leggings! The unique fabric is infused with caffeine to metabolize fat, and Shea Butter to keep skin smooth and supple. Breathable, lightweight and stretchy, they can even be comfortably worn under your clothes.

Overall Rating ★★★★★ 4.4 / 62
4 / 5 (62) reviews would recommend this product to a friend.
[read all reviews](#) [write a review](#)

Live help

product details | customer reviews | tell a friend |

B5252 Slimming Leggings
Select... 2 |
Select... 2 |
Qty 1 Add another item >
Price \$79.99

[Add to Wish List](#) [Add to Shopping Bag](#)

[Full Story](#) [The Facts](#) [Why We Love It!](#) [Customer Reviews](#)

They're made of patented Lytess®, a unique fabric infused with micronized active ingredients. Caffeine metabolizes and dehydrates fat cells, while Shea Butter moisturizes and smooths. In less than a month, you'll be visibly slimmer and firmer. They're breathable and naturally stretchy like a second skin, so you can even wear them under tight skirts and pants...or while sleeping. Made in Italy. Machine washable in cold/medium.

[SHARE](#) [Facebook](#) [Twitter](#) [Google+](#)

Never miss our latest news, specials or sales
Sign up for e-mails
Enter Your Email [sign me up](#)

About Solutions Customer Service My Account Privacy & Security Site Map
Suggestions / [Feedback](#)

TOLL FREE: 1-877-718-7901

[Need help? LIVE CHAT](#)

<http://www.solutions.com/jump.jsp?itemType=PRODUCT&itemID=26745>

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Exhibit D

Women's Slimming Leggings, Shapewear | Norm Thompson 3/12/13 1:52 PM

Norm Thompson
scape from the ordinary™

misses & petites | plus sizes | men's | shoes & handbags | food & gifts | travel | **outlet**

Home > Misses & Petites > Misses > Camis & Trimmies

Keyword or Item # **find it** Secure

help | sign in / register | order status | shopping bag (0 items \$0.00)

Women's Slimming Leggings

Be the first to [write a review](#)

Look slimmer while becoming trimmer in our Women's Slimming Leggings! Take up to 2" off hips and 1" off thighs in just weeks. The shapewear's secret? Caffeine, Super stretchy, seamless knit lycra/spandex & infused with a microencapsulated formula that stimulates the breakdown of fats while botanicals smooth, firm and restructure the skin.

- Caffeine helps break down fat; botanicals flush out toxins
- Slimming and firming results are visible in under a month
- For maximum benefit, wear 5 days a week, 8 hours a day, for 28 days
- Ingredients last up to 30 washings
- Sizes: S/M (4-10); L/XL (12-16); 2XL (18-20); 3XL (22-24)

product details | tell a friend 23

34646 Women's Slimming Leggings

Select... 3

Select... 2

Price: \$79.95

Qty 1

Need help? **LIVE CHAT** | **add to wish list** | **add to shopping bag**

Details | **Sizing** | Fabric & Care | Customer Reviews

- Moderate control
- Infused with micro-capsules
- Seamless construction
- Capri length
- Smooth elastic waistband
- Gusseted crotch
- Imported

Like 0 0

More Ideas:

Lyless® Cellulite-Slimming Shapewear Shorts
\$49.95

CONTACT US | CUSTOMER SERVICE | 1.800.547.1160 | LIVE HELP | **LIFTING GUARANTEE**

My Account | Order Status | About Us | **SIGN UP FOR EMAIL**
Gift Cards | Shipping | Careers | enjoy first looks, exclusive offers and special sales
Size Charts | Returns & Exchanges | Request a Catalog | Your Email Address **Sign Up**

©2013 Norm Thompson | Solutions | Salsa Ro | Gold Vieja | Privacy & Security | Site Map | Terms of Use | **JOIN US!**
Body Belle | Bibir | LinnSource | Appleseed's | Old Pueblo Traders | f b
WinterSkins | Drapers and Dancers | Haband | Bedford Fair | The Top Shop

Complaint

Exhibit E

Solutions
body·belle™
P.O. Box 127, Jessup, PA 19434

POSTMASTER:
Please deliver Oct. 1-3, 2012
CURRENT RESIDENT OR

PSAT STD.
U.S. POSTAGE
PAID
SOLUTIONS

order toll free 877.440.5C25
BodyBelle.com

CATALOG: BodyBelle SWH12
in home Oct. 1, 2012

CATALOG CODE

CUSTOMER ID #

SWH12 © October 2012
Prices valid until next publication

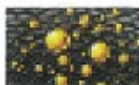
Caffeinated slimmers take 2" off hips
and 1" off thighs in just weeks.

Made of a micro-massaging fabric that holds a microencapsulated formula of powerful natural ingredients, these slimmers work wonders. As it is massaged into skin, caffeine metabolizes fat cells while shea butter smooths. Enhanced blood circulation flushes toxins while the active ingredients break down fat. In under a month, you'll be visibly slimmer and firmer. Breathable and stretchy for comfort under skirts and pants...or while you sleep. Machine washable nylon/spandex. Imported. Black in sizes: S/M (6-12), L/XL (14-18), XXL (20-24), XXXL (26-30).
55E16 JavaThin Slimming Bike Shorts \$49
56467 JavaThin Slimming Leggings \$79

Patented
fabric by
Lytess® is
infused with
caffeine

"Say goodbye
to the cellulite
and the sag."
— Dr. Oz

Here's how **JavaThin** works:



Fixing of
microcapsules



Progressive
release



Active ingredients
penetrate



More
JavaThin
slimmers
p. 51-59

free shipping

FREE Standard Shipping on your
\$49 order. Coupon code 15332
Good through November 15, 2012.

we've had a facelift!
BodyEssentials is now
body·belle
new look...new brands...new you!

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Exhibit F

CATALOG: Norm Thompson NSL212 in home Oct. 22, 2012

Instant curve appeal
Caffeine + botanicals are proven to take off inches now and later!

Take inches off hips, thighs and waist in just weeks...the secret is caffeine. This is no ordinary shapewear! A unique, seamless knit fabric massages a skin-perfecting microencapsulated formula into skin. Caffeine breaks down fats, while botanicals help smooth, firm and restructure skin, and even flush out toxins. In under a month, you'll be visibly slimmer and firmer. For maximum benefit, wear 5 days a week, 8 hours a day for 28 days. Ingredients last up to 20 washings. Nylon/spandex, S/M(6-12), L/XL(14-18), 2XL(20-24), 3XL(26-30). Imported. Washable.

A. Slimming Bike Shorts in black.
#34541 \$49.95

B. Slimming Body Shaper in black or nude.
#35123 (Misses) \$79.95

C. Slimming Leggings in black.
#34646 \$79.95

Lose 2" off hips and 1" off thighs

A. SLIMMING BIKE SHORTS

ALL STYLES ARE RECOMMENDED BY DR. OZ FOR FIGHTING CELLULITE!

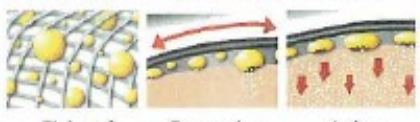
Lose 2" off hips and 1" off thighs

C. SLIMMING LEGGINGS

Body Shaper subtracts up to 4" off waist, trims nearly 2" off hips

B. SLIMMING BODY SHAPER

THE SECRET IS CAFFEINE! See how it works:



Fixing of microcapsules *Progressive release* *Active ingredients penetrate*

Complaint

Exhibit G

effortless slimming cellulite blaster

Innovative
fabric is
infused with
caffeine



leggings

NEW capris

HERE'S HOW IT WORKS:

Rolling at
microcapsulesProgressive
releaseActive ingredients
penetrate

Instant trimming when you wear them, plus take 2" off hips and 1" off thighs in 30 days.

Enhanced blood circulation flushes toxins while the active ingredients break down fat. In under a month, you'll be visibly slimmer and firmer. Breathable and stretchy Lyse® fabric is comfortable under skirts and pants all day long. Machine washable nylon/spandex. Imported. Black. Sizes S/M (4-10), L/XL (12-16), 2XL (18-20), 3XL (22-24).

55816 Slimming Bike Shorts \$49

56980 Slimming Capris \$69

56467 Slimming Leggings \$79



Professional grade LED massage system blasts cellulite three ways.

Clinically proven system helps tone, firm and reduce the appearance of cellulite. Rolling massager helps break up fat cells, while the deep tissue action of the infrared LED light boosts circulation and cell renewal to reduce dimpling. Includes Anti-Cellulite Cream with deep penetrating caffeine plus other botanicals to stimulate healthy firmness.

56734 Lipo Reduction System \$139

56735 Anti-Cellulite Cream (7 oz.) \$39



See results in 4 to 6 weeks



2 Unconditional Lifetime Guarantee

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Exhibit H


Here's how it works:

Fixing of microcapsules

Progressive release

Active Ingredients penetrate

Goodbye, cellulite! Lose up to 2" off hips and 1" off thighs in 30 days.

We love these shorts and leggings! They're made of innovative Lyliss[®] fabric infused with micronized active ingredients—caffeine metabolizes and dehydrates fat cells, and shea butter moisturizes and smooths. In less than a month, you'll be visibly slimmer and firmer. They're breathable and naturally stretchy like a second skin, so you can even wear them under skirts and pants. Imported. Machine washable nylon/spandex. Black. Sizes S/M(4-10), L/XL(12-16), 2XL(18-20) and 3XL(22-24).

94441 Slimming Plus Shorts 680 98

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of Norm Thompson Outfitters, Inc., a corporation, hereinafter sometimes

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referred to as “Respondent,” and Respondent having been furnished with a copy of a draft of complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing a Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 Rule; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that 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 Consent Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Decision and Order:

1. Respondent Norm Thompson Outfitters, Inc., is an Oregon corporation with its principal office or place of business at 3188 NW Aloclek Drive, Hillsboro, Oregon 97124
2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the Respondent, and the proceeding is in the public interest.

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ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “Respondent” shall mean Norm Thompson Outfitters, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Adequate and well-controlled human clinical study” means a human clinical study that is randomized, double-blind, placebo controlled, and conducted by persons qualified by training and experience to conduct such study.
- C. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- D. “Covered Product” means any garment containing a drug or cosmetic.
- E. “Drug” and “cosmetic” mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.
- F. “Reliably Reported,” for a human clinical test or study (“test”), means a report of the test has been published in a peer-reviewed journal, and such published report provides sufficient information about the test for experts in the relevant field to assess the reliability of the results.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication,

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including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes substantial weight or fat loss or a substantial reduction in body size.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Part I of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product causes weight or fat loss or a reduction in body size, unless the representation is non-misleading, and, at the time it is made, Respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Part, competent and reliable scientific evidence shall consist of at least two adequate and well-controlled human clinical studies of the Covered Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Covered Product or any drug or cosmetic, in or affecting commerce, shall not make any representation, other than representations covered under Parts I and II of this order, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, that use of such product reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such

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representation, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, competent and reliable scientific evidence means tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth in Part VIII of this Order are available for inspection and production to the Commission.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication, including through the use of any product name or endorsement:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of the product are scientifically proven.

V.

IT IS FURTHER ORDERED that

- A. 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

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Education Act of 1990 or permitted under Sections 303-304 of the Food and Drug Administration Modernization Act of 1997; and

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

VI.

IT IS FURTHER ORDERED that Respondent shall, within thirty (30) days after the date of entry of this order, provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased any Covered Product from Respondent from March 20, 2011, through the date of entry of this order. Such file (1) shall include each consumer's name and address, the product(s) purchased, the total amount of moneys paid less any amount credited for returns or refunds, the date(s) of purchase, and, if available, the consumer's email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.

VII.

IT IS FURTHER ORDERED that Respondent shall create a fund in the amount of two hundred thirty thousand dollars (\$230,000) to be used for the purpose of providing redress to those consumers who purchased any Covered Product from Respondent from March 20, 2011, through the date of entry of this order.

- A. Within 45 days after the date of service of this order, Respondent shall send a notice, in form substantially identical to Attachment A to this order, to all persons whom it identified pursuant to Part VI of this order. Such notice shall be provided by email to all persons for whom Respondent has an email address and by

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United States Mail to all persons for whom Respondent does not have an email address. Said notice shall contain no information other than that set forth in Attachment A, nor shall any other material be transmitted therewith.

- B. Thirty (30) days after the emailing or mailing of the notice described in Part VII. A., Respondent shall credit to the credit card of record for each consumer who purchased a Covered Product from Respondent during the relevant time period an amount equal to such consumer's *pro rata* share of the redress fund.
- C. No part of the costs associated with the administration of this redress program shall be paid out of the fund established pursuant to this Section. Respondent shall bear all costs associated with the above-described redress program.
- D. Within sixty (60) days after the emailing or mailing of the notice described in Part VII. A., Respondent shall provide a report in writing to the Federal Trade Commission setting forth the name and address of each consumer who received a credit and the amount of such credit. Respondent shall remit to the Federal Trade Commission any funds remaining after the redress to consumers is completed. The Commission may apply any such funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Respondent shall be notified as to how the funds are distributed, but shall have no right to challenge the Commission's choice of remedies under this Part. No portion of any payment under this Part shall be deemed a payment of any fine, penalty, or punitive assessment.
- E. Respondent agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or

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subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Respondent further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A). For all other purposes and with respect to all other parties, Respondent's stipulation in this section shall have no effect. It is specifically agreed and acknowledged that this section is not intended to be, nor shall it be, construed as an admission of liability by Respondent with respect to the allegations set forth in the Complaint with respect to any claims or demands by any third parties.

- F. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

IT IS FURTHER ORDERED that, with regard to any human clinical test or study ("test") upon which Respondent relies to substantiate any claim covered by this Order, Respondent shall secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test, including, but not necessarily limited to:

- A. All protocols and protocol amendments, reports, articles, write-ups, or other accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or any other person not employed by the research entity;
- B. All documents referring or relating to recruitment; randomization; instructions, including oral

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instructions, to participants; and participant compliance;

- C. Documents sufficient to identify all test participants, including any participants who did not complete the test, and all communications with any participants relating to the test; all raw data collected from participants enrolled in the test, including any participants who did not complete the test; source documents for such data; any data dictionaries; and any case report forms;
- D. All documents referring or relating to any statistical analysis of any test data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or between-group analysis performed on any test data; and
- E. All documents referring or relating to the sponsorship of the test, including all contracts and communications between any sponsor and the test's researchers.

Provided, however, the preceding preservation requirement shall not apply to a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by (1) any Respondent; (2) any other person or entity in active concert or participation with any Respondent; (3) any person or entity affiliated with or acting on behalf of any Respondent; (4) any supplier of any ingredient contained in the product at issue to any of the foregoing or to the product's manufacturer; or (5) the supplier or manufacturer of such product.

For any test conducted, controlled, or sponsored, in whole or in part, by Respondent, Respondent must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of any personal information collected from or about participants. These procedures shall be documented in writing and shall contain administrative, technical, and physical safeguards appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information collected from or about the participants.

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IX.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, 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 reasonable notice and 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.

X.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, 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 primary 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 and its successors and assigns 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. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgements of receipt of this order obtained pursuant to this Part.

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XI.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor; 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. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: “In the Matter of Norm Thompson Outfitters, Inc., FTC File Number 132-3094.”

XII.

IT IS FURTHER ORDERED that Respondent Norm Thompson Outfitters, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

XIII.

This order will terminate on November 6, 2034, 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

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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.

ATTACHMENT A
EMAIL OR MAIL NOTICE TO CONSUMERS

Dear Norm Thompson customer:

Our records show that you purchased a Lytess slimming garment from Norm Thompson on or after March 20, 2011.

When we sold you the Lytess garment, we advertised, based on information we received from the manufacturer, that wearing the garments as instructed would reduce the size of your hips by up to 2.1 inches and your thighs by up to one inch and would eliminate or reduce cellulite and that scientific tests proved those results.

Analysis to Aid Public Comment

The Federal Trade Commission (“FTC”) has charged that we did not have adequate substantiation for these claims. While Norm Thompson neither admits nor denies liability in connection with this matter, we have reached a settlement with the FTC that provides a partial refund to anyone who purchased these garments.

We will be crediting your refund to the credit card that we have on file based on your most recent purchase from Norm Thompson. That credit card ends in XXXX. If that credit card is still active, you do not need to do anything. You will be receiving your refund within XX days.

If that credit card is no longer active, please contact us at XXX-XXX-XXXX within 10 days and provide us with a credit card to which the refund can be credited.

You can verify that this notice is legitimate by going to the FTC’s website at www.ftc.gov or by calling the FTC at XXX-XXX-XXXX.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Norm Thompson Outfitters, Inc. (“respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt 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 the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Analysis to Aid Public Comment

This matter involves the advertising, marketing, and sale by respondent of women's undergarments that are infused with microencapsulated caffeine and other ingredients. Respondent has marketed the garments through its mail order catalogs and through websites under the names Norm Thompson Outfitters, Sahalie, Solutions, Body Essentials and Body*Belle. According to the FTC complaint, respondent claimed the garments would slim and reshape the body and reduce cellulite.

Specifically, the FTC complaint alleges that respondent represented that wearing the garments eight hours a day for 30 days eliminates or substantially reduces cellulite; causes a reduction of up to two inches in the wearer's hip measurements and up to one inch in the wearer's thigh measurements in one month or less; and that the reduction in thigh and hip measurements can be achieved without effort. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented that scientific tests prove that wearing the garments results in a substantial reduction in hip and thigh measurement and that scientific tests prove that wearing the garments five days a week, for eight hours a day, for 28 days will reduce a wearer's hip measurement by two inches and a wearer's thigh measurement by one inch. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Parts I-III address the unsubstantiated claims alleged in the complaint. Part I prohibits respondent from claiming that any Covered Product – *i.e.*, a garment that contains any drug or cosmetic – causes substantial weight or fat loss or a substantial reduction in body size. The Commission has publicly advised that any claim that a product worn on the body causes substantial weight loss is always false.

Part II covers any representation, other than representations covered under Part I, that any Covered Product or any drug or cosmetic causes weight or fat loss or a reduction in body size. Part II prohibits respondent from making such representations unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon

Analysis to Aid Public Comment

competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, the proposed order defines “competent and reliable scientific evidence” as at least two randomized, double-blind, placebo-controlled human clinical studies that are conducted by independent, qualified researchers and that conform to acceptable designs and protocols, and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Part III of the proposed order prohibits respondent from making any representation, other than representations covered under Parts I or II, that use of a Covered Product or a drug or cosmetic reduces or eliminates cellulite, unless the representation is non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, the proposed order defines “competent and reliable scientific evidence” as tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, and that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the proposed order addresses the allegedly false claims that scientific tests prove that wearing the advertised garments results in the reduction in the wearer’s body size. Part IV prohibits respondent, when advertising any product, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or misrepresenting that the benefits of the product are scientifically proven.

Part V of the proposed order provides a safe harbor for representations that are permitted in labeling for that drug under any tentative or final standard promulgated by the Food and Drug Administration (“FDA”), any new drug application approved by the FDA, or FDA regulations pursuant to the Nutrition Labeling and Education Act of 1990 or the FDA Modernization Act of 1997.

Analysis to Aid Public Comment

Part VII of the proposed order requires respondent to pay two hundred thirty thousand dollars (\$230,000) to the Commission to be used for equitable relief, including restitution. The order also requires respondent to administer and bear the costs of the redress program. To facilitate the payment of redress, Part VI of the proposed order requires respondent to provide to the Commission a searchable electronic file containing the name and contact information of all consumers who purchased the garments from respondent from March 20, 2011, through the date of entry of the order.

Part VIII of the proposed order is triggered whenever the human clinical testing requirement in either Part II or Part III applies. Part VIII of the proposed order requires the company to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test. There is an exception for a “Reliably Reported” test defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by any proposed respondent or supplier. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part IX of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to any representation covered by the proposed order. Parts X, XI and XII of the proposed order require respondent to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XIII provides that the order will terminate after twenty (20) years, with certain exceptions.

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 complaint and proposed order or to modify the proposed order’s terms in any way.

Complaint

IN THE MATTER OF

WACOAL AMERICA, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4496; File No. 132 3095**Complaint, November 6, 2014 – Decision, November 6, 2014*

This consent order addresses Wacoal America, Inc.'s advertising, marketing, and sale by respondent of iPants, women's undergarments that are infused with microencapsulated caffeine and other ingredients. The complaint alleges that respondent represented that wearing iPants garments eliminates or substantially reduces cellulite; causes a substantial reduction in the wearer's thigh measurements; and that iPants garments contain caffeine that causes the destruction of fat cells and results in substantial slimming. The consent order requires respondent to pay one million three hundred thousand dollars (\$1,300,000) to the Commission to be used for equitable relief, including restitution, and any attendant expenses for the administration of such equitable relief. The order also prohibits respondent from claiming that any garment that contains any drug or cosmetic or any drug or cosmetic causes substantial weight or fat loss or a substantial reduction in unclad body size.

Participants

For the *Commission*: Eric Edmondson and David M. Newman.

For the *Respondent*: D. Reed Freeman, Morrison & Foerster;
Sherman W. Kahn, Mauriel Kapouytian Woods.

COMPLAINT

The Federal Trade Commission, having reason to believe that Wacoal America, Inc. ("Respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at One Wacoal Plaza, Lyndhurst, New Jersey.
2. Respondent advertises, offers for sale, sells and distributes women's undergarments under the brand name iPants, including bike shorts, tights and leggings (collectively the "Garments"),