

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.

Complaint

EXHIBIT A

EXHIBIT A

"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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## EXHIBIT A

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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EXHIBIT A

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*

