

Complaint

87 F.T.C.

IN THE MATTER OF

SIMEON MANAGEMENT CORPORATION, ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 8996. Complaint, Oct. 15, 1974—Final Order,* April 29, 1976*

Order requiring five independent California weight reduction clinic operators, among other things to cease failing to make conspicuous disclosure statements in advertising, and to potential purchasers that drugs used in weight reducing programs have not been approved by the Food and Drug Administration as safe and effective for weight control; drugs do not cause more attractive redistribution of weight; and treatment required adherence to a 500 calorie daily diet.

Appearances

For the Commission: *Alfred Lindeman, Harvey M. Freed and Paul D. Hodge.*

For the respondents: *Grayson & Gross, Los Angeles, Calif., for Simeon Management Corporation, John D. Howell, Simeons Weight Clinics Foundation, Robert Van Dine, J. William Byrd and Medical Weight Loss, Inc. Robert M. Aran, Beverly Hills, Calif., for Darrel P. Simpson. David L. Cunningham, Sausalito, Calif., for Bariatric Medical Clinics Management Corporation and David L. Cunningham. Lee Shaw, San Diego, Calif., for Harvey J. Lobelson and Weight Reduction Medical Clinic. Cooper & Scarpulla, San Francisco, Calif., for C.M. Norcal, Inc., HCG Weight Clinics Foundation, Peter J. Marengo, III and Joseph Costa.*

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Simeon Management Corporation, a corporation, and John D. Howell, individually and as principal investor in Simeon Management Corporation; Simeons Weight Clinics Foundation, a corporation, and Robert Van Dine and J. William Byrd, individually and as officers of Simeons Weight Clinics Foundation; Medical Weight Loss, Inc., a corporation, and Darrel P. Simpson, individually and as an officer of Medical Weight Loss, Inc.; Bariatric Medical Clinics Management Corporation, a corporation, and David L. Cunningham, individually and as an officer of Bariatric

* Reported as corrected by Commission order dated July 7, 1976.

Medical Clinics Management Corporation; Harvey J. Lobelson, an individual doing business as Weight Reduction Medical Clinic; C. M. Norcal, Inc., a corporation, HCG Weight Clinics Foundation, a corporation, and Peter J. Marengo, III and Joseph Costa, individually and as officers of C. M. Norcal, Inc. and HCG Weight Clinics Foundation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. (A) Respondent Simeon Management Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 7712 Densmore Ave., Van Nuys, California.

Respondent John D. Howell is the principal investor in said corporate respondent Simeon Management Corporation, which has not yet named officers and directors or issued stock. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondent.

Respondent Simeons Weight Clinics Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 7712 Densmore Ave., Van Nuys, California.

Respondents Robert Van Dine and J. William Byrd are officers of said corporate respondent Simeons Weight Clinics Foundation. Their business address is the same as that of said corporate respondent. Said individual respondents and respondents Howell and Simeon Management Corporation cooperate and act together to bring about the acts and practices hereinafter set forth, including the operation of numerous clinics known by the name Simeons Weight Clinics Foundation located in the State of California, and by other names located elsewhere in other States in the United States.

(B) Respondent Medical Weight Loss, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 1901 Avenue of the Stars, Suite 470, Los Angeles, California.

Respondent Darrel P. Simpson is an officer of Medical Weight Loss, Inc. Said individual respondent formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondent. He and respondent Medical Weight Loss, Inc. cooperate and act together to bring about the acts and practices

hereinafter set forth, including the operation of numerous clinics known by the name Medical Weight Loss located in the State of California and by the same name or other names located elsewhere in other States in the United States.

(C) Respondent Bariatric Medical Clinics Management Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 560 Battery St., San Francisco, California.

Respondent David L. Cunningham is an officer of Bariatric Medical Clinics Management Corporation. Said individual respondent formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is 680 Beach St., San Francisco, California. He and respondent Bariatric Medical Clinics Management Corporation cooperate and act together to bring about the acts and practices hereinafter set forth, including the operation of numerous clinics known by the name Bariatric Medical Clinics located in the State of California.

(D) Respondent Harvey J. Lobelson is an individual trading and doing business under the name of Weight Reduction Medical Clinic, with his principal office and place of business located at 6505 Alvarado Rd., San Diego, California, and with numerous other clinics known by the same name located elsewhere in the State of California.

(E) Respondent C. M. Norcal, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6 West Swain Rd., Stockton, California.

Respondent HCG Weight Clinics Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6 West Swain Rd., Stockton, California.

Respondents Peter J. Marengo, III, and Joseph Costa are officers of C. M. Norcal, Inc. and HCG Weight Clinics Foundation. Their business address is the same as that of said corporate respondents. Said individual respondents formulate, direct and control the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. They and said corporate respondents cooperate and act together to bring about the acts and practices hereinafter set forth, including the operation of numerous clinics known by the name HCG Weight Clinics Foundation located in the State of California.

PAR. 2. Each of the respondents is engaged in the business of operating weight reduction clinics, and the advertising, offering for

sale and sale of weight reduction treatments by said clinics, which treatments are purported to produce significant loss of weight by persons who desire to lose weight. Said treatments are sometimes referred to as the "Simeon" method or "Simeons" method, and consist of five or six daily injections per week of a prescription drug, human chorionic gonadotropin (hereinafter referred to as HCG), which is a hormone derived from the urine of pregnant women, and adherence to a 500 calorie diet daily, both for a period of about four to six weeks. Said drug falls within the classification of "drug" as said term is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their businesses as aforesaid, each of the respondents has disseminated and caused the dissemination of certain advertisements concerning the said reducing clinics and treatments in newspapers which are distributed by United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said treatments including the drug HCG.

PAR. 4. Typical of such advertisements disseminated as aforesaid, but not all inclusive thereof, are the following:

SIMEON WEIGHT CLINICS FOUNDATION DECLAIMS WAR ON WEIGHT

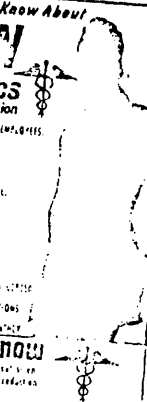
MEDICALLY SUPERVISED WEIGHT LOSS

Lose weight safely, quickly and effortlessly through our proven weight reduction program developed by Medical Doctors and supervised by our Physicians and Nurses. Simeon Weight Clinics, its Doctors, Nurses and professionally trained staff, bring you a quick and safe way to melt away unwanted pounds. Start today by calling for your free consultation.

Important Facts to Know About
SIMEON
Weight Clinics
Foundation

- OVER 265 PROFESSIONALLY TRAINED EMPLOYEES
- OVER 77 MEDICAL DOCTORS
- OVER 75 LICENSED NURSES
- OVER 45 CLINICS IN CALIFORNIA ALONE
- TOTAL MEDICAL SUPERVISION
- APPROVED AS A FEA/PAO HEALTH PLAN
- NO SHIMMERS OR SPAINOUS CONTACT
- MASTER CHANGE THE BASKETBALL LEAD A LITTLE
- RESULT: 100% CHARGE FOR CONSULTATIONS
- SUPERBLY TRAINED TO LOSE WEIGHT

SEE OUR DOCTORS NOW
Start today by calling for a free consultation on your nearest of a 500+ proven weight reduction program.



LOSE WEIGHT UNDER STRICT MEDICAL SUPERVISION.

SIMEON
SIMEON
Weight Clinics
Foundation

Weekdays 8 to 7 • Saturdays 9 to 1

**CALL THE CLINIC
NEAR YOU TODAY!**

BAY AREA CLINICS


S.F. 2266 GEARY BLVD.	667-2543	REDWOOD CITY	365-4264
S.F. 656 SUTTER STREET	898-5908	SAN JOSE	267-8000
S.F. 2065 MISSION STREET	620-8461	GARLAND	465-8845
S.F. VINEY PORTAL	668-7164	EL CERRILLO	525-2342
DUBLIN CITY	718-8298	HAYWARD	537-6822
SAN MATEO	547-8220	SAN RAFAEL	450-5930

CALL A CLINIC IN YOUR AREA

S. F. Sunday Examiner & Chronicle Datebook, Sunday, June 23 1974

LOSING WEIGHT IS A DOCTOR'S BUSINESS


**HOW YOU CAN LOSE WEIGHT...
THROUGH A PROVEN METHOD—FAST ...**



... using the safe and practical Dr. A. T. W. Simeons method of weight reduction. Expect dramatic results in just weeks. Call your nearest clinic today for a consultation at no charge. You'll also receive a copy of Dr. Simeons book, "POUNDS AND INCHES," at no charge. Enroll in the world's largest group of Doctor owned, Doctor operated medical weight loss clinics.

Summer's here ... Special rates for groups of 6 or more

NO CONTRACTS TO SIGN... 42 CLINICS OPEN IN THIS AREA

 <p>Look for the World Globe ... you'll know your at Medical Weight Loss.</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">SO. SAN FRANCISCO 586-7117</td> <td style="width: 33%;">REDWOOD CITY 369-2935</td> <td style="width: 33%;">FREMONT 786-9232</td> </tr> <tr> <td>DALY CITY 994-6446</td> <td>MOUNTAIN VIEW 965-4308</td> <td>SAN LORENZO/ HAYWARD 278-4144</td> </tr> <tr> <td>SAN CARLOS 591-9681</td> <td>MILPITAS 263-8181</td> <td>PETALUMA 763-4178</td> </tr> <tr> <td>SAN MATEO 347-3051</td> <td>CASTRO VALLEY/ SAN LEANDRO 581-5070</td> <td>LOS GATOS/ SARATOGA 356-1118</td> </tr> <tr> <td>MILL VALLEY 332-6560</td> <td>DUBLIN 829-2424</td> <td>EAST SAN JOSE 926-2737</td> </tr> </table>	SO. SAN FRANCISCO 586-7117	REDWOOD CITY 369-2935	FREMONT 786-9232	DALY CITY 994-6446	MOUNTAIN VIEW 965-4308	SAN LORENZO/ HAYWARD 278-4144	SAN CARLOS 591-9681	MILPITAS 263-8181	PETALUMA 763-4178	SAN MATEO 347-3051	CASTRO VALLEY/ SAN LEANDRO 581-5070	LOS GATOS/ SARATOGA 356-1118	MILL VALLEY 332-6560	DUBLIN 829-2424	EAST SAN JOSE 926-2737	
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BankAmericard or Master Charge Welcome FOR INFORMATION CALL (415) 697-0600

Complaint

87 F.T.C.

**medical
weight®
reduction**

**NEW CLINIC
NOW OPEN
DUBLIN
829-2626**



Bariatric's individual program is a safe and practical method for the entire family to lose weight and learn how to maintain proper weight ... under the strict supervision of Medical Doctors. Call for information Mon. thru Friday 8 a.m. to 6 p.m.

Bariatric Medical Clinics

OAKLAND 1419 Broadway 485-7800	SAN FRANCISCO Post & Powell 433-2333	PLEASANT HILL 1222 Contra Costa 798-7050	HAYWARD 21561 Foothill 888-8623
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14 San Francisco Chronicle Mon., June 24, 1974

LOOK AT ME NOW!



I lost 26 lbs in 6 weeks!

"I didn't sign any contracts or take any pills! I didn't even do any exercises! Also, my husband liked the money-back guarantee! The doctors and nurses were just great! Life really changes when you slim down!"

Chris Mishak, patient.

San Jose
296-2000

South San Jose
267-3131

Los Altos/Mt. View
941-6440

San Mateo
347-9901

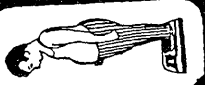

Redwood City
369-0333




WEIGHT REDUCTION MEDICAL CLINIC

Already helping thousands in southern California!

LOSE WEIGHT-NOW


*-to look better
-to feel better
-to perform better*



FREE CONSULTATION WITH NO OBLIGATION

MANDATORY, that all examinations, tests and treatments are medically supervised by M.D., R.N.'s and L.V.N.'s. You will receive a one-time complete blood count and blood chemistry. Also thyroid test and a urinalysis. Plus a complete computerized EKG and full physical exam given by the Doctor. This is all part of the program. before you are accepted. IT'S EASY - You'll be astounded how easy it is... Formerly available only to the very wealthy. The weight reduction plan is completely professional and now can be yours at a very modest cost. Terms are available.

**CALL NOW
938-2565**
1409 HUNSEY LANE
Walnut Creek



FREE
This book with each consultation

FEATURING
DR. A.T.W. SIMEON'S
"POUNDS & INCHES" METHOD
... Obesity affects 4 out of 5 families... whether you are male or female, 18 or 80, HCG Weight Clinics Foundation can improve your appearance and attractiveness - and help you stay that way!

...lose weight in weeks... you can't afford not to... and we make it easy with our new Credit Plan!

HCG Weight Clinics Foundation

Sacramento	927-2201	Modesto	521-8030
Stockton	478-5000	Walnut Creek	938-2565
Mother Lode	736-2142		

Oakland Tribune, June 16, 1973

PAR. 5. Through the use of the advertisements set forth in Paragraph Four, and others similar thereto but not specifically set forth herein, each of the respondents directly or indirectly invites and induces persons seeking to lose weight to attend its respective clinics and purchase its respective treatments to achieve this purpose. Said advertising fails to disclose the following material facts to prospective consumers:

1. The treatment offered by each respondent involves injections of the drug HCG;
2. The drug HCG is not approved by the Food and Drug Administration as safe and effective for the treatment of obesity or weight control.

Therefore, each respondent's advertisements were and are misleading in material respects and constituted, and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act; and the aforesaid advertisements were, and are, false, misleading, deceptive and unfair.

PAR. 6. The drug laws of the United States have been established by Congress to protect consumers from being subjected to certain drugs before such drugs have been approved by the Food and Drug Administration as both safe and effective for specific uses. Each respondent's advertising, promotion and marketing has the capacity to induce potentially large numbers of persons who desire to lose weight to be subjected to its respective treatments. Said treatments include numerous injections of the prescription drug HCG, which has not been approved by the Food and Drug Administration as safe and effective for the treatment of obesity or weight control, as provided for in the Federal Food, Drug and Cosmetic Act. Furthermore, the total cost of said treatments to each patient is substantial. Therefore, each respondent's advertising, promotion and marketing of a costly treatment which involves the use of a prescription drug prior to approval by the Food and Drug Administration as both safe and effective for its intended use is unfair.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged, including the dissemination of "false advertisements," were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in violation of Sections 5 and 12 of the Federal Trade Commission Act.

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW
JUDGE AS TO J. WILLIAM BYRD, MEDICAL WEIGHT LOSS, INC.,
AND DARREL P. SIMPSON JANUARY 7, 1975

PRELIMINARY STATEMENT

[2] In a complaint issued on October 15, 1974, in accord with its Rule 3.11, the Federal Trade Commission instituted a proceeding charging respondents with false, misleading, deceptive and unfair advertising for their weight reduction clinics where the "Simeon" or "Simeons" Method is used.

In the complaint it was alleged (1) that the method includes numerous injections of the prescription drug human chorionic gonadotropin (HCG) which has not been approved by the Food and Drug Administration (FDA) as safe and effective for the treatment of obesity or for weight control (complaint, Pars. Two and Six), and (2) that the total cost of the treatments per patient is substantial (complaint, Par. Six).

Therefore, it was alleged, it is unfair and violative of Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. §§45 and 52) for respondents to advertise, promote and market their method prior to FDA approval of HCG as being both safe and effective for its use in treating either obesity or weight control (complaint, Pars. Six and Seven).

[3] Commission records show that respondent J. William Byrd received a copy of the Complaint on November 21, 1974 (pp. 9 and 10, transcript of prehearing conference). Respondents Medical Weight Loss, Inc., and Darrel P. Simpson received their copies on October 21, 1974 (p. 8, transcript of prehearing conference). However, none of these three respondents filed an answer to the complaint within the thirty (30) days allowed under Commission Rule 4.3, nor have they done so to date. The other respondents in this matter have filed answers to the allegations.

The failure by the three respondents to file an answer constitutes a waiver of their right to appear and contest the allegations. This is noted in the notice section* of the complaint (pp. 6 and 7). The same section also alerts respondents to the fact that failure to answer authorizes the administrative law judge to find the facts as alleged and to enter an initial decision (see also Commission Rule 3.12(c)).

On the basis of the allegations, it is clear that this proceeding is concerned with risks to which members of the public are exposed, particularly if they contract with respondents for obesity or weight

* Not reproduced herein.

control treatments in accord with the Simeon Method. Such proceedings are within the purview of Sections 12 and 13 of the Federal Trade Commission Act (15 U.S.C. §§ 52 and 53) which, in pertinent part, have to do with bringing an end, as promptly as possible, to the false advertising of drugs; and HCG is a drug (complaint, Par. Two).

Consequently, I am of the opinion that my initial decision in this matter, insofar as the three nonanswering respondents are concerned, should be rendered as promptly as possible, consistent with their being accorded due process. My view that the decision should be rendered as promptly as possible is buttressed by the fact that the Commission sought to obtain a preliminary injunction in the United States District Court for the Northern District of California (C74-2226 WHO) to bring an end to the offensive practices pending litigation of the allegations made in the complaint.

[4] With regard to their rights to due process, deferral of the rendition of this decision as to these three respondents until after the prehearing conference, which none of the three attended, has accorded them more than the right to due process requires. They have had ample notice both of the charges and of their opportunity to contest them. 5 U.S.C. §554(b) and (c), (formerly the Administrative Procedure Act); *United States v. San Juan Lumber Co., Inc.*, 313 F. Supp. 703 (U.S. Dist. Ct. Colo. - 1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Golden Grain Macaroni Company v. Federal Trade Commission*, 472 F.2d 882 (9th Cir. 1972), *cert. denied*, 412 U.S. 918 (1973).

Accordingly, complaint counsel's motion that these three respondents be declared in default and that an initial decision, conclusion and order against them should issue, which motion was made to me at the prehearing conference (p. 7, transcript of prehearing conference), is granted.

Complaint counsel's motion for a summary decision against respondents Harvey J. Lobelson and Weight Reduction Clinic (p. 44, transcript of prehearing conference) is denied because those respondents have amended their answer to deny the key charge in Paragraph Six of the complaint which formed the primary basis for that motion.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in the initial decision, are hereby denied. The findings of fact made herein are based on the failure to answer, on a review of the allegations made in the complaint and on an examination of the transcript of the prehearing conference which was held in San Francisco on December 2, 1974.

In accord with Rule 3.12(c), the undersigned hereby makes the following findings of fact, conclusions and order.

FINDINGS OF FACT AS TO RESPONDENTS J. WILLIAM BYRD,
MEDICAL WEIGHT LOSS, INC., AND DARREL P. SIMPSON.

(1) Respondent J. William Byrd is, or when the complaint was filed was, an officer of said corporate respondent Simeons Weight Clinics Foundation. His business address is, [5] or was, the same as that of said corporate respondent. Respondent J. William Byrd and respondents John D. Howell and Simeon Management Corporation cooperated and acted together to bring about the acts and practices hereinafter set forth, including the operation of numerous clinics known by the name Simeons Weight Clinics Foundation located in the State of California, and by other names located elsewhere in other States of the United States.

Respondent Medical Weight Loss, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 1901 Avenue of the Stars, Suite 470, Los Angeles, California.

Respondent Darrel P. Simpson is an officer of Medical Weight Loss, Inc. Said individual respondent formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of said corporate respondent. He and respondent Medical Weight Loss, Inc. cooperate and act together to bring about the acts and practices hereinafter set forth, including the operation of numerous clinics known by the name Medical Weight Loss located in the State of California and by the same name or other names located elsewhere in other States in the United States.

(2) Each of the respondents is, or was, engaged in the business of operating weight reduction clinics and the advertising, offering for sale and sale of weight reduction treatments by said clinics, which treatments were and are purported to produce significant loss of weight. Said treatments are sometimes referred to as the "Simeon" or "Simeons" method, and include (a) five or six daily injections per week of HCG, which is a hormone derived from the urine of pregnant women, and (b) adherence to a 500 calorie diet daily, both for a period of about four to six weeks. HCG falls within the classification of "drug" as said term is defined in the Federal Trade Commission Act.

[6] (3) In the course and conduct of their business each of the three respondents has disseminated and caused the dissemination of certain advertisements concerning the said reducing clinics and treatments in newspapers which are distributed by United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are

1184

Initial Decision

likely to induce, directly or indirectly, the purchase of said treatments including the drug HCG.

(4) Typical of such advertisements, but not all inclusive thereof, are the following:

SIMEON WEIGHT CLINICS FOUNDATION DECLARES WAR ON WEIGHT


MEDICALLY SUPERVISED WEIGHT LOSS

Lose weight safely, quickly and effortlessly through our proven weight reduction program developed by Medical Doctors and supervised by our Physicians and Nurses. Simeon Weight Clinics, its Doctors, Nurses and professionally trained staff, bring you a quick and safe way to melt away unwanted pounds. Start today by calling for your free consultation.

Important Facts to Know About
SIMEON
Weight Clinics
Foundation

- OVER 200 PROFESSIONALLY TRAINED EMPLOYEES
- OVER 17 MEDICAL DOCTORS
- OVER 75 LICENSED NURSES
- OVER 45 CLINICS IN CALIFORNIA ALONE
- TOTAL MEDICAL SUPERVISION
- APPROVED AS A FULL-FACILITY HEALTH PLAN
- NO CHARGES OF STENOLOGIC CHARGE
- MASTER CHARGE AND BANK AMERICAN EXPRESS
- ACCIDENT AND CHARGE FOR CONSULTATIONS
- 12 MONTHS FREE TO 120 DAYS MONTHLY

SEE OUR DOCTORS NOW
Start today by calling for a free consultation. We'll help you lose weight safely and effectively. No more dieting. No more exercise. No more frustration.



LOSE WEIGHT UNDER STRICT MEDICAL SUPERVISION.

SIMEON
SIMEON
Weight Clinics
Foundation

Weekdays 8 to 7 • Saturdays 9 to 1

**CALL THE CLINIC
NEAR YOU TODAY.**

BAY AREA CLINICS

S.F. 2266 GEARY BLVD.	587-2643	REDWOOD CITY	365-4264
S.F. 655 SUTTER STREET	622-6008	SAN JOSE	257-8600
S.F. 2065 MISSION STREET ...	622-5491	OAKLAND	465-5845
S.F. WEST PORTAL	666-7154	EL CERRITO	525-2342
DALY CITY	748-0976	HAYWARD	537-6822
SAN MATEO	547-0213	SAN RAFAEL	456-5930

CALL A CLINIC IN YOUR AREA

Datebook, Sunday, June 23, 1974
S. F. Sunday Examiner & Chronicle

LOSING WEIGHT IS A DOCTOR'S BUSINESS

NOW YOU CAN LOSE WEIGHT...

THROUGH A PROVEN METHOD—FAST ...



... using the safe and practical Dr. A. T. W. Simeons method of weight reduction. Expect dramatic results in just weeks. Call your nearest clinic today for a consultation at no charge. You'll also receive a copy of Dr. Simeons book,

"POUNDS AND INCHES," at no charge. Enroll in the world's largest group of Doctor owned, Doctor operated medical weight loss clinics.

Summer's here ... Special rates for groups of 6 or more

NO CONTRACTS TO SIGN... 42 CLINICS OPEN IN THIS AREA



Look for the World Globe ... you'll know your at Medical Weight Loss.

SO. SAN FRANCISCO 588-7117	REDWOOD CITY 369-2935	FREMONT 796-9232
DALY CITY 994-6446	MOUNTAIN VIEW 965-4300	SAN LORENZO/ HAYWARD 278-4114
SAN CARLOS 591-9681	MILPITAS 263-8181	PETALUMA 763-4178
SAN MATEO 347-3051	CASTRO VALLEY/ SAN LEANDRO 581-5070	LOS GATOS/ SARATOGA 356-1118
MILL VALLEY 332-6560	DUBLIN 829-2424	EAST SAN JOSE 926-2737

BankAmericard or Master Charge Welcome

FOR INFORMATION CALL (415) 697-6600

MEDICAL WEIGHT LOSS

[9] (5) Through the use of the advertisements set forth in Paragraph Four, and others similar thereto but not specifically set forth herein, each of the three respondents directly or indirectly invited and induced persons seeking to lose weight to patronize their clinics and to purchase the Simeon method of treatment. Said advertising, however, fails to disclose the following material facts to prospective consumers:

1. The treatment offered by each of the three respondents involves injections of the drug HCG;

2. The drug HCG is not approved by the Food and Drug Administration as safe and effective for the treatment of obesity or weight control.

Therefore, each of the three respondents' advertisements were and are misleading in material respects and constituted, and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act; and the aforesaid advertisements were, and are, false, misleading, deceptive and unfair.

(6) The drug laws of the United States were established by Congress to protect consumers from being subjected to certain drugs before such drugs have been approved for specific uses. Each of the three respondents' advertising, promotion and marketing has the capacity to induce potentially large numbers of persons who desire to lose weight to purchase and undergo the three respondents' respective treatments. The treatments include numerous injections of the prescription drug HCG, which has not been approved by the Food and Drug Administration as safe and effective for the treatment of obesity or weight control, as provided for in the Federal Food, Drug and Cosmetic Act (21 U.S.C. §321). Furthermore, the total cost of said treatments to each patient is substantial. Therefore, each of the three respondents' advertising, promotion and marketing of a costly treatment which involves the injection into persons of a prescription drug prior to approval by the Food and Drug Administration as both safe and effective for its intended use is unfair.

[10] (7) The aforesaid acts and practices of the three respondents including the dissemination of "false advertisements," were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in violation of Sections 5 and 12 of the Federal Trade Commission Act.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The acts and practices charged in the complaint took place in commerce as "commerce" is defined in the Federal Trade Commission Act.

4. The three respondents have engaged in unfair or deceptive acts and practices in commerce in that they have disseminated false and misleading advertisements in violation of Sections 5 and 12(a) of the Federal Trade Commission Act (15 U.S.C. §§45 and 52).

ORDER

It is ordered, That respondents J. William Byrd, individually and as an officer of Simeons Weight Clinics Foundation, a corporation, Medical Weight Loss, Inc., a corporation, its successors and assigns and its officers, and Darrel P. Simpson, individually and as an officer of Medical Weight Loss, Inc., respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of the "Simeon" or "Simeons" method for weight reduction or of any other weight reducing service or treatment, do forthwith cease and desist from:

[11] 1. Disseminating, or causing the dissemination of any advertisement, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, promoting any service or treatment which involves the use of HCG or any other drug required under the Federal Food, Drug and Cosmetic Act to be approved by the Food and Drug Administration (FDA) as both safe and effective for the treatment of the conditions for which it is to be used, until such drug has received the required FDA approval.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such weight reducing service or treatment in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to comply with the requirements of paragraph 1 hereof.

It is further ordered, That each of the three respondents is to deliver a copy of this order to cease and desist to all persons now engaged, or who become engaged, in the management, [12] advertising, promotion, or marketing of weight reducing treatments as their agents, salesmen, representatives, or employees and to secure from each of said persons a signed statement acknowledging receipt of a copy thereof.

It is further ordered, That the corporate respondent Medical Weight Loss, Inc. is to notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution,

assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That each of the individual respondents named herein is to promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW
JUDGE JUNE 18, 1975

PRELIMINARY STATEMENT

[2] In a complaint dated October 15, 1974, the Commission charged respondents with violations of Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. §§45 and 52).

[3] The gravamen of the charges was that respondents' advertising in newspapers distributed by the United States mails and various other means in commerce invited and induced persons seeking to lose weight to attend their clinics and to purchase treatments without disclosing in the advertising that the treatments used, *i.e.*, the Simeon or Simeons method, involve injections of the drug, human chorionic gonadotropin (HCG).

It also was alleged that HCG has not been approved by the Food and Drug Administration (FDA) as safe and effective for the treatment of obesity and weight control, that the advertisements were misleading in material respects in that they failed to disclose lack of FDA approval, constituted "false advertisements" and were, and are, misleading, deceptive and unfair.

Lastly, it was alleged that it is unfair for respondents to promote and market a costly treatment involving use of HCG—a prescription drug—prior to its approval by the Food and Drug Administration as safe and effective for its intended use by respondents in treating obesity and weight control.

After issuance of the complaint and prior to the start of the adjudicative hearings on the charges, counsel for the Commission sought a preliminary injunction in the United States District Court for the Northern District of California (No. C-74-225 WHO) to enjoin, pending the completion of the Commission proceedings, the dissemination by respondents of the advertisements alleged to be false and

misleading. In a memorandum opinion dated March 11, 1975, the court declined to issue the injunction.

Three of the respondents named in the Commission's complaint (J. William Byrd, individually and as an officer of Simeons Weight Clinics Foundation; Medical Weight Loss, Inc.; and Darrel P. Simpson, individually and as an officer of Medical Weight Loss, Inc.) did not answer the complaint. Consequently, an initial decision predicated on their default was filed by me on January 7, 1975, in accord with Commission Rule 3.12(c). By order dated March 7, 1975, the Commission stayed the effective date of that initial decision until its further order issues.

[4] The remaining respondents (*i.e.*, those listed in the caption hereof) answered in timely fashion. In addition to denying that they were violating Sections 5 and 12 of the Federal Trade Commission Act, various defenses were asserted. These defenses, in essence, were that: (1) This matter lies within the jurisdiction of the Food and Drug Administration rather than the Federal Trade Commission; (2) The advertisements are not violative of Sections 12 and 15 of the F.T.C. Act because (a) it is not customary or usual for a doctor to advertise the use of HCG, (b) it is customary and usual for a doctor to use HCG for weight control purposes, and (c) it is not customary to tell a patient that HCG has approval for other purposes but not for weight control; (3) California law precludes a finding of violation of the Federal Trade Commission Act in that California's Knox-Mills Act regarding prepaid medical plans, under which respondents are registered, calls for submittal of advertisements to the Attorney General of the State, and prohibits their use if disapproved by him. Respondents' advertisements have not been disapproved; (4) The treatments are administered by medical doctors and the Federal Trade Commission has no jurisdiction to interfere with the doctor-patient relationship; (5) No "sale" of the drug HCG takes place within the meaning of Section 12 of the F.T.C. Act; (6) HCG is safe and not harmful as used by respondents; (7) A substantial number of doctors in the United States have used HCG as an integral part of their weight reduction programs for a substantial period of time and the failure of the F.T.C. to challenge such use has estopped the Commission "* * *" from prosecuting this action based on the doctrine of laches;" and (8) HCG is exempt from the new drug requirements of the Federal Food, Drug and Cosmetic Act (FFDCA). Each of these defenses is addressed below in this initial decision.

Complaint counsel and counsel for Norcal, et al., filed cross motions for summary decision on January 27 and February 4, 1975, respectively. These were denied by me on February 10, 1975. Complaint counsel's

request for reconsideration was also denied in an order issued on February 21, 1975.

[5] Adjudicative hearings were held in San Francisco and Los Angeles, California, on February 25, 26 and 27, and March 6 and 7, 1975, respectively. The record was closed for the reception of evidence on March 24, 1975. Thereafter, in accord with Commission Rule 3.46, proposed findings, conclusions and order, together with reasons and briefs in support thereof were filed by the parties on May 9, 1975.

The findings of fact made herein are based on a review of the allegations made in the complaint, respondents' answers, stipulations entered by counsel, written admissions by respondents, the evidentiary record of this matter and upon consideration of the demeanor of the witnesses at the hearings in this proceeding. In addition, the proposed findings of fact, conclusions and order, together with reasons and briefs in support thereof, which have been filed by the parties, have been given careful consideration. To the extent not adopted by this decision in the form proposed or in substance, they are rejected as not supported by the record or as immaterial.

References to the record are intended to serve as guides to the testimony, evidence and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence considered in arriving at such findings. The following abbreviations have been used:

CX — Commission's Exhibit, followed by number of exhibit being referenced.

RX — Respondents' Exhibit, followed by number of exhibit being referenced.

Tr. — Transcript, preceded by the name of the witness testifying and followed by the page number being referenced. [6]

FINDINGS OF FACT

1. RESPONDENTS' IDENTITIES

(A) Respondent Simeon Management Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 7712 Densmore Ave., Van Nuys, California. The corporation has not yet named officers and directors or issued stock.

Respondent John D. Howell is the principal investor in Simeon Management Corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices set forth in the complaint. His business address is the same as that of said corporate respondent.

Respondent Simeons Weight Clinics Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 7712 Densmore Ave., Van Nuys, California.

Respondent Robert Van Dine is an officer of corporate respondent Simeons Weight Clinics Foundation. His business address is the same as that of said corporate respondent. He and respondents Howell and Simeon Management Corporation cooperate and act together to bring about the acts and practices set forth in the complaint, including the operation of numerous clinics known by the name Simeons Weight Clinics Foundation located in the State of California, and by other names located elsewhere in other States in the United States. (All the findings in (A) were admitted since these facts were set forth in the complaint but Simeon did not address them in its answer. See Commission Rule 3.12(b)(1)(ii).)

[7] (B) Respondent Bariatric Medical Clinics Management Corporation (Bariatric) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 560 Battery St., San Francisco, California.

Respondent David L. Cunningham is an officer of Bariatric Medical Clinics Management Corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices set forth in the complaint (Cunningham, Tr. 102); however, he does not personally engage in any practices that may be regarded as medical treatment (Bariatric Answer p. 2; Cunningham, Tr. 108). His business address is 680 Beach St., San Francisco, California. He and respondent Bariatric cooperate and act together to bring about the acts and practices set forth in the complaint, including the operation of numerous clinics known by the name Bariatric Medical Clinics located in the State of California (Bariatric Answer, p. 2; Cunningham, Tr. 102).

(C) Respondent Harvey J. Lobelson (Lobelson) is an individual trading and doing business under the name of Weight Reduction Medical Clinic, with his principal office and place of business located at 6505 Alvarado Rd., San Diego, California. He also operates numerous other clinics known by the same name located elsewhere in the State of California (Lobelson Answer, p. 1).

(D) Respondent C. M. Norcal, Inc. (Norcal) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6 West Swain Rd., Stockton, California (Norcal Answer, p. 2).

[8] Respondent HCG Weight Clinics Foundation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6 West Swain Rd., Stockton, California (Norcal Answer, p. 2).

Respondents Peter J. Marengo, III, and Joseph Costa are officers of C. M. Norcal, Inc. and HCG Weight Clinics Foundation. Their business address is the same as that of said corporate respondents (Norcal Answer, p. 2).

Other than those activities related to the doctor-patient relationship (Norcal Answer, p. 2), the individual respondents Marengo and Costa formulate, direct and control the acts and practices set forth in the complaint. These include the operation of numerous clinics known by the name HCG Weight Clinics Foundation located in the State of California (Norcal Answer, p. 2).

2. RESPONDENTS' ACTIVITIES

(A) Each of the respondents is involved in the business of operating weight reduction clinics, and in the advertising, offering for sale and sale of weight reduction treatments by the clinics, which treatments are designed to produce significant loss of weight through use of the Simeon or Simeons method (complaint Par. 2, respondents Simeon, et al. Answer, Commission Rule 3.12(b)(1)(ii); Cunningham, Tr. 102, 108, 110-111; Lobelson Answer, pp. 1-2; Norcal Answer, p. 2).

(B) Respondents' weight reduction treatments are not unreasonably "costly." Their cost is comparable to physicians' charges for office visits for medical attention of various types including other weight reduction treatments (Parker, Tr. 658-659; Polsky, Tr. 669-670).

Simeons Clinics charge patients anywhere from \$188 to \$368 or more per set of treatments (Simeon Stipulations #4). HCG Weight Clinics charge from \$195 to \$395 or more, with the average cost having been calculated to be \$302 (Norcal Stipulations #4). Weight Reduction Medical Clinic's charges to patients are \$170 for 23-shot treatments and \$240 for 40-shot treatments (Lobelson Requests for Admissions and Responses #4). Bariatric's clinics charge \$165-\$170 per set of six-week treatments (Tr. p. 98). [9]

3. THE SIMEON(S) METHOD (CX'S 1-3)

The "Simeon" or "Simeons" method is followed in the treatments respondents advertise. That method includes five or six injections per week, one injection per visit, for from four to six weeks, of human chorionic gonadotropin (HCG), a prescription drug. HCG is a hormone

derived from the urine of pregnant women and is a "drug" as that term is defined in the Federal Trade Commission Act (15 U.S.C. §55(c)). The method also calls for adherence to a 500 calorie a day diet (CX 22; Respondents Simeon, et al. Answer, Commission Rule 3.12(b)(1)(ii); Bariatric et al. Answer, p. 2; Lobelson et al. Answer, p. 2; Norcal Answer, p. 2).

(Note: Pursuant to Commission Rule 3.15, in order to make it clear that the Simeon(s) method is not limited absolutely merely to five or six injections per week, on a daily basis, of HCG, and a 500 calorie a day diet, both for a period of about four to six weeks, at a prehearing conference on December 2, 1974, the words "consist of" were deleted and "include" was substituted in paragraph two of the complaint with the agreement of both sides (Tr. 31-35).)

4. THE COMMISSION'S JURISDICTION

Each of the respondents has disseminated and caused the dissemination of advertisements concerning the reducing clinics and treatments (admitted in each respondent's Answer). These have appeared in newspapers of intra and interstate circulation. In addition, each respondent except Bariatric has advertised on television (Simeon Stipulation, Norcal Stipulation and Lobelson Stipulation).

[10] The newspapers in which their advertisements were placed have interstate circulations, *e.g.*, *The San Francisco Chronicle*, *The Los Angeles Times* and *The Sacramento Bee* (Simeon, Lobelson and Norcal Stipulations and/or Admissions). Similarly, the television stations over which each but Bariatric advertised are interstate in range.

In addition, respondents, in the course of operating the weight reduction clinics, purchase HCG from drug manufacturers located throughout the United States and have it shipped to their receiving points for distribution to the clinics at which it is injected into persons who have subscribed for the course of treatments. Therefore, respondents are "in commerce" within the meaning of the Federal Trade Commission Act (Marengo, Tr. 397-398).

5. ADVERTISEMENTS USED

Typical advertisements each of the respondents has disseminated follow on pages 10a-10d. Each of the advertisements was disseminated by a different respondent; however, they are sufficiently alike in their representations and omissions to be considered and discussed together (see page 11, *infra*).

SIMEON WEIGHT CLINICS FOUNDATION DECLARES WAR ON WEIGHT

MEDICALLY SUPERVISED WEIGHT LOSS

Lose weight safely, quickly and effortlessly through our proven weight reduction program developed by Medical Doctors and supervised by our Physicians and Nurses. Simeon Weight Clinics, its Doctors, Nurses and professionally trained staff, bring you a quick and safe way to melt away unwanted pounds. Start today by calling for your free consultation.

Important Facts to Know About



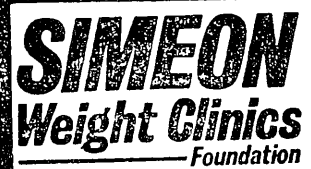
- OVER 200 PROFESSIONALLY TRAINED EMPLOYEES
- OVER 17 MEDICAL DOCTORS
- OVER 75 LICENSED NURSES
- OVER 45 CLINICS IN CALIFORNIA ALONE
- TOTAL MEDICAL SUPERVISION
- APPROVED AS A PREPAID HEALTH PLAN
- NO BUNNICKS OR STRENUOUS EXERCISE
- MASTER CHARGE AND BANQUAMERICARD ACCEPTED
- ABSOLUTELY NO CHARGE FOR CONSULTATIONS
- SUCCESSFULLY TREATING THOUSANDS MONTHLY



SEE OUR DOCTORS NOW

Start losing weight safely, quickly and without strenuous exercise through our proven weight reduction program.

LOSE WEIGHT UNDER STRICT MEDICAL SUPERVISION.



Weekdays 8 to 7 • Saturdays 9 to 1

CALL THE CLINIC NEAR YOU TODAY.

BAY AREA CLINICS

S.F. 2266 GEARY BLVD.	567-2543	REDWOOD CITY	365-4264
S.F. 655 SUTTER STREET	928-5888	SAN JOSE	267-8600
S.F. 2065 MISSION STREET ...	626-3461	OAKLAND	465-5845
S.F. WEST PORTAL	665-7034	EL CERRITO	525-2342
DALY CITY	756-0406	HAYWARD	537-6822
SAN MATEO	347-8223	SAN RAFAEL	456-5930

CALL A CLINIC IN YOUR AREA

S. F. Sunday Examiner & Chronicle Datebook, Sunday, June 23, 1974

**medical
weight®
reduction**

**NEW CLINIC
NOW OPEN
DUBLIN
829-2626**




Bariatric's individual program is a safe and practical method for the entire family to lose weight and learn how to maintain proper weight... under the strict supervision of Medical Doctors. Call for information Mon. thru Friday 8 a.m. to 6 p.m.

Bariatric Medical Clinics

OAKLAND 1419 Broadway 465-7000	SAN FRANCISCO Post & Powell 433-2333	PLEASANT HILL 1222 Contra Costa 798-7090	HAYWARD 21551 Foothill 888-8623
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14 San Francisco Chronicle Mon., June 24, 1974

LOOK AT ME NOW!



**I lost 26 lbs in
6 weeks!**

"I didn't sign any contracts or take any pills! I didn't even do any exercises! Also, my husband liked the money-back guarantee! The doctors and nurses were just great! Life really changes when you slim down!"

Chris Mishak, patient.


San Jose
296-2000

South San Jose
267-3131

Los Altos/Mt. View
941-6440

San Mateo
347-9901

Redwood City
369-0333



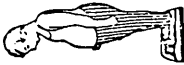
**WEIGHT REDUCTION
MEDICAL CLINIC**

Already helping thousands in southern California!


1184

Initial Decision

LOSE WEIGHT - NOW



*-to look better
-to feel better
-to perform better*



MANDATORY, that all examinations, tests and treatments are medically supervised by M.D., R.N.'s and L.V.N.'s. You will receive a one time complete blood count and blood chemistry. Also thyroid test and a urinalysis. Plus a complete computerized EKG and full physical exam given by the Doctor. This is all part of the program, before you are accepted. **IT'S EASY** - You'll be astounded how easy it is... Formerly available only to the very wealthy. The weight reduction plan is completely professional and now can be yours at a very modest cost. Terms are available.

FREE CONSULTATION OFFERS NO OBLIGATION

FEATURING
DR. A.T.W. SIMEON'S
"POUNDS & INCHES" METHOD

... Obesity affects 4 out of 5 families... whether you are male or female, 18 or 80, HCG Weight Clinics Foundation can improve your appearance and attractiveness - and help you stay that way!

...lose weight in weeks... you can't afford not to... and we make it easy with our new Credit Plan!

HCG
Weight Clinics
Foundation

Sacramento 927-2201	Modesto 521-8030
Stockton 478-5000	Walnut Creek 938-2565
Mother Lode 736-2142	

CALL NOW
938-2565
1409 NURSERY LANE
Walnut Creek

Oakland Tribune, June 10, 1974

[11] The impression conveyed by respondents' advertisements is that the weight reduction plan offered involves doctors using a method whereby those taking the treatments will lose weight. The advertisements are an inducement to subscribe to the regimen offered but no information is given as to its specifics.

Each of the advertisements reproduced above, as well as others in the record, fails to disclose the material facts that:

(1) the treatments offered by each respondent involve injections of the drug HCG; or that

(2) HCG is not approved by the Food and Drug Administration as safe *and* effective for the treatment of obesity or weight control. (See Simeon Stipulations, Exhibits A and B, Norcal Stipulations A, B and C (RX 3), Lobelson Responses to Requests for Admissions #5 (Exhibit A) and CX 17a-17m (Bariatric).)

6. EFFECT OF THE ADVERTISEMENTS

(A) By use of such advertisements, and others, each of the respondents directly or indirectly invites persons to attend its clinics and to purchase treatments in order to lose weight. (Simeon stipulated it advertised in newspapers and on television, and as noted before, admitted (par. 5, above) disseminating the advertisements reproduced on page 10a hereof. Admitted by Bariatric, et al., Commission Rule 3.12(b)(1)(ii); Lobelson Answer, par. 5, p. 3; Norcal Answer, par. 5, p. 3.)

(B) Each respondent's advertising, promotion and marketing effort has the capacity to induce potentially large numbers of persons who desire to lose weight to purchase its respective treatments.

[12] (C) Each respondent's advertising, promotion and marketing of a treatment which involves the injection of HCG prior to its approval by the Food and Drug Administration as being both safe *and* effective is unfair to rivals of respondents who offer other methods, devices or texts for the purpose of losing weight.

DISCUSSION

JURISDICTION

Respondents have at all times relevant hereto been engaged in interstate commerce within the intent and meaning of Sections 4 and 5 of the Federal Trade Commission Act. (See Findings, pp. 9-11 above, regarding newspaper advertisements and interstate shipments.)

The Commission's jurisdiction over the advertising of treatments or services as well as products under Section 5 is clearly established under existing case law. *Abel Allan Goodman v. Federal Trade Commission*,

244 F.2d 584 (9th Cir. 1957); *Federal Trade Commission v. Civil Service Training Bureau, Inc.*, 79 F.2d 113 (6th Cir. 1935).

It is sufficient for establishing the "in commerce" jurisdictional requirement of Section 5 of the Federal Trade Commission Act, if the advertisements of the respondents have been disseminated interstate. Intent to attract out-of-State customers is not necessary. Jurisdiction under Section 12 of the F.T.C. Act exists if the U.S. mails have been used by respondents in the dissemination of their advertisements. *John A. Guziak v. Federal Trade Commission*, 361 F.2d 700 (8th Cir. 1966); *S. Klein Dept. Stores, Inc.*, Dkt. 7891, 57 F.T.C. 1543, 1544 (1960) Interlocutory Order; *Surrey Sleep Products*, 73 FTC 523, 553-554 (1968); *Sidney J. Mueller v. United States*, 262 F.2d 443, 446-448 (5th Cir. 1958); *Kenneth W. Shafe, et al. v. Federal Trade Commission*, 256 F.2d 661 (6th Cir. 1958). (Note: The "in commerce" jurisdictional requirements of Sections 5 and 12 of the F.T.C. Act were changed to "in or affecting commerce" in essence by the Magnuson-Moss Warranty— Federal Trade Commission Improvement Act (88 Stat. 2193— Jan. 4, 1975), some months after instant complaint issued.)

[13] All the acts and practices which were and are part of the mode of operation of respondents in effecting the sale of treatments for the purpose of losing weight were methods of competition or acts and practices in commerce within the purview of the Federal Trade Commission Act. *Standard Oil Co. v. Federal Trade Commission*, 340 U.S. 231, 236-238 (7th Cir. 1951); *Holland Furnace Company v. Federal Trade Commission*, 269 F.2d 203 (7th Cir. 1959), *cert. denied*, 361 U.S. 932; *John A. Guziak v. Federal Trade Commission*, *supra*; *United States v. South-Eastern Underwriters Association et al.*, 322 U.S. 533, 549-553 (1944).

F.T.C. and FDA Responsibilities

The determinations as to (1) whether HCG is a new drug, and (2) whether HCG is safe and effective, insofar as its use for treating obesity and weight control are concerned, are for the Food and Drug Administration to make. That, however, does not deprive the Federal Trade Commission of its authority to take action to bring an end to false, misleading, deceptive or unfair advertising or unfair trade practices used in connection with the offering of treatments involving the administration of HCG to ultimate consumers of the drug.

Except for jurisdictional exclusions not pertinent here (see Sec. 5(a)(6) of the F.T.C. Act), Sections 5 and 12 of the F.T.C. Act (15 U.S.C. §§45 and 52) authorize the Commission to initiate proceedings to bring an end to *any* unfair method of competition or unfair or deceptive act or practice in commerce when it is to the interest of the public to do so.

