IN THE MATTER OF

NOVARTIS CORPORATION, ET AL.

Docket 9279. Interlocutory Order, August 5, 1999

ORDER GRANTING APPLICATION FOR STAY OF PART IV OF ORDER

On July 19, 1999, respondents Novartis Corporation and Novartis Consumer Health, Inc. (collectively "Novartis") applied for a stay pending appeal of Part IV of the Commission's order of May 13, 1999, as modified by order dated July 2, 1999, (hereinafter "Order") which imposes a corrective advertising requirement. Complaint counsel opposes the granting of a stay. For the reasons stated below, the Commission grants the application and stays the enforcement of Part IV of its Order pending a ruling disposing of the petition for review recently filed by Novartis in the United States Court of Appeals for the District of Columbia Circuit. All other provisions of the Order will remain in effect during the pendency of the appeal.

Commission adjudicative orders (except divestiture orders) take effect "upon the sixtieth day after" their date of service, unless "stayed, in whole or in part and subject to such conditions as may be appropriate by ... the Commission" or "an appropriate court of appeals." 15 U.S.C. 45 (g)(2). A party seeking a stay must first apply for such relief to the Commission. Novartis has done so in its July 19 application.

Commission Rule 3.56(c), 16 CFR 3.56(c), sets out the applicable legal standard for the granting of a stay pending appeal. An applicant for a stay must address the following four factors: (1) "the likelihood of the applicant's success on appeal"; (2) "whether the applicant will suffer irreparable harm if a stay is not granted"; (3) "the degree of injury to other parties if a stay is granted"; and (4) "why the stay is in the public interest." *Id.*

We consider each of these prongs in turn.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

Novartis' assertions of a likelihood of success on the merits merely revisit arguments that we have already considered and rejected in our May 27, 1999 opinion and in our order of July 2 denying its petition for reconsideration. Novartis first claims that consumer

beliefs about Doan's superior efficacy for back pain could have been caused by that product's historical positioning as a remedy for back pain, and might not have been substantially created or reinforced by the deceptive advertising campaign. App. for Stay at 7-8. That claim is rebutted by surveys that demonstrate significant changes in consumer attitudes during the course of the campaign. *In re Novartis Corp.,* No. 9279, 1999 FTC LEXIS 90, at 84-88 (May 13, 1999). We have explained that the NFO Study, which documented a lingering of consumer misbeliefs six months after the deceptive advertising campaign ended, was not rendered invalid merely because it did not ask specifically about the effect of the challenged advertisements. App. for Stay at 8-9. To the contrary, the temporal coincidence of changes in consumer perceptions with the period of the challenged campaign adequately demonstrates causality, and hence the validity of the study. *Novartis Corp.*, 1999 FTC LEXIS 90, at *91.

We also have previously rejected Novartis' next argument -- that false beliefs on the part of consumers that Doan's was more efficacious for the treatment of back pain than other brands would not necessarily make such consumers more likely to purchase Doan's. App. for Stay at 9-13. Indeed, we have pointed out that Novartis' own expert has conceded that a back pain sufferer who mistakenly believes that a product is superior for the treatment of back pain "would be motivated to purchase the product." *Novartis Corp.*, 1999 FTC LEXIS 90, at *71 (citing Jacoby Tr. 3371). Finally, Novartis even argues against the very exemption that the Commission granted it -- claiming that the exemption of advertisements of fifteen seconds or less renders the corrective advertising requirement "irrational." App. for Stay at 15. That incongruous claim is rebutted by the fact that the exemption was designed specifically to ensure that our corrective advertising requirement would not hinder Novartis' ability to use its historically preferred advertising format. *See Novartis Corp.*, 1999 FTC LEXIS 90, at *107. Novartis offers no reason for us to question our prior treatment of any of these points, and its renewal of these arguments, without more, is insufficient to justify the grant of a stay. *See In re Toys "R" Us, Inc.*, No. 9278, slip op. at 1 (Dec. 1, 1998); *In re Detroit Auto Dealers Ass'n, Inc.*, No. 9189, 1995 FTC LEXIS 256, at *4 (Aug. 23, 1995).

We recognize that our prior determination -- that consumer misbeliefs substantially caused or reinforced by the deceptive advertising campaign are likely to linger -- is based upon a complex

factual record. We are confident of the correctness of our decision and the grant of the stay pending appeal neither states or implies doubt on our part as to the merits of Novartis' claims. *See In re California Dental Ass'n*, 1996 FTC LEXIS 277, at *9. Nevertheless, it is well settled that arguable difficulties arising from the application of the law to a complex factual record can support a finding that a stay applicant has made a substantial showing on the merits. *See In re Toys "R" Us, Inc.*, No. 9278, slip op. at 1 (collecting cases). We remain convinced, for the reasons articulated in our previous opinion, *see Novartis Corp.*, 1999 FTC LEXIS 90, at *95-103, that the effects of Novartis' deceptive advertising campaign would linger for at least five more years (at which time the corrective advertising requirement will automatically terminate). Nevertheless, Novartis' arguments on the merits are adequate (if barely so) to warrant consideration of the remaining factors noted above.

II. IRREPARABLE INJURY

Novartis must demonstrate that denial of a stay would cause it irreparable harm. Conclusory or unsupported assertions of harm do not suffice, and "mere injuries, however substantial, in terms of money" do not constitute legally cognizable irreparable injury. *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (internal quotation marks omitted). The controlling factor is irreparable injury. Novartis bears the burden of proving that the alleged irreparable injury is substantial and likely to occur absent a stay. *See Michigan Coalition of Radioactive Material Users v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991).

Novartis alleges irreparable injury on two principal grounds: first, the non-recoverable costs it will incur in re-labeling its products while its appeal proceeds; second, the adverse effects on consumer perceptions of Doan's and on Doan's retail distribution that use of the corrective message would arguably have. App. for Stay at 18. The costs that Novartis would incur in complying with Part IV of the Order could not be recovered in the event that Novartis prevails on appeal; therefore, such costs constitute irreparable injury under these facts.

Moreover, while we are satisfied that any effects upon Doan's sales or reputation are proper remedial consequences of removing the lingering effects of Novartis' deceptive conduct, the irreparable injury

inquiry examines the consequences to Novartis if it succeeds on the merits of its appeal. If a Court of Appeals were to determine that corrective advertising is not appropriate, then any lost sales or reputational harm associated with the corrective advertising requirement during the pendency of the appeal may indeed be difficult to ameliorate. *See In re California Dental Ass'n*, No. 9259, 1996 FTC LEXIS 277, at *7 (May 22, 1996) (holding that where compliance could cause confusion or require costly notification if reversed on appeal, a party may be irreparably injured). Thus, while the Commission clearly has the authority to impose the corrective advertising remedy contained in Part IV of our Order, Novartis has made an adequate showing that it would be irreparably injured if the Commission's decision were to be overturned on appeal.

III. HARM TO OTHERS AND THE PUBLIC INTEREST

Because complaint counsel represents the public interest in effective law enforcement, we consider the third and fourth prongs together. *See Id.*, at *7-8.

Novartis contends that the issuance of a stay would be in the public interest because implementation of the corrective advertising requirement could dissuade individuals for whom Doan's could be effective from using the product. In fact, our finding that the challenged advertising campaign was deceptive and consumers continue to harbor false beliefs that Doan's is superior to other products for the treatment of back pain, *Novartis Corp.*, 1999 FTC LEXIS 90, at *94, 102-03, demonstrates that the public interest would not, if anything, cut against the issuance of a stay. There is a danger that, if we grant a stay, some consumers laboring under the misimpression that Doan's is superior for the treatment of back pain would purchase Doan's who would not have chosen to do so had they known the truth about the product. Moreover, the fact that individuals may have a range of different responses to any treatment for back pain, whether advertised fairly or deceptively, cannot prevent a general ban of deceptive advertising or any requirement of correction. App. for Stay at 19-20.

CONCLUSION

The decision whether to stay Part IV of our Order is a close one. We recognize that granting a stay will likely entail some harm to the public interest by permitting lingering misbeliefs to affect consumer

behavior during the period of the stay. In the interest of developing a reasonable accommodation between Novartis' private interests and the public interest in eliminating the lingering effects of its deceptive advertising campaign, however, and in light of the complex factual issues underlying our conclusion that corrective advertising is necessary, we stay Part IV of the Order during "the relatively brief period of a stay pending appeal." *In re Toys "R" Us, Inc.*, No. 9278, slip op. at 2. We are confident that the Court of Appeals will resolve this matter expeditiously, thus limiting the extent of consumer injury occasioned by our grant of this stay.

Apart from the stayed provisions of Part IV, all other provisions of the Order will take effect upon the sixtieth day after service. *Cf. California Dental Ass'n*, 1995 FTC LEXIS 256, at *11 ("Respondent has not sought to stay those provisions of the Order that prohibit continuation of the restraints found to be unlawful. Respondent has thus attempted to minimize the harm to the public interest while focusing on the provisions that create the greatest harm to itself.") The stay shall remain in effect until the court of appeals issues a ruling disposing of the petition for review.

Commissioner Swindle concurring.

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

The Commission has granted Novartis' petition for a stay pending appellate review of the corrective advertising provision contained in Part IV of the Order. I have voted in favor of granting the petition for a stay. However, I am writing separately to explain the differences between my reasons for granting the petition and those of the majority.

The Commission considers four factors when deciding whether to grant a stay: 1) the likelihood of the applicant's success on appeal; 2) whether the applicant will suffer irreparable harm absent a stay; 3) injury to others if the stay is granted; and 4) whether the stay is in the public interest. 16 CFR 3.56(c). I will discuss each factor in turn.

The existence of a false belief that is likely to linger is one of the prerequisites for corrective advertising under *Warner-Lambert Co. v. FTC*, 562 F.2d 749 (D.C. Cir. 1977), *modifying and enforcing* 86 FTC 1398 (1975). In the instant case, the Administrative Law Judge concluded that the evidence that had been offered did not prove the existence of a lingering false belief. In dissenting from the imposition

of the corrective advertising provision in this case, I also concluded that the exceedingly weak evidence offered on this issue did not prove the existence of a lingering false belief.[1] Because, as both the ALJ and I determined, the evidence did not prove the existence of the lingering belief, which is necessary to support the imposition of corrective advertising, I conclude that there is a substantial likelihood that Novartis will prevail on the merits of its appeal.

With regard to the second factor, I also conclude that Novartis has shown that it will suffer irreparable injury in absence of a stay. If a stay is not granted, then Novartis will suffer some irreparable harm by incurring the non-recoverable cost of affixing the corrective message to approximately 2,000,000 packages of Doan's pills. Cohen Dec. ¶ 13. Moreover, if a stay is not granted, the corrective advertising requirement will compel Novartis to engage in commercial speech in violation of its rights under the First Amendment. *Novartis Corporation, et al.*, Dkt. No. 9279 (May 13, 1999) (Statement of Commissioner Orson Swindle, concurring in part and dissenting in part). The loss of First Amendment rights, even for minimal periods of time, may constitute irreparable injury sufficient to support granting a stay. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *National Treasury Employees v. United States*, 927 F.2d 1253, 1254 (D.C. Cir. 1991). Based on the irrevocable economic loss that Novartis will incur by relabeling its packages and the harm to its First Amendment right to engage (or not engage) in commercial speech, I conclude that Novartis will likely be irreparably harmed if the stay is not granted.

As for the third factor, if the stay is granted and the corrective advertising remedy is therefore postponed, consumers are unlikely to suffer harm because there was insufficient evidence that the false belief is likely to be lingering in the minds of consumers. Because, unlike the majority, I do not believe that the record shows any lingering effect, it follows that there will be no consumer injury if the Commission grants a stay. Finally, I conclude that the stay is in the public interest because it forestalls a possible injury to one party's Constitutional rights without injuring consumers.

My determination that all four factors to be evaluated under Rule 3.56(c) weigh in favor of granting a stay is a logical outgrowth of the

[1] To support the corrective advertising requirement, the evidence in the record would have to show that the belief was likely to linger in the minds of consumers for the duration of the requirement, which extends more than eight years after Novartis discontinued making the implied deceptive claim.

conclusion that I reached just over two months ago in dissenting from the imposition of a corrective advertising requirement. Accordingly, I agree that the appropriate result here is to stay the corrective advertising portion of the Order.

In contrast, the logical outgrowth of everything that the majority has previously said and done in this case should have resulted in a *denial* of the petition for a stay. I cannot reconcile the reasons that the majority has given for granting the stay with the unequivocal conclusions and decisive language in its opinion, especially its cursory dismissal of Novartis' arguments on the merits and reliance on purportedly substantial and ongoing consumer injury to justify the extraordinary remedy of corrective advertising. I similarly cannot reconcile the corrective advertising requirement imposed with any evidence in the record.[2] Rather than rehashing and belaboring these issues, however, I instead leave it to the Court of Appeals for the District of Columbia Circuit to determine whether the corrective advertising provision can be sustained notwithstanding these clear discrepancies.

[2] Novartis must spend $8 million for corrective advertisements if it wants to terminate the corrective advertising requirement before September 2004. Given the majority's preoccupation with corrective advertising, I find especially puzzling the order provision that allows Novartis to count toward that $8 million figure its expenditures for 15-second broadcast advertisements that *will not carry the corrective message*.

IN THE MATTER OF

LIBERTY FINANCIAL COMPANIES, INC.

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

Docket C-3891. Complaint, Aug. 12, 1999--Decision, Aug. 12, 1999

This consent order, among other things, prohibits Liberty Financial Companies, Inc., the Massachusetts-based website operation, from misrepresenting the purpose for the collection or use of personal information from or about children or consumers age thirteen through seventeen. The consent order requires the respondent to provide clear and prominent notice with respect to its practices regarding its collection and use of personal information.

Participants

For the Commission: *Toby Levin, Sydney Knight, Joel Winston, C. Lee Peeler* and *Louis Silversin.*

For the respondent: *William MacLeod, Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Liberty Financial Companies, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Liberty Financial Companies, Inc., is a Massachusetts corporation with its principal office or place of business at 600 Atlantic Avenue, Boston, Massachusetts.

2. Respondent has operated a World Wide Web ("Web") site located at *http://www.younginvestor.com* (the "Website").

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. Respondent has disseminated or caused to be disseminated on its Website certain Web pages directed at children known as The Young Investor Measure Up Survey area. [*Exhibit A*]. At this area, respondent conducts a survey that collects from participants numerous items of information such as the individual's: weekly

amount of allowance; types of financial gifts received such as stocks, bonds and mutual funds, and from whom; spending habits; part time work history; plans for college; and family finances including ownership of any mutual funds or investments in the Stein Roe Young Investor Fund offered by respondent. The survey states that "[a]ll of your answers will be totally anonymous." The survey ends with a section entitled "Entry Form" that asks participants what prize they would prefer if they win the "quarterly drawing," and asks if they "would like to be added to the Young Investor e-mail newsletter." The survey collects personal identifying information, including name, age, and gender, and participants in the survey are also told to provide e-mail address and street address in order to receive the newsletter and for identification purposes if they win the drawing.

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it maintains the information it collects at the Measure Up Survey area in an anonymous manner.

6. In truth and in fact, respondent does not maintain the information it collects at the Measure Up Survey area in an anonymous manner because individuals can be identified with their responses to the survey. While respondent has not sold, rented, or otherwise marketed the information to any third party, respondent compiles and maintains a database that combines the personal identifying information that it collects in the Entry Form section of the survey, including name, address, and e-mail address, with all other survey responses. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. The Measure Up Survey [*Exhibit A*] contains the following statements:

A. "Would you like to be added to the Young Investor e-mail newsletter?"
B. "Each Quarter, one participant will win.his or her choice of a digital video camera, CD ROM drive or flatbed scanner."
C. "If you are chosen as a winner in the quarterly drawing, which prize would you like?
   o Connectix color digital video camera
   o CD ROM drive
   o Flatbed scanner"

The survey then requests personal identifying information from the participants, including name, residence, and e-mail address, and states

that this information "[m]ust be completed to get our newsletter" and "will only be used to contact you if you win."

8. Through the means described in paragraph seven, respondent has represented, expressly or by implication, that:

A. Participants in the Measure Up Survey who submit the requested personal identifying information receive upon request respondent's Young Investor e-mail newsletter.

B. In each quarter, a participant in the Measure Up Survey who submits the requested personal identifying information is selected to win his or her choice of specified prizes.

9. In truth and in fact:

A. Participants in the Measure Up Survey who submit the requested personal identifying information do not receive upon request respondent's Young Investor e-mail newsletter. Respondent has not provided an e-mail newsletter to any of the participants in the survey and, in fact, has never developed such an e-mail newsletter.

B. A participant in the Measure Up Survey who submits the requested personal identifying information has not been selected in each quarter to win his or her choice of specified prizes.

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

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

EXHIBIT A

The Young Investor

Measure Up Survey

See how you measure up to other kids in understanding money and investing. Each Quarter, one participant will win his or her choice of a digital video camera, CD ROM drive or flatbed scanner.

Take the Survey Now

View Current Survey Results

See the Winner's List

EXHIBIT A

The Young Investor Survey

Thank you for taking part in our important study. This survey is being conducted to help us learn more about the experiences of students nationwide.

As you will notice as you fill out this questionnaire, many of the questions are about serious topics and issues. It is very important that you answer all questions truthfully and completely, saying exactly what you have experienced. This is not a test; there are no right or wrong answers. Again, please be as honest as you can in answering the following questions.

All of your answers will be totally anonymous.

A. Allowance

A1. How much of an allowance do you currently receive each week?

$ ☐
O I don't receive an allowance
O I'm not sure

A2. Do you usually save some of your allowance?

O Yes
O No
O I don't receive an allowance
O Not sure

B. Gifts

B1. Have you received any of the following as a gift?

Check all that apply

EXHIBIT A

	Yes	No	Not Sure
1.Savings Bonds	O	O	O
2. Stocks	O	O	O
3. Mutual Funds	O	O	O
4. Cash	O	O	O
5. Checks	O	O	O
6. Certificates of Deposit (CDs)	O	O	O
7. Gold Coins	O	O	O

B2. Who has given you these types of gifts?

Check all that apply

☐ Parents	☐ Grandparents
☐ Aunts/Uncles	☐ Brothers/Sisters
☐ Family Friends	☐ Other
☐ None of the Above	☐ Not Sure

B3. What do you usually do with gifts of money?

Check all that apply

☐ Spend it on something I need	☐ Spend it on something I want, but don't really need
☐ Give it to my Parents to save for me	☐ Put it in my savings account
☐ Put it into a mutual fund account	☐ Buy an individual Stock or Bond
☐ I never receive gifts of money	☐ Not Sure

C. Work

C1. Do you currently have a part-time job during the school year?

- O Yes
- O No
- O Not Sure

C2. To earn extra money, do you do odd jobs such as shoveling snow, mowing lawns, raking leaves or

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EXHIBIT A

babysitting?

- O Yes
- O No
- O Not Sure

D. How taught about Money

D1. How knowledgeable do you think you are about money compared to other people your age?

- O Very knowledgeable
- O Somewhat knowledgeable
- O Not very knowledgeable
- O Not knowledgeable at all
- O Not Sure

D2. Who has taught you what you know about money and investing?

Check all that apply

☐ My parents	☐ My teachers
☐ My brothers or sisters	☐ My friends
☐ Television	☐ Books and/or Magazines
☐ I figured it out myself	☐ Not Sure

D3. Have you ever taken a class where you learn about money and investing?

- O Yes, taken such a class
- O No, not taken such a class
- O Not Sure

D4. Would you like to take a class where you learn more about money and investing?

- O Yes, would like to take such a class
- O No, would not like to take such a class
- O Not Sure

E. College

E1. Are you planning to attend college?

- O Yes, planning to attend college

EXHIBIT A

- O No, not planning to attend college
- O Not Sure

E2. Are you currently saving money for college?

- O Yes, currently saving
- O No, not currently saving
- O Not Sure

E3. Are your parents currently saving money for your college education?

- O Yes, currently saving
- O No, not currently saving
- O Not Sure

F. Family Finances

F1. Do your parents discuss family finances with you on a regular basis?

- O Yes, discuss
- O No, don't discuss
- O Not Sure

F2. Do you own any mutual funds?

- O Yes
- O No
- O Not Sure

F3. Are you a Stein Roe Young Investor Fund shareholder?

- O Yes
- O No
- O Not Sure

G. Knowledge Questions

G1. If a movie star has to pay federal income tax on $3 million in income this year, about how much do you think this movie star will have to pay?

- O $70,000
- O $100,000
- O $400,000
- O $900,000

EXHIBIT A

○ $1,500,000
○ Not Sure

G2. Please pick the closest definition for a mutual fund from the choices below.

○ An investment company that raises money from shareholders and invests in securities
○ Debt instrument issued by a bank that usually pays interest.
○ An interest bearing security that obligates the issuer to pay the holder a specified sum of money and repay principal amount a maturity.
○ Ownership of a corporation represented by shares that are claims on the company's earning and assets.
○ Not Sure

G3. Over twenty years' time, where would you expect to make the most money; the stock market, the bond market, or bank certificates of deposit (CDs)

○ Stock Market
○ Bond Market
○ Bank Certificates of Deposit (CDs)
○ Not Sure

G4. Do you think the federal deficit is good, bad, or has no effect on the economy:

○ Good
○ Bad
○ No effect
○ Not Sure

G5. What percentage of American adults do you think are currently out of work?

○ Less than 1%
○ 1-5%
○ 6-10%
○ 11-15%
○ 16-20%
○ 21% or more
○ Not Sure

G6. What percentage of American adults do you think make more than $100,000 a year?

○ Less than 1%

EXHIBIT A

- O 1-5%
- O 6-10%
- O 11-15%
- O 16-20%
- O 21% or more
- O Not Sure

G7. At what age do you think that you will retire?

[10]

O Never O Not Sure

H. Demographic Questions

H1. Are you:

- O Male
- O Female

H2. How old are you?

[ ]

H3. How often do you surf the web?

- O Daily
- O A few times a week
- O Once a week
- O A few times a month

H4. What do you think of the Young Investor Web Site?

- O One of the best sites on the web
- O Helpful in understanding money
- O I would recommend it to my friends
- O It sucks

H5. Will you come back to the Young Investor Web Site?

- O Yes
- O No
- O Not sure
- O Only if I win a great prize

H6. What is your main computer?

- O Intel-based PC
- O Apple Macintosh

EXHIBIT A

The Measure up Survey

O Other

I. Entry Form

If you are chosen as a winner in the quarterly drawing, which prize would you like?

O Connectix color digital video camera
O CD ROM drive
O Flatbed scanner

Would you like to be added to the Young Investor email newsletter?

O Yes
O No

* Must be completed to get our newsletter	
First Name *	
Last Name *	
Street Address *	
City *	
State *	Zip Code *
Country	
E-Mail Address *	

send in my form

This information will only be used to contact you if you win.
Take me back to the Measure Up Survey Page

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Liberty Financial Companies, Inc., is a Massachusetts corporation with its principal office or place of business at 600 Atlantic Avenue, Boston, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "*Child*" or "*children*" shall mean an individual under the age of thirteen (13).

2. "*Parents*" or "*parental*" shall mean a legal guardian, including, but not limited to, a biological or adoptive parent.

3. "*Personal information*" shall mean individually identifiable information about an individual collected online, including first and last name, home or other physical address including street name and name of a city or town, e-mail address, telephone number, Social Security number, or any information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this definition.

4. "*Disclosure*" shall mean, with respect to personal information, (a) the release of personal information collected from a child in identifiable form for any purpose, except where such information is provided to a person other than respondent who provides support for the internal operations of the website and does not disclose or use that information for any other purpose, and (b) making personal information collected from a child by a website directed to children or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, publicly available in identifiable form, by any means including, but not limited to, public posting through the Internet, or through a home page of a website, a pen pal service, an electronic mail service, a message board, or a chat room.

5. "*Clear(ly) and prominent(ly)*" shall mean in a type size and location that are not obscured by any distracting elements and are sufficiently noticeable for an ordinary consumer to read and comprehend, and in a typeface that contrasts with the background against which it appears.

6. "*Electronically verifiable signature*" shall mean a digital signature or other electronic means that ensures a valid consent by requiring: (1) authentication (guarantee that the message has come from the person who claims to have sent it); (2) integrity (proof that the message contents have not been altered, deliberately or accidentally, during transmission); and (3) non-repudiation (certainty that the sender of the message cannot later deny sending it).

7. "*Verifiable parental consent*" shall mean obtaining consent by any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the respondent's personal information collection, use, and disclosure practices, and authorizes the collection, use, and

disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child. Such reasonable efforts may include any of the following means: (1) a signed statement transmitted by postal mail or facsimile; (2) authorizing a charge to a credit card via a secure server; (3) e-mail accompanied by an electronically verifiable signature; (4) a procedure that is specifically authorized by statute, regulation, or guide issued by the Commission; or (5) such other procedure that ensures verified parental consent and ensures the identity of the parent, such as the use of a reliable certifying authority.

8. "*Website directed to children*" shall mean a commercial website targeted to children, or that portion of a commercial website that is targeted to children. Provided however, that a commercial website or a portion of a commercial website shall not be deemed directed to children solely for referring or linking to a commercial website directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

9. Unless otherwise specified, "*respondent*" shall mean Liberty Financial Companies, Inc., its successors and assigns and its officers, agents, representatives, and employees.

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

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal information from children and/or consumers age thirteen (13) through seventeen (17), in or affecting commerce, shall not make any misrepresentation, in any manner, expressly or by implication:

A. That the information collected is maintained in an anonymous manner;

B. That children and/or consumers age thirteen (13) through seventeen (17) who submit such information will receive an e-mail newsletter or any other represented product or service;

C. That children and/or consumers age thirteen (13) through seventeen (17) who submit such information are eligible to win prizes in respondent's drawing or contest; or

D. Regarding the collection or use of personal information from or about children and/or consumers age thirteen (13) through seventeen (17).

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall not collect personal information from any child if respondent has actual knowledge that such child does not have his or her parent's permission to provide the information to respondent. For purposes of Parts II, III, IV, and V of this order, respondent shall not be deemed to have actual knowledge if the child has falsely represented that (s)he is not a child and respondent does not knowingly possess information that such representation is false.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information from children, at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall provide clear and prominent notice with respect to respondent's practices regarding its collection and use of personal information. Such notice shall include:

A. What information is being collected (*e.g.*, "name," "home address," "e-mail address," "age," "interests");

B. How respondent uses such information;

C. Respondent's disclosure practices for such information (*e.g.*, parties to whom it may be disclosed, such as "advertisers of consumer products," "mailing list companies," "the general public");

D. A description of a means that is reasonable under the circumstances by which a parent whose child has provided personal information may obtain, upon request and upon proper identification, (i) a description of the specific types of personal information collected from the child by respondent, (ii) the opportunity at any

time to refuse to permit the respondent's further use or maintenance in retrievable form, or future online collection, of personal information from that child, and (iii) any personal information collected from the child.

Such notice shall appear on the home page of respondent's website(s) directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, and at each location on the site(s) at which such information is collected.

Provided, however, that for purposes of this Part, compliance with all of the following shall be deemed adequate notice: (a) placement of a clear and prominent hyperlink or button labeled **PRIVACY NOTICE** on the home page(s), which directly links to the privacy notice screen(s); (b) placement of the information required in this Part clearly and prominently on the privacy notice screen(s), followed on the same screen(s) with a button that must be clicked on to make it disappear; and (c) at each location on the site at which any personal information is collected, placement of a clear and prominent hyperlink on the initial screen on which the collection takes place, which links directly to the privacy notice and which is accompanied by the following statement in bold typeface:

NOTICE: We collect personal information on this site.
To learn more about how we use your information click here.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information from children at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall maintain a procedure by which it obtains verifiable parental consent for the collection, use or disclosure of such information from children.

V.

It is further ordered, That respondent Liberty Financial Companies, Inc., and its successors and assigns, shall delete from its website(s) directed to children, and at any commercial website(s)

where respondent has actual knowledge that it is collecting personal information from a child, all personal information collected from children prior to the date of service of the order.

VI.

It is further ordered, That after the effective date of the Children's Online Privacy Protection Act of 1998 and any regulations or guides promulgated by the Commission pursuant to the Act, compliance with such statute, regulations, and guides shall be deemed to be compliance with the definition section of this order and Parts II, III and IV of this order.

VII.

It is further ordered, That respondent Liberty Financial Companies, Inc., and its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying the following:

A. For five (5) years after the last date of dissemination of a notice required by this order, a print or electronic copy in HTML format of all documents relating to compliance with Parts III through V of this order, including, but not limited to, a sample copy of every information collection form, Web page, screen, or document containing any representation regarding respondent's information collection and use practices pertaining to children. Each Web page copy shall be accompanied by the URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the World Wide Web; and

B. For five (5) years after the last collection of personal information from a child, all materials evidencing the verifiable parental consent given to respondent.

Provided, however, that after creation of any Web page or screen in compliance with this order, respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect respondent's compliance obligations under this order.

VIII.

It is further ordered, That respondent Liberty Financial Companies, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

It is further ordered, That respondent Liberty Financial Companies, 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 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Liberty Financial Companies, Inc., and its successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on August 12, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

B.A.T. INDUSTRIES P.L.C., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9271. Consent Order April 19, 1995–Set Aside Order, Aug. 12, 1999

This order reopens a 1995 consent order -- which required the respondents to divest certain cigarette brands and a cigarette manufacturing facility -- and sets aside the prior approval provision pursuant to the Commission's Prior Approval Policy Statement. Thus the consent order is set aside in its entirety because no further obligation remains under the order, besides an annual reporting requirement.

ORDER SETTING ASIDE ORDER

On April 29, 1999, British American Tobacco p.l.c. ("BAT"), the successor to B.A.T. Industries p.l.c. and Brown & Williamson Tobacco Corporation, the respondents in the above-referenced order ("Order"), filed its Petition to Reopen and Modify Order ("Petition") in this matter. BAT asks that the Commission reopen and modify the Order pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Policy Statement").[1] The Petition requests that the Commission reopen and modify the Order to eliminate the prior approval provision in paragraph IV of the Order. The thirty-day comment period on the Petition ended June 29, 1999. No comments were received. For the reasons discussed below, the Commission has determined to grant BAT's Petition. Because there would remain no further affirmative obligations under the Order, besides an annual reporting requirement, the Commission has determined to set aside the Order in its entirety.

The complaint in this matter alleges that BAT's acquisition of the American Tobacco Company ("ATC") violated Section 5 of the FTC Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by lessening competition in the United States

[1] 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

cigarette market. The Order required BAT to divest certain assets of ATC, as defined in the Order. The Commission approved BAT's application for approval to divest the assets to Commonwealth Brands, Inc., and BAT did so. Paragraph IV of the Order prohibits BAT for a ten-year period from acquiring, without the prior approval of the Commission, any stock, share capital, or other interest in any concern engaged in the manufacture in the United States of cigarettes for consumption in the United States; or from acquiring any assets used for the manufacture, distribution, or sale in the United States of cigarettes.

The Commission, in its Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.[2] The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."[3]

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."[4] As explained in the Policy Statement, the need for a prior notification requirement will

[2] Policy Statement at 2.

[3] *Id.*

[4] *Id.* at 3.

depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants and other relevant factors.

The Commission also announced, in its Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."[5] The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to ... [the Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Policy Statement.[6]

The presumption is that setting aside the general prior approval requirement of paragraph IV of the Order is in the public interest. There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that the respondent would attempt the same or essentially the same merger that gave rise to the original complaint. In addition, it appears likely that future mergers within the relevant market would be HSR reportable. BAT completed the divestiture required by the Order. Nothing to overcome the presumption having been presented, and because the only remaining obligation under the Order is the prior approval requirement in paragraph IV and the attendant reporting requirements, the Commission has determined to reopen the proceeding in Docket No. 9271 and set aside the Order.

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened, and that the Commission's order issued on April 19, 1995, be, and it hereby is, set aside as of the effective date of this order.

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[5] *Id.* at 4.

[6] *Id.*

IN THE MATTER OF

R. J. REYNOLDS TOBACCO COMPANY

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

Docket C-3892. Complaint, Aug. 16, 1999--Decision, Aug. 16, 1999

This consent order, among other things, prohibits R.J. Reynolds Tobacco Company, the North Carolina-based advertiser and distributor for Winston cigarettes, from making deceptive or unsubstantiated representations, and requires certain disclosures in the advertisements for cigarettes and other tobacco products.

Participants

For the Commission: *Beth Grossman, Lisa Kopchik, Joel Winston, C. Lee Peeler, Joseph Mulholland* and *Margaret Patterson.*

For the respondent: *Judith Oldham, Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that R.J. Reynolds Tobacco Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent R.J. Reynolds Tobacco Company is a New Jersey corporation with its principal office or place of business at 401 North Main Street, P.O.B. 2959 Winston-Salem, North Carolina.

2. Respondent has advertised, promoted, offered for sale, sold and distributed tobacco products, including Winston cigarettes.

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. Respondent has disseminated or has caused to be disseminated advertisements for Winston cigarettes, including but not necessarily limited to the attached Exhibits A through F. These advertisements contain the following statements:

(A) "Yours have additives. New Winstons don't.
94% tobacco 100% tobacco
6% additives True taste."
Circular brand containing the words "No BULL"

(B) "Winston just got
naked.
No additives."
Circular brand containing the words "No BULL"

(C) "Thank you for not smoking additives."
Circular brand containing the words "No BULL"
"100% tobacco
True taste"

(D) "I get enough
bull at work.
I don't need to smoke it.
WINSTON
NO ADDITIVES
TRUE TASTE"
Circular brand containing the words "No BULL"

(E) "I'm not all
sugar & spice.
And neither are my smokes.
WINSTON
NO ADDITIVES
TRUE TASTE"
Circular brand containing the words "No BULL"

(F) "Still smoking additives?"
Circular logo containing the words:
Winston
straight up
NO ADDITIVES • TRUE TASTE

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that smoking Winston cigarettes, because they contain no additives, is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Among other reasons, the smoke from Winston cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

16 mg "tar" 1.1 mg nicotine av per cigarette by FTC method

Yours have additives.*

94% tobacco

*Laboratory analyses of the top ten U.S. non-menthol brand styles show all of their tobaccos contain a minimum of 6% additives on a dry weight basis.

New Winstons don't.

100% TOBACCO

True taste.

EXHIBIT A

EXHIBIT B

EXHIBIT B

EXHIBIT C

Thank you for not smoking additives.

Winston

No additives are in our tobacco for true taste.

*0 mg "tar" 0.9 mg nicotine av per cigarette by FTC method

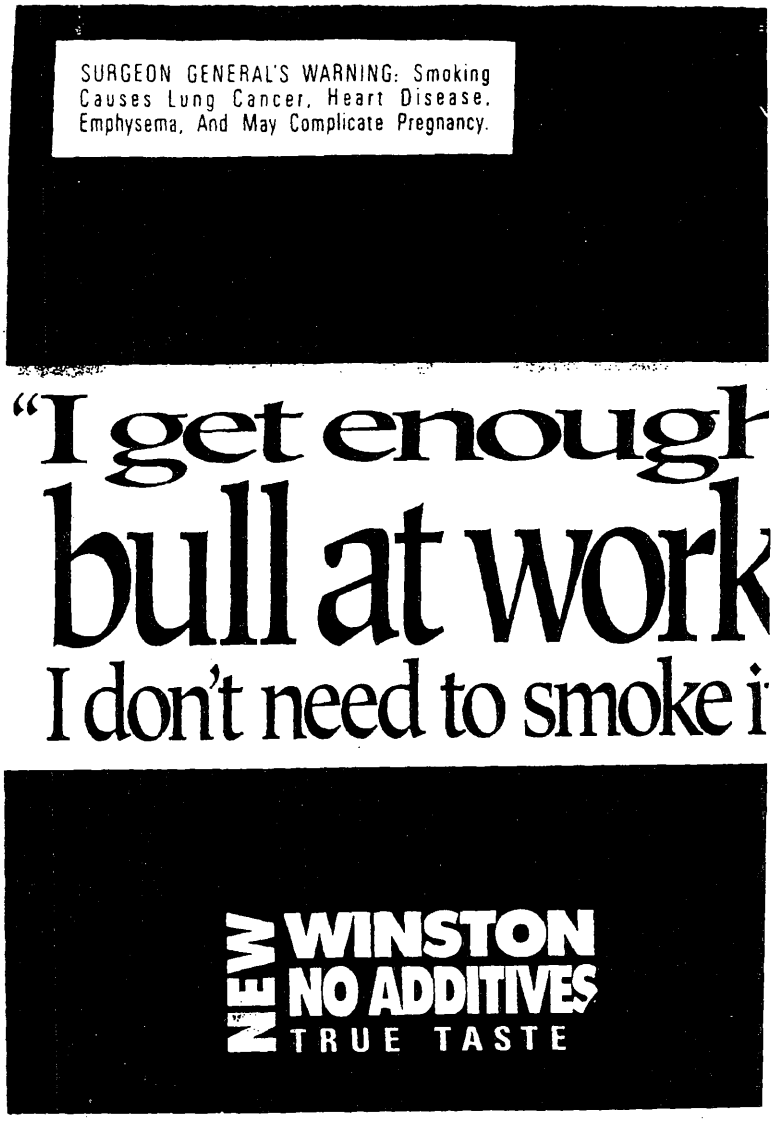
SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

No BULL

100% tobacco True taste Wins

Ex. C

EXHIBIT D



Ex D-1

EXHIBIT D

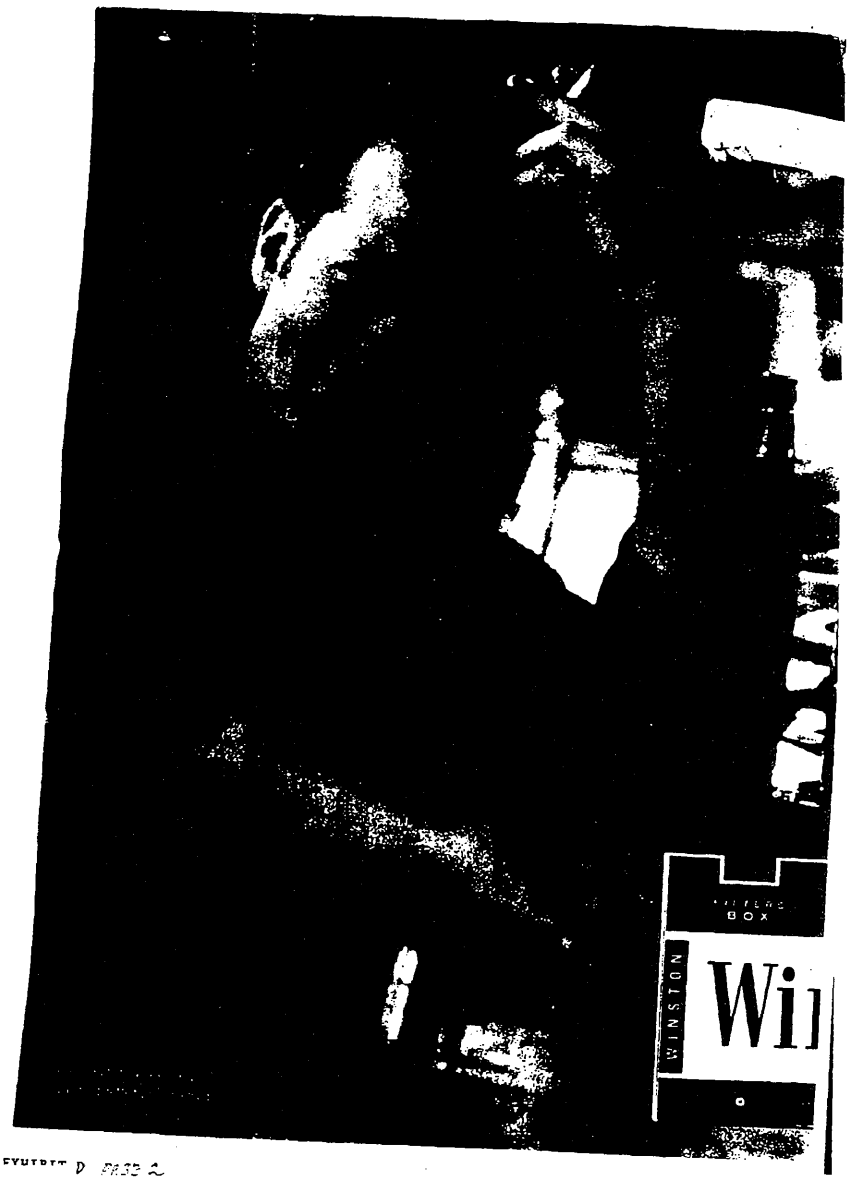


EXHIBIT D PAGE 2

EXHIBIT E

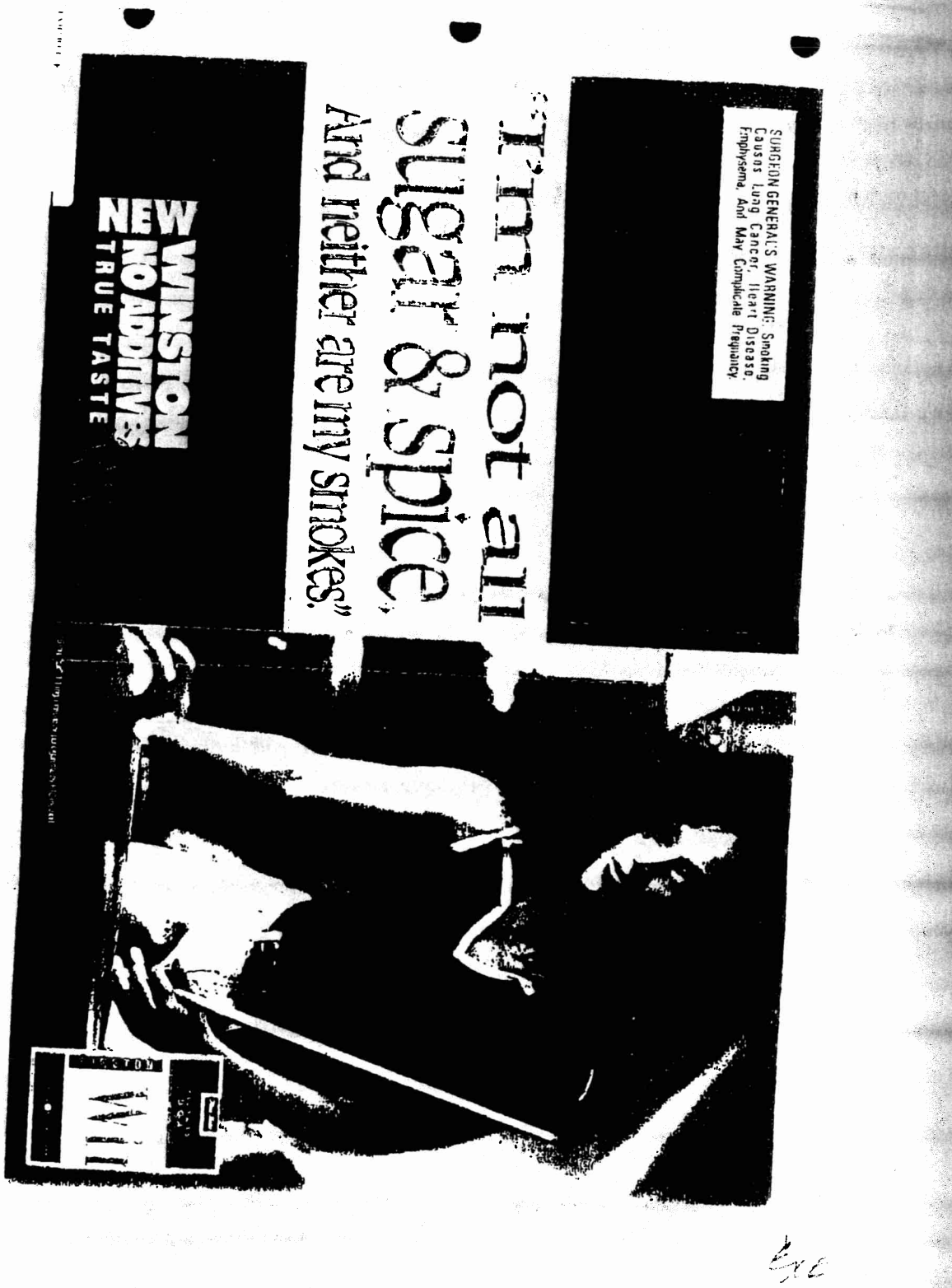

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
"It's not all sugar & spice.
And neither are my smokes."
NEW WINSTON NO ADDITIVES TRUE TASTE

EXHIBIT F

WINSTO'. BOX
16 mg. tar [illegible] av. per cigarette by F[illegible] method
No additives in our tobacco means true taste. straight up

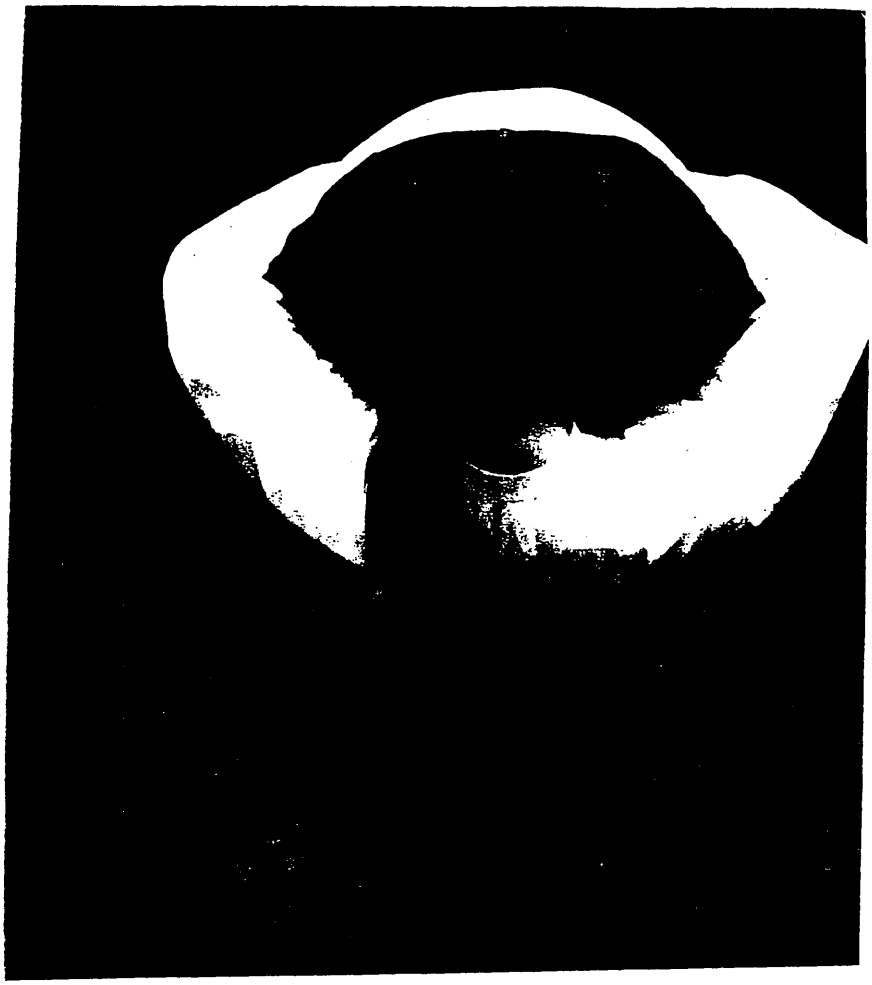
SURGEO'. GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

Still smoking additives?

straight up

EXF-1

EXHIBIT F



CX.F-2

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent R.J. Reynolds Tobacco Company is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its principal office or place of business at 401 North Main Street, P.O.B. 2959, Winston-Salem, North Carolina.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean R.J. Reynolds Tobacco Company, a corporation, its successors and assigns and its officers, agents, representatives and employees.

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

4. "*Advertisement*" shall mean any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of any tobacco product, including but not limited to a statement, illustration or depiction in or on a brochure, newspaper, magazine, free standing insert, pamphlet, leaflet, circular, mailer, book insert, letter, coupon, catalog, poster, chart, billboard, transit advertisement, point of purchase display, specialty or utilitarian item, sponsorship material, package insert, film, slide, or the Internet or other computer network or system.

5. "*Tobacco product*" shall mean cigarettes, cigars, cigarillos, little cigars, smokeless tobacco, cigarette tobacco, pipe tobacco, and any other product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.

6. "*Winston cigarettes*" shall mean all varieties and styles of the Winston brand of cigarettes, including but not limited to all lengths, strengths, hard pack or soft pack, menthol or not.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Winston cigarettes or any other tobacco product in or affecting commerce, shall display in advertisements as specified below, clearly

and prominently, the following disclosures (including the line breaks, punctuation and capitalization illustrated):

In cigarette advertisements:

No additives in our tobacco
does NOT mean a safer cigarette.

In advertisements for any other tobacco product:

No additives in our tobacco
does NOT mean safer.

These disclosures shall be displayed:

A. Beginning no later than July 15, 1999, and continuing for a period of one year thereafter, in all advertisements for Winston cigarettes that contain no additives.

B. Except as provided for in Part II.A of this order, beginning no later than thirty (30) days after the date of issuance of this order, in any advertisement that, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represents that a tobacco product has no additives.

Provided, that the above disclosures shall not be required in any advertisement that is not required to bear a health warning pursuant to 15 U.S.C. 1333.

Provided further, that the above disclosures shall not be required in any advertisement for a *bona fide* event, entrant, team or series presented or sponsored by any Winston tobacco product where (i) the advertisement contains the word Winston *only* as part of the name of the event, entrant, team or series and/or as part of the phrase "brought to you by Winston King," "presented by Winston King," "sponsored by Winston King," or the equivalent ("the Phrase"); (ii) the Phrase is displayed in a type size, manner and color contrast no greater than reasonably necessary so that it may be read; (iii) the advertisement does not, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represent that the tobacco product has no additives; and (iv) there is no other selling message describing a feature or attribute of Winston tobacco products.

Provided further, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such cigarettes or other tobacco product pose materially lower health risks than other cigarettes or other products of the same type.

For purposes of this Part, "clearly and prominently" shall mean, as exemplified by Exhibits 1 and 2, attached to this order:

1. In black type and black rule on a solid white background, or in white type and white rule on a solid red background, or in any other color combination that would provide an equivalent or greater degree of print contrast as objectively determined by densitometer or comparable measurements of the type and rule color and the background color; and

2. Centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than 40% of the size of the area enclosed by the ruled rectangle surrounding the health warnings mandated by 15 U.S.C. 1333. The width of the rule forming the rectangle shall be no less than 50% of the width of the rule required for the health warnings mandated by 15 U.S.C. 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than 40% of the area required for health warnings by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than 50% of the width of any surrounding rule required by such amended, modified, or superseding law; and

3. In the same type style and type size as that required for health warnings pursuant to 15 U.S.C. 1333. The word "NOT" shall be in bold typeface.

Provided that, if, at any time after this order becomes final, 15 U.S.C. 1333 is amended, modified, or superseded by any other law, the type style and type size of the disclosure shall be the same as the type style and type size required for warnings by such amended, modified, or superseding law; and

4. In a clear and prominent location but not immediately next to other written or textual matter or any rectangular designs, elements, or similar geometric forms, including but not limited to any warning statement required under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331 *et seq.*, or the Comprehensive

Smokeless Tobacco Health Education Act, 15 U.S.C. 4401 *et seq.* In addition, the disclosure shall not be positioned in the margin of a print advertisement. A disclosure shall be deemed "not immediately next to" other geometric or textual matter if the distance between the disclosure and the other matter is as great as the distance between the outside left edge of the rule of the rectangle enclosing the health warning required by 15 U.S.C. 1333 and the top left point of the letter "S" in the word "SURGEON" in that health warning; and

5. For audiovisual or audio advertisements, including but not limited to advertisements on videotapes, cassettes, discs, or the Internet; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the disclosure shall appear on the screen at the end of the advertisement in the format described above for a length of time and in such a manner that it is easily legible and shall be announced simultaneously at the end of the advertisement in a manner that is clearly audible.

Provided, however, that in any advertisement that does not contain a visual component, the disclosure need not appear in visual format, and in any advertisement that does not contain an audio component, the disclosure need not be announced in audial format.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. Provided, however, that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, that a tobacco product has no additives, where such representation is accompanied by the disclosure mandated by this order.

II.

It is further ordered, That respondent shall:

A. Instruct each R.J. Reynolds Tobacco Company sales representative to remove or sticker with the disclosure specified in Part I of this order any advertisement for Winston cigarettes displayed in a retail establishment where such advertisement, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represents that Winston cigarettes have no additives and does

not include the disclosure specified in Part I of this order. The sales representative may remove or sticker such advertisements in the ordinary course of performing his or her duties, but in any event, shall remove or sticker all such advertisements in each of the retail establishments for which the representative is responsible no later than July 15, 1999.

B. For five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying 1) a copy of each different version of the letter instructing R.J. Reynolds Tobacco Company sales representatives to remove or sticker advertising pursuant to subparagraph A of this Part; and 2) a list of the name and address of each R.J. Reynolds Tobacco Company sales representative to whom such a letter was sent.

III.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements containing the representation;

B. For any representation covered by this order that is not accompanied by a disclosure set forth in Part I of this order:

1. All materials that were relied upon in disseminating the representation; and

2. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns, shall deliver a copy of this order, in either paper or electronic form, to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with

respect to the subject matter of this order. Respondent shall secure from each such person either 1) a signed and dated statement acknowledging receipt of the order; or 2) a dated, electronic acknowledgment indicating that the person has read, downloaded or printed the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order or a record, in either electronic or paper form, of each electronic acknowledgment of receipt of the order.

V.

It is further ordered, That respondent R.J. Reynolds Tobacco Company and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any Winston cigarettes for which the composition or formula has been changed in such a manner as may affect compliance obligations arising under this order, including but not limited to the addition of any additives to any variety of Winston cigarettes. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C.

VI.

It is further ordered, That respondent R.J. Reynolds Tobacco Company 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 of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of

Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C.

VII.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on August 16, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

EXHIBIT 1

All taste. No bull.

No additives in our tobacco does NOT mean a safer cigarette.

15 mg "tar", 1.1 mg nicotine av per cigarette by FTC method.

SURGEON GENERAL'S WARN NG: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

Ex. 1

EXHIBIT 2

EX.2

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted to issue this consent order because the remedies, including a corrective statement in Winston advertisements for one year, are warranted by the facts of this case. The nationwide advertising campaign for "no additives" Winston cigarettes, launched in August 1997, is unusually extensive. Based on my reading of the record, I am convinced that many consumers interpret ads containing express "no additives" claims to mean that Winstons are not as harmful as other cigarettes, and such a health claim is presumably important to consumers in their purchasing decisions. Based on the extent and magnitude of the ongoing ad campaign and the demonstrated strength of the implied health claim, I am willing to infer that the claim will linger in the minds of consumers for one year absent a corrective statement. I am particularly concerned about a lingering effect of the ads because of the well-recognized health risks of smoking. Under these circumstances, I support the corrective advertising remedy contained in the consent order.

IN THE MATTER OF

FEDERATED DEPARTMENT STORES, INC.

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

Docket C-3893. Complaint, Aug. 20, 1999--Decision, Aug. 20, 1999

This consent order, among other things, prohibits Federated Department Stores, Inc., the Ohio-based retail business, from misrepresenting to consumers who have filed petitions for bankruptcy protection: that reaffirmation agreements will be filed in bankruptcy court; that any reaffirmation agreement is legally binding on the consumer; or that any action will be taken to collect any debt that has been legally discharged in bankruptcy proceedings.

Participants

For the Commission: *Randall Brook, Charles Harwood* and *Genevieve Fu.*

For the respondent: *Mark Herrmann, Jones, Day, Reavis & Pogue*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Federated Department Stores, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Federated Department Stores, Inc., is a Delaware corporation with its principal office or place of business at 7 West Seventh Street, Cincinnati, Ohio. Respondent conducts relevant business through, among other affiliates or subsidiaries, FDS National Bank, The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Macy's East, Inc., Macy's West, Inc., and Stern's Department Stores, Inc.

2. Respondent, through one or more of its affiliates, is engaged in, among other things, the consumer retail business. In the course and conduct of its business, respondent has regularly extended credit (hereinafter "consumer credit accounts") for the purpose of facilitating consumers' purchase of respondent's products and services.

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.

THE UNITED STATES BANKRUPTCY CODE

4. Under the United States Bankruptcy Code (11 U.S.C. 1-1330), a debtor may be granted a discharge in a Chapter 7 bankruptcy proceeding from debts that have arisen prior to the filing of the bankruptcy petition (hereinafter referred to as "pre-petition debts"), meaning that the debtor is no longer individually liable for these debts. The granting of a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ." 11 U.S.C. 524(a)(2). The purpose of the injunction is to protect the debtor's "fresh start" by ensuring that no debt collection efforts are taken against the debtor personally for pre-petition debts.

5. The United States Bankruptcy Code provides, however, that a debtor may agree with a creditor that the creditor can enforce what would otherwise be a discharged debt. In other words, a debtor may reaffirm his or her pre-petition debts, as long as certain requirements are met. These so-called "reaffirmation agreements" are enforceable only if, among other things, the agreement is filed with the bankruptcy court. If the debtor is not represented by an attorney, the bankruptcy court must hold a hearing to determine that the reaffirmation agreement would not impose an undue hardship on the debtor and is in the best interest of the debtor, and must approve the reaffirmation agreement before it becomes enforceable. 11 U.S.C. 524(c) and (d).

6. If the requirements of 11 U.S.C. 524(c) and (d) are not met, an agreement to reaffirm a debt is not binding and a creditor violates the bankruptcy code if it attempts to collect that debt. 11 U.S.C. 524(a).

VIOLATIONS OF SECTION 5(a) OF THE FEDERAL TRADE COMMISSION ACT

7. From at least 1990, respondent regularly induced consumers who had filed for protection under Chapter 7 of the United States Bankruptcy Code to enter into agreements reaffirming some or all of their debt arising from pre-petition consumer credit accounts that would otherwise be discharged through bankruptcy proceedings.

8. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code.

9. In truth and in fact, in many cases respondent did not intend to file, and did not file, the reaffirmation agreements with the bankruptcy courts. Therefore, the representation made in paragraph eight was, and is, false or misleading.

10. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements were legally binding on the consumers and that the consumers were legally required to pay their pre-petition debts.

11. In truth and in fact, in many cases, the reaffirmation agreements were not legally binding on the consumers and the consumers were not legally required to pay their pre-petition debts for reasons including, but not necessarily limited to, the following: (a) respondent did not file the reaffirmation agreements with the bankruptcy courts; or (b) respondent filed the reaffirmation agreements, but the agreements were then not approved by the bankruptcy courts. Therefore, the representation made in paragraph ten was, and is, false or misleading.

12. In the course and conduct of its business, respondent regularly collected from consumers debts that had been legally discharged in bankruptcy proceedings and that respondent was not permitted by law to collect. Respondent's actions have caused or were likely to cause substantial injury to consumers that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers. 15 U.S.C. 45(n). Therefore, respondent's collection of debts that they were not permitted by law to collect was, and is, unfair.

13. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office 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; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Federated Department Stores, Inc., is a Delaware corporation with its principal office or place of business at 7 West Seventh Street, Cincinnati, Ohio. Respondent conducts relevant business through, among other affiliates or subsidiaries, FDS National Bank, The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Macy's East, Inc., Macy's West, Inc., and Stern's Department Stores, Inc.

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

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "*respondent*" shall mean Federated Department Stores, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

2. "*Debt*" shall mean any obligation or alleged obligation of a consumer to pay money arising out of any transaction.

3. "*Reaffirmation Agreement*" shall mean any agreement between a creditor and a debtor in bankruptcy whereby a debt that is otherwise dischargeable with respect to the personal liability of the debtor is reaffirmed by the debtor.

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

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any debt, shall not:

A. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that reaffirmation agreements will be filed in bankruptcy court;

B. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that any reaffirmation agreement is legally binding on the consumer; or

C. Take any action to collect any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that respondent is not permitted by law to collect.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall not make any material misrepresentation, expressly or by implication, in the collection of any debt subject to a pending bankruptcy proceeding.

III.

It is further ordered, That respondent, and its successors and assigns, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to all reaffirmation agreements signed by consumers and records sufficient to show that the reaffirmation agreements were filed in bankruptcy courts and were subsequently approved by bankruptcy courts as part of the underlying bankruptcy proceedings, if required by the United States Bankruptcy Code.

IV.

It is further ordered, That respondent, and its successors and assigns, for five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, managerial employees, and bankruptcy court representatives having debt collection responsibilities with respect to the subject matter of this order (collectively, "bankruptcy personnel"), and shall secure from each of these persons a signed and dated statement acknowledging receipt of the order. Respondent shall, for five (5) years after each of these statements acknowledging receipt of the order is signed and dated, maintain and upon request make available to the Federal Trade Commission for inspection and copying the statements. Respondent shall deliver this order to current bankruptcy personnel within thirty (30) days after the date of service of this order, and to future bankruptcy personnel within ninety (90) days after the person assumes a position as bankruptcy personnel.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation in each case that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any

proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date the action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining this knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

This order will terminate on August 20, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of the 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 the complaint; and

C. This order if the complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if the 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 the complaint is filed and the later of the deadline for appealing the dismissal or ruling and the date the dismissal or ruling is upheld on appeal.

IN THE MATTER OF

PROVIDENT COMPANIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3894. Complaint, Sept. 3, 1999--Decision, Sept. 3, 1999

This consent order, among other things, allows the merger of two of the nation's leading providers of individual disability insurance and requires the companies to continue to submit individual disability insurance data to an independent entity, as specified, for aggregating and disseminating industry-wide actuarial information.

Participants

For the Commission: *Jacqueline Mendel, Ann Malester, William Baer, Jeremy Bulow* and *Charlotte Wojcik.*

For the respondents: *Helen Sweeney, LeBeouf, Lamb, Greene & MacRae*, New York, N.Y. and *John Beerbower, Cravath, Swain & Moore*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Provident Companies, Inc., a corporation subject to the jurisdiction of the Commission, has agreed to merge with UNUM Corporation, a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Provident Companies, Inc. ("Provident") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1 Fountain Square, Chattanooga, Tennessee.

2. Respondent UNUM Corporation ("UNUM") is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Delaware, with its office and principal place of business located at 2211 Congress Street, Portland, Maine.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE MERGER

4. Pursuant to an Agreement and Plan of Merger dated November 22, 1998, Provident and UNUM will merge under the name "UNUMProvident Corporation," with a combined stock value of $11.43 billion ("the Merger").

III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Merger is disability insurance sold to individuals. Disability insurance provides protection against loss of income due to sickness, accident, or injury. Individual disability insurance policies are sold to people who do not have group disability insurance coverage available through their employers or other organizations, or who desire to supplement group disability insurance. Each such individual disability insurance policy is individually underwritten, based on the applicant's medical background, financial portfolio and occupation. Because the individual is the policyholder of his or her own policy, such policies are "portable," *i.e.*, the insured person remains covered so long as he or she pays the premium even if he or she changes employers or occupations.

6. For purposes of this complaint, a relevant geographic area in which to analyze the effects of the Merger is the United States.

IV. STRUCTURE OF THE MARKET

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or two-firm and four-firm concentration ratios.

V. BARRIERS TO ENTRY AND EXPANSION

8. Timely entry into the relevant market is unlikely to occur at a sufficient scale to deter or counteract the effects of the Merger

described in paragraph nine. Access to credible data on disability claims is required to design and price disability insurance policies for individuals. Thus, an existing provider of individual disability insurance without its own credible base of such data or the ability to access a credible public data base is unlikely to expand successfully. UNUMProvident will possess a substantial percentage of available data, the contribution of which to a publicly available data base will be crucial for industry-wide data to remain credible. However, as a result of the merger, UNUMProvident may have an economic incentive not to supply its data to a publicly-available data base.

VI. EFFECTS OF THE MERGER

9. The effect of the Merger may be substantially to lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended,15 U.S.C. 45, in the following ways, among others:

a. By eliminating direct actual competition between Provident and UNUM in the relevant market;

b. By increasing the likelihood that the firm created by the Merger will unilaterally exercise market power in the relevant market; and

c. By increasing the likelihood of collusion in the relevant market.

VII. VIOLATIONS CHARGED

10. The Merger agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

11. The Merger described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger of Provident Companies, Inc. and UNUM Corporation, and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and

Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 (f) of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Provident Companies, Inc. ("Provident") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1 Foundation Square, Chattanooga, Tennessee.

2. Respondent UNUM Corporation ("UNUM") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2211 Congress Street, Portland, Maine.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Provident*" means Provident Companies, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Provident, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*UNUM*" means UNUM Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by UNUM, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Merger*" means the combination of UNUM and Provident pursuant to the Agreement and Plan of Merger dated November 22, 1998.

D. "*UNUMProvident*" means the entity resulting from the Merger.

E. "*Respondents*" means UNUM, Provident and UNUMProvident.

F. "*Commission*" means the Federal Trade Commission.

G. "*NAIC*" means the National Association of Insurance Commissioners.

H. "*Designee*" means any independent entity that has been requested specifically by the NAIC to prepare industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance.

I. "*Individual Disability Insurance*" means insurance to protect against loss of income due to disability arising from sickness, accident or injury (but not including "accident only" insurance, which insures only losses arising from accidents), individually underwritten and sold to individuals as the policyholders of the insurance, as distinguished from group disability insurance provided to members of a group by an employer or other organization.

J. "*Incidence Rate*" means the rate at which people become disabled as defined in Individual Disability Insurance policies.

K. "*Claims Termination Rate*" means the rate at which Individual Disability Insurance claims terminate.

L. "*Data*" means all data relating to Individual Disability Insurance Incidence Rates and Claims Termination Rates with respect to policyholders in the United States of the type and in the form as requested from time to time by the Society of Actuaries, the NAIC, or its Designee.

M. "*Request*" means any industry-wide solicitation of Data by the Society of Actuaries, the NAIC, or its Designee from providers of Individual Disability Insurance to be used in the preparation of industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or

supplementing industry-wide actuarial tables for Individual Disability Insurance.

N. "*Aggregated Data*" means Data provided in response to each specification in each Request by providers of Individual Disability Insurance that has been aggregated.

O. "*Disaggregated Data*" means Data from one (1) provider of Individual Disability Insurance.

II.

It is further ordered, That:

In response to each Request by the Society of Actuaries, the NAIC, or its Designee, respondents shall submit Data specified in the Request in the format and within the time period requested of respondents and other Individual Disability Insurance providers, or within six (6) months of the date the Request is made, whichever is earlier, unless the time period is extended in writing by the requesting entity or by the entity that will receive Data pursuant to any Request; provided, however, that respondents may limit the use of their Data as follows:

A. Respondents may require that the Society of Actuaries, the NAIC, or its Designee use Disaggregated Data solely for the purpose of creating Aggregated Data;

B. Respondents may require a commitment from the Society of Actuaries, the NAIC, or its Designee, whichever will receive Data pursuant to any Request, that their Disaggregated Data will not be viewed at any time by (1) any employee of any firm providing Individual Disability Insurance, or (2) actuarial consultants who provide actuarial consulting services to Individual Disability Insurance firms; provided, however, that for each submission of Disaggregated Data in response to a Request, an individual who provides actuarial consulting services to Individual Disability Insurance firms may view the Disaggregated Data, subject to the prior written consent of respondents, who may require such individual to agree in writing to preserve the confidentiality of Disaggregated Data; provided, further, however, that if respondents have not opposed such disclosure, in writing, within ten (10) days after written notice has been provided by the Society of Actuaries, the NAIC, or its Designee, respondents shall be deemed to have consented to such disclosure;

C. Respondents may require that the Society of Actuaries, the NAIC, or its Designee use Aggregated Data solely for the purpose of creating and disseminating industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance; and

D. Before Aggregated Data is used to create and disseminate industry-wide actuarial tables for Individual Disability Insurance, or actuarial studies or actuarial reports that relate to creating or supplementing industry-wide actuarial tables for Individual Disability Insurance; respondents may require that the Society of Actuaries, the NAIC, or its Designee, whichever will receive the Data pursuant to any Request, certify in writing that:

1. Aggregated Data includes responses to the Request, for each specification in each Request, from at least three (3) other providers of Individual Disability Insurance that are among the ten (10) largest providers of Individual Disability Insurance in the industry as measured by direct earned premium; and

2. If the Disaggregated Data submitted by respondents represents 60% or more of all industry data submitted for any particular specification in the Request, respondents may require the Society of Actuaries, the NAIC, or its Designee to weight the Disaggregated Data submitted by respondents for that particular specification in accordance with generally accepted experience study practices, so that, when weighted, respondents' Disaggregated Data represents no more than 50% of the Aggregated Data.

III.

It is further ordered, That:

Within ninety (90) days after the date this order becomes final and within ninety (90) days after Requests have been made by the Society of Actuaries, the NAIC, or its Designee, and once annually, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraph II of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of the order, including a description of all substantive contacts or negotiations to submit Data

and the identity of all individuals participating in such negotiations. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the submitting of the Data.

IV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation, that may affect compliance obligations arising out of the order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents, who may have counsel present, regarding any such matters.

VI.

It is further ordered, That respondents shall not be obligated to comply with this order if the Merger is abandoned. For purposes of this order, UNUM and Provident will be deemed to have abandoned the proposed Merger after they provide written notice to the Commission that they have abandoned the proposed Merger and have withdrawn any related notifications filed pursuant to Section 7A of the Clayton Act, as amended, 15 U.S.C.18a.

VII.

It is further ordered, That this order shall terminate on September 3, 2019.

IN THE MATTER OF

BODY SYSTEMS TECHNOLOGY, INC. ET AL.

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

Docket C-3895. Complaint, Sept. 7, 1999--Decision, Sept. 7, 1999

This consent order, among other things, prohibits the Florida-based corporation and its officers from representing that their dietary capsules or liquid are effective in the prevention of cancer or the treatment of cancer, HIV/AIDS, or arthritis unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. In addition, the consent order prohibits any unsubstantiated claims regarding the health benefits, performance, efficacy, or safety of any such product or program.

Participants

For the Commission: *Donald D'Amato* and *Michael Bloom.*

For the respondents: *Robert Gatton, Broad & Cassel*, Orlando, FL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Body Systems Technology, Inc., a corporation, William E. Chace and James D. Davis, individually and as officers of the corporation ("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:

PARAGRAPH 1. Respondent Body Systems Technology, Inc. ("Body Systems") is a Florida corporation with its principal office or place of business at 408 Live Oaks Blvd., Casselberry, Florida.

Respondent William E. Chace is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation, including the acts and practices alleged in this complaint. His business address is 408 Live Oaks Blvd., Casselberry, Florida.

Respondent James D. Davis is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation,

including the acts and practices alleged in this complaint. His business address is 408 Live Oaks Blvd., Casselberry, Florida.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed, among other products, Body Systems' shark cartilage capsules, a dietary supplement that purports to effectively treat or prevent cancer, and Body Systems' uña de gato (also known as "Cat's Claw" or "*Uncaria Tomentosa*"), a dietary supplement made from the derivative of a Peruvian vine that purports to be effective in the treatment of cancer, HIV and AIDS, and arthritis. Body Systems' shark cartilage and uña de gato products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52 and 55.

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

BODY SYSTEMS' SHARK CARTILAGE CAPSULES

PAR. 4. Respondents Body Systems, William E. Chace, and James D. Davis have disseminated or have caused to be disseminated advertisements for Body Systems' shark cartilage capsules, including, but not limited to, the attached Exhibits A and B. Advertisements for Body Systems' shark cartilage capsules have been disseminated through, among other media, numerous websites on the Internet. These advertisements contain the following statements:

Shark Cartilage is a natural nontoxic substance that has been shown to inhibit tumor growth, as evidenced by published laboratory studies conducted by eminent scientists over a thirty year period. And, if studies proving that shark cartilage is an effective cancer treatment and preventative were not sufficient cause for rejoicing . . .

PAR. 5. Through the means described in paragraph four, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that Body Systems' shark cartilage capsules:

A. Are effective in the treatment of cancer.
B. Are effective in the prevention of cancer.

PAR. 6. Through the means described in paragraph four, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that they possessed and

relied upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made.

PAR. 7. In truth and in fact, respondents Body Systems, William E. Chace, and James D. Davis did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made. Among other reasons, the purported support that respondents relied upon for the above claims--a book intended for lay readers that discusses the benefits of shark cartilage--did not adequately relate to their advertising claims. Although the book includes overviews of various studies in animals and humans that purportedly support respondents' cancer claims, respondents lacked appropriately controlled peer reviewed clinical studies or other credible scientific evidence indicating that the ingestion of shark cartilage in capsule form is an effective cancer treatment or effective cancer preventative. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

PAR. 8. Through the means described in paragraph four, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that published laboratory studies prove that Body Systems' shark cartilage capsules are effective in the treatment of cancer and in the prevention of cancer.

PAR. 9. In truth and in fact, published laboratory studies do not prove that Body Systems' shark cartilage capsules are effective in the treatment of cancer and in the prevention of cancer. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

BODY SYSTEMS' UÑA DE GATO

PAR. 10. Respondents Body Systems, William E. Chace, and James D. Davis have disseminated or have caused to be disseminated advertisements for Body Systems' uña de gato products, including, but not limited to, the attached Exhibits C and D. Advertisements for Body Systems' uña de gato capsules and uña de gato liquid have been disseminated through, among other media, numerous websites on the Internet. These advertisements contain the following statements:

Beginning in the 1970's [sic] and continuing through today, research has been conducted on this remarkable plant in many countries throughout the world

including: several research facilities in Peru; University of Innsbruck, Austria; University of Munich, Germany; The Huntington Research Center, England; The Central Research Institute of Chemistry, Hungary; the Universities of Milan and Naples, Italy. As a result of this ongoing research, there is evidence to suggest that Uncaria tomentosa may be beneficial in the treatment of cancer, arthritis, . . . and those infected with HIV virus.

PAR. 11. Through the means described in paragraph ten, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that Body Systems' uña de gato capsules and Body Systems' uña de gato liquid:

A. Are or are likely to be an effective treatment of cancer.
B. Are or are likely to be an effective treatment of HIV and AIDS.
C. Are or are likely to be an effective treatment of arthritis.

PAR. 12. Through the means described in paragraph ten, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven at the time the representations were made.

PAR. 13. In truth and in fact, respondents Body Systems, William E. Chace, and James D. Davis did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven at the time the representations were made. Among other reasons, the purported support that respondents relied upon for the above claims--articles, a booklet, and newsletters that discuss generally the purported efficacy of uña de gato for a variety of human disease conditions and that, with one exception, were intended for lay readers--did not adequately relate to their advertising claims. Although respondents' submissions contain references to various studies and anecdotal stories that purportedly support respondents' claims, respondents lacked appropriately controlled peer reviewed clinical studies or other credible scientific evidence indicating that the ingestion of uña de gato in capsule or liquid form is effective in the treatment of cancer, HIV and AIDS, and arthritis. Therefore, the representation set forth in paragraph twelve was, and is, false or misleading.

PAR. 14. Through the means described in paragraph ten, respondents Body Systems, William E. Chace, and James D. Davis have represented, expressly or by implication, that research shows

that Body Systems' uña de gato capsules and Body Systems' uña de gato liquid are or are likely to be an effective treatment of cancer, AIDS and HIV, and arthritis.

PAR. 15. In truth and in fact, research does not show that Body Systems' uña de gato capsules and Body Systems' uña de gato liquid are or are likely to be an effective treatment of cancer, AIDS and HIV, and arthritis. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

PAR. 16. 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.

EXHIBIT A

SHARK

"Tumor Inhibitor"

Shark Cartilage is a natural nontoxic substance that has been shown to inhibit tumor growth, as evidenced by published laboratory studies conducted by eminent scientists over a thirty year period. And, if the studies proving that shark cartilage is an effective cancer treatment and preventative were not sufficient cause for rejoicing, these studies also indicate that a substance in shark cartilage has the potential to control arthritis, psoriasis, macular degeneration, and other diseases of aging.

In further studies results were released in May 1992 from preliminary clinical studies conducted by Roscoe L. Van Zandt, M.D. a gynecologist in Arlington, Texas. Dr. Van Zandt reported that eight women with advanced breast tumors had received 30 to 60 grams of orally administered shark cartilage daily. In all eight patients after six to eight weeks, the tumors had significantly reduced in size. In three case, the tumors had become encapsulated, and in two cases in which the tumors had become attached to the chest wall, they had become detached and free floating. In addition to these eight breast cancer cases, two women with uterine fibroid tumors had experienced a disappearance of their tumors.

One of the major imports of clinical trials is that they move theory to the real world. Trials on people have not only tested and proven the theory that shark cartilage can reverse cancer but also have given us concrete data on the method of achieving a cure.

Researchers also have found that shark cartilage is successful in reducing pain in approximately 70 percent of osteoarthritis cases and 60 percent of rheumatoid arthritis cases.

Suggested Use:
Take 2 - 5 capsules daily as required.

Ingredients:
500 mg Shark Cartilage. 52.9% Protein, no sugar or starch, no artificial colors or flavors and no preservatives. Sodium free, no corn, wheat, soy or dairy. Yeast free.

ORDERING INFORMATION

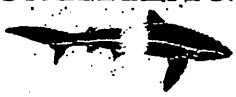
PRODUCT	ITEM #	QUANTITY	YOUR PRICE
Shark	5094	90 capsules	$ 14.50

To Order Call 1-800-771-6977

Exhibit A

EXHIBIT B

SHARK CARTILAGE



Shark cartilage is a natural nontoxic substance that has been shown to inhibit tumor growth, as evidenced by published laboratory studies conducted by eminent scientists over a thirty year period. And, if the studies proving that shark cartilage is an effective cancer treatment and preventative were not sufficient cause for rejoicing, these studies also indicate that a substance in shark cartilage has the potential to control arthritis, psoriasis, macular degeneration, and other diseases of aging.

In further studies: Results were released in May 1992 from preliminary clinical studies conducted by Roscoe L. Van Zandt, M.D. a gynecologist in Arlington, Texas. Dr. Van Zandt reported that eight women with advanced breast tumors had received 30 to 60 grams of orally administered shark cartilage daily. In all eight patients after six to eight weeks, the tumors had significantly reduced in size. In three cases, the tumors had become encapsulated, and in two cases in which the tumors had become attached to the chest wall, they had become detached and free-floating. In addition to these eight breast cancer cases, two women with uterine fibroid tumors had experienced a disappearance of their tumors.

One of the major imports of clinical trials is that they move theory into the real world. Trials on people have not only tested and proven the theory that shark cartilage can reverse cancer but also have given us concrete data on the method of achieving a cure.

Researchers also have found that shark cartilage is successful in reducing pain in approximately 70 percent of osteoarthritis cases and 60 percent of rheumatoid arthritis cases.

Contains: 500 mg. Shark Cartilage. 52.9% Protein, no sugar or starch, no artificial colors or flavors and no preservatives. Sodium free, no corn, wheat, soy or dairy. Yeast free.

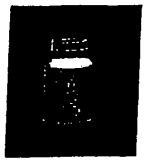
For more information please contact:

Exhibit B

EXHIBIT C

UNA DE GATO®

"Uncaria Tomentosa"



Cat's Claw **has been used for hundreds, perhaps thousands of years by the native Ashanica Indians for treatment of a wide range of health problems associated with the immune and digestive systems.** ***Cat's Claw*** **or** ***Uncaria tomentosa*** **is a herb that grows wild in the highlands of the Peruvian Amazon.**

Beginning in the 1970's and continuing through today, research has been conducted on this remarkable plant in many countries throughout the world including: several research facilities in Peru; University of Innsbruck, Austria; University of Munich, Germany; The Huntington Research Center, England; The Central Research Institute of Chemistry, Hungary; The Universities of Milan and Naples, Italy. As a result of this ongoing research, there is evidence to suggest that Uncaria tomentosa may be beneficial in the treatment of cancer, arthritis, bursitis, rheumatism, genital herpes and herpes zoster, allergies, ulcers, systemic candidasis, PMS and irregularities of the female cycle,
environmental toxin poisoning, numerous bowel and intestinal disorders, organic depression, and those infected with HIV virus.

Dr. Brent W. Davis, DC., who has been working with Uncaria tomentosa for a number of years in the United States, has referred to this herb as The Opener of the Way because of its remarkable ability to cleanse the entire intestinal tract and help patients suffering from many different stomach and bowel disorders including: Crohn's Disease, Diverticulitis, leaky bowel syndrome, colitis, hemorrhoids, fistulas, gastritis, ulcers, parasites and intestinal flora imbalance. In its healing ability and benefit to the immune system. Uncaria tomentosa appears to have so many therapeutic applications that it far surpasses such well known herbs as Pau de Arco, Echinacea, Golden Seal, Astragulas and Siberian Ginseng, as well as Reishi and Shitake mushrooms, and other natural products such as Citrus Seed Extract, Capryilic Acid and Shark Cartilage.

There is evidence to suggest that ***Uncaria Tomentosa*** **may also be beneficial in the treatment of:**

- **Cancer**
- **Genital Herpes**
- **Bursitis**
- **Arthritis**
- **Rheumatism**
- **Allergies**
- **PMS**
- **Organic Depression**
- **HIV**

ORDERING INFORMATION

EXHIBIT C

OFF-LINE ORDER FORM

To Order by Phone,Call 1-800-771-6977

Return to Product Index

Go To Off-line Product Order Form

Return to Body Systems Technology Home Page

Web Site design; 1997 Better Health Products Product names mentioned are registered trademarks or trademarks of Body Systems Technology, Inc. or their respective owners.

EXHIBIT D

Uña de Gato
Uncaria Tomentosa

Cat's Claw
A wondrous herb
from the Peruvian Rainforest

Uncaria tomentosa is an herb that grows wild in the highlands of the Peruvian Amazon. It has been used for hundreds, perhaps thousands of years by the native Ashanica Indians for treatment of a wide range of health problems associated with the immune and digestive systems.

Beginning in the 1970's and continuing through today, research has been conducted on this remarkable plant in many countries throughout the world including: several research facilities in Peru; University of Innsbruck, Austria; University of Munich, Germany; The Huntington Research Center, England; The Central Research Institute of Chemistry, Hungary; The Universities of Milan and Naples, Italy. As a result of this ongoing research, there is evidence to suggest that Uncaria tomentosa may be beneficial in the treatment of cancer, arthritis, bursitis, rheumatism, genital herpes and herpes zoster, allergies, ulcers, systemic candidasis, PMS and irregularities of the female cycle, environmental toxin poisoning, numerous bowel and intestinal disorders, organic depression, and those infected with the HIV virus.

Dr. Brent W. Davis, DC., who has been working with Uncaria tomentosa for a number of years in the United States, has referred to this herb as The Opener of the Way because of its remarkable ability to cleanse the entire intestinal tract and help patients suffering from many different stomach and bowel disorders including: Crohn's disease, diverticulitis, leaky bowel syndrome, colitis, hemorrhoids, fistulas, gastritis, ulcers, parasites and intestinal flora imbalance. In its healing ability and benefit to the immune system. Uncaria tomentosa appears to have so many therapeutic applications that it far surpasses such well known herbs as Pau de Arco, Echinacea, Golden Seal, Astragulas and Siberian Ginseng, as well as Reishi and Shitake mushrooms, and other natural products such as Citrus Seed Extract, Caprylic Acid and Shark Cartilage.

For more information please contact:

Exhibit D

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Commission's New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Body Systems Technology, Inc. is a Florida corporation with its principal office or place of business at 408 Live Oaks Blvd., Casselberry, Florida.

Respondent William E. Chace is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation, including the acts and practices alleged in this complaint. His business address is 408 Live Oaks Blvd., Casselberry, Florida.

Respondent James D. Davis is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation,

including the acts and practices alleged in this complaint. His business address is 408 Live Oaks Blvd., Casselberry, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondents*" shall mean Body Systems Technology, Inc., a corporation, its successors and assigns and its officers; William E. Chace and James D. Davis, individually and as officers of the corporation; and each of the above's agents, representatives, and employees.

3. "*Distributor*" shall mean any purchaser or other transferee of any product or program covered by this order who acquires such product or program from respondents.

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

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Body System Technology, Inc.'s shark cartilage capsules or any other product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product or program:

A. Is effective in the treatment of cancer; or

B. Is effective in preventing cancer,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Body System Technology, Inc.'s uña de gato capsules, uña de gato liquid, or any other product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product or program:

A. Is or is likely to be an effective treatment of cancer;
B. Is or is likely to be an effective treatment of HIV and AIDS; or
C. Is or is likely to be an effective treatment of arthritis,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, or drug as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, or any program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, efficacy, or safety of such product or program, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by

implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

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

VII.

It is further ordered, That:

A. Respondents shall not disseminate to any distributor any material containing any representations prohibited by this order.

B. Respondents shall not, directly or indirectly, authorize any distributor to make any representations prohibited by this order.

C. Within thirty (30) days after service of this order, respondents shall send by first class mail an exact copy of the notice attached hereto as Attachment A to each distributor with whom respondents have done business between February 1, 1997 and the date respondents executed this order, to the extent that such distributor is known to respondents through a diligent search of their records, including but not limited to computer files, sales records, and inventory lists. The mailing shall not include any other documents. Respondents shall require each distributor to execute and return the original of the letter as a condition of remaining or once again becoming a distributor of Body Systems Technology, Inc.

D. For a period of three (3) years following service of this order, respondents shall provide an exact copy of the notice attached hereto as Attachment C to each new distributor with whom respondents do business after the date respondents executed this order. Such notice shall be sent with the first shipment of respondents' products or

programs to said distributor. Respondents shall require each new distributor to execute and return the original of the letter as a condition of being a distributor of Body Systems Technology, Inc.

E. Respondents shall use reasonable efforts to monitor distributors' advertising and promotional activities. In the event that respondents receive any information that subsequent to receipt of Attachment A pursuant to Subpart C of this Part or subsequent to receipt of Attachment C pursuant to Subpart D of this Part, any distributor is using or disseminating any advertisement or promotional material or making any oral statement that contains any representation prohibited by this order, respondents shall immediately terminate said distributor's right to market respondents' products or programs and immediately provide, by certified mail, all relevant information, including name, address, and telephone number of the company at issue, the nature of the violation, and any relevant materials used or disseminated, to the Associate Director, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

F. Respondents shall require distributors to submit to respondents all advertising and promotional materials and claims for any products or programs covered by this order for review prior to their dissemination and publication. Respondents shall not authorize distributors to disseminate these materials and claims unless they are in compliance with this order.

Respondents may also comply with the obligations set forth above in this Subpart by:

1. Disseminating to distributors marketing materials that comply with this order; and

2. Requiring these distributors to submit for review all advertising and promotional materials for a particular product or program covered by this order that contain representations that are not substantially similar to the representations for the same product or program contained in the advertising and promotional materials most recently forwarded to the distributors by respondents.

VIII.

It is further ordered, That respondents Body Systems Technology, Inc. and its successors and assigns, and respondents William E. Chace and James D. Davis shall, for a period of five (5) years after the last notice is sent pursuant to Part VII of this order, maintain and upon

request make available to the Federal Trade Commission for inspection and copying: all notification letters sent to distributors, communications between respondents and distributors, and any other materials that refer or relate to the requirements of Part VII.

IX.

It is further ordered, That respondents shall refund the full purchase price of its shark cartilage capsules, uña de gato capsules, and uña de gato liquid, including shipping and handling and applicable taxes, to each purchaser whose initial request for a refund is received by respondents within one hundred and twenty (120) days after the date of service of this order under the following terms and conditions:

A. If respondents' diligent inquiry and examination of the corporate respondent's books and records reasonably substantiates the purchaser's claim of purchase or the purchaser provides proof of purchase, including but not limited to any of the following: return of goods or packaging, canceled check[s], credit card invoice[s], or receipt[s], the refund shall be paid within fifteen (15) business days of respondents' receipt of the refund request.

B. If the purchaser makes a timely request for a refund but neither of the conditions of Subpart A is satisfied, the respondents shall advise the purchaser, within fifteen (15) business days of receipt of the request for refund, that respondents will provide a prompt refund if the purchaser completes and returns to any respondent, within fifteen (15) days of receipt of the notice, a declaration of purchase, which the respondents shall provide together with a stamped and addressed return envelope. The declaration shall be substantially in the form of the declaration attached hereto as Attachment B. The refund shall be paid within fifteen (15) business days of respondents' receipt of the purchaser's completed declaration.

Provided, however, that if any request[s] for a refund from a single purchaser is for greater than three bottles of a product covered by this Part, respondents may, within fifteen (15) business days of receipt of the request[s] for refund, notify the purchaser that it will provide a prompt refund for all unopened packages of Body Systems Technology, Inc. shark cartilage capsules, uña de gato capsules, and uña de gato liquid returned within fifteen (15) business days of receipt

of the notice, and shall advise the purchaser that such returns may be made at the respondents' expense. The respondents shall provide each such purchaser with a prepaid means of return. The refund shall be paid within fifteen (15) business days of the return of unopened merchandise. Refund requests shall be sent to Body Systems Technology, Inc., 408 Live Oaks Blvd., Casselberry, FL 32707.

X.

It is further ordered, That respondent Body Systems Technology, Inc. and its successors and assigns, and respondents William E. Chace and James D. Davis shall, no later than one hundred and eighty (180) days after the date of service of this order, send by certified mail a monitoring report, in the form of a sworn affidavit executed on behalf of respondents to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. This report shall specify the steps respondents have taken to comply with the terms of Part IX of this order and shall state, without limitation:

A. The name and address of each purchaser from whom respondents received a refund request;

B. The date on which each request was received and the amount of the refund provided by respondents to each such purchaser;

C. That each refund was for the full amount of payment from each purchaser to whom any refund was paid;

D. The status of any disputed refund request and the identification of each purchaser whose refund request is disputed, by name, address, and amount of the claim; and

E. The total amount of refunds paid by respondents.

XI.

It is further ordered, That respondent Body Systems Technology, Inc., and its successors and assigns, respondents William E. Chace and James D. Davis shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XII.

It is further ordered, That respondent Body Systems Technology, Inc., and its successors and assigns, and respondents William E. Chace and James D. Davis, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to 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.

XIII.

It is further ordered, That respondent Body Systems Technology, 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 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XIV.

It is further ordered, That respondents William E. Chace and James D. Davis, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his

current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and her/his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XV.

It is further ordered, That respondent Body Systems Technology, Inc., and its successors and assigns, and respondents William E. Chace and James D. Davis shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XVI.

This order will terminate on September 7, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

ATTACHMENT A

LETTER SENT TO DISTRIBUTORS WITH WHOM RESPONDENTS HAVE DONE BUSINESS BETWEEN FEBRUARY 1, 1997 AND THE DATE RESPONDENTS EXECUTED THIS ORDER

[To Be Printed on Body Systems Technology, Inc. letterhead]

[NAME AND ADDRESS OF RECIPIENT]

[DATE]

Dear **[DISTRIBUTOR'S NAME]**:

It is against the law to make false claims about any product or program or to make any health-related claims about any product or program of Body Systems Technology, Inc., which are not substantiated by competent and reliable scientific evidence. Competent and reliable scientific evidence is defined as tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Anecdotal evidence and consumer testimonials are not considered competent and reliable scientific evidence.

The Federal Trade Commission has determined that it has reason to believe that claims that Body Systems Technology, Inc.'s shark cartilage capsules are effective in the treatment or prevention of cancer are not substantiated by competent and reliable scientific evidence. Moreover, the Federal Trade Commission has determined that it has reason to believe that claims that Body Systems Technology, Inc.'s uña de gato capsules and uña de gato liquid are or are likely to be effective treatments for cancer, HIV, AIDS, and arthritis also are not substantiated by competent and reliable scientific evidence. As a result of these determinations, Body Systems Technology, Inc. has agreed with the Federal Trade Commission that it will offer distributors who purchased any of these products refunds in accordance with the procedures and conditions set forth in the appendix to this letter.

Body Systems Technology, Inc. intends to abide by the law and demands that its distributors do the same. Therefore, as a condition of your remaining and or becoming once again a distributor of Body Systems Technology, Inc.'s products and programs, you must agree not to use, rely on, or distribute any advertising or promotional materials containing false or unsubstantiated claims. You must further agree not to make false or unsubstantiated oral representations with regard to any product or program of Body Systems Technology, Inc. You must also agree to notify your retail or wholesale customers to do the same. If you or your retail or wholesale customers use such materials or make such representations, we will stop doing business with you.

In order that Body Systems Technology, Inc. may assure itself that you are in compliance with the aforesaid requirements, you must, as a condition of remaining or becoming a distributor of Body Systems Technology, Inc. agree to submit to Body Systems Technology, Inc. in advance and prior to use, dissemination, or publication, all advertisements or promotional materials that you intend to use, publish, or disseminate with regard to any Body Systems Technology, Inc. product

or program. You must further agree not to use, disseminate or publish any such advertisement or promotional materials without obtaining our prior approval.

If you should fail or refuse to comply with the terms of this letter, your distributorship with Body Systems Technology, Inc. will be terminated immediately. Furthermore, if Body Systems Technology, Inc. believes that you have misrepresented or have made claims with respect to any product or program of Body Systems Technology, Inc. which are unsubstantiated by reliable scientific evidence, Body Systems Technology, Inc. will report your violation to the Federal Trade Commission.

Please sign, date, and return this letter to Body Systems Technology, Inc. at the above address acknowledging your agreement to the terms set forth herein. A copy of this letter has been provided for your files.

Thank you very much for your cooperation.

William E. Chace
President
Body Systems Technology, Inc.

ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges receipt of this letter and hereby agrees to its terms and conditions.

Date _____ Signature _____

REFUND CONDITIONS AND PROCEDURES

Body Systems Technology, Inc. will refund the full purchase price of its shark cartilage capsules, uña de gato capsules, and uña de gato liquid including shipping and handling and applicable taxes, to each purchaser whose initial request for a refund is received by Body Systems Technology, Inc. within ninety (90) days after the date of this letter under the following terms and conditions:

A. Our books and records reasonably substantiate your claim of purchase or you provide Body Systems Technology, Inc. with proof of purchase, including but not limited to any of the following: return of goods or packaging, canceled check[s], credit card invoice[s], or receipt[s].
B. If you make a timely request for a refund but neither of the conditions of Subpart A is satisfied, Body Systems Technology, Inc. will provide you with a Declaration of Purchase. Upon completion and return of this Declaration of Purchase to Body Systems Technology, Inc., we will then provide you with a refund.

Please Note: If any request[s] for a refund from a single purchaser is for more than three bottles of Body Systems Technology, Inc. shark cartilage capsules, uña de gato capsules, or uña de gato liquid, we reserve the right to only provide a refund upon receipt of all unopened packages of the Body Systems Technology, Inc. shark cartilage capsules, uña de gato capsules, and uña de gato liquid. Such returns,

however, will be made at Body Systems Technology, Inc.'s expense as we will provide you with a prepaid means of return.

Refund requests may be sent to Body Systems Technology, Inc., 408 Live Oaks Blvd., Casselberry, FL 32707.

ATTACHMENT B

[ADDRESS AND TELEPHONE NUMBER OF THE DECLARANT]

[DATE]

William E. Chace, President
Body Systems Technology, Inc.
408 Live Oaks Boulevard
Casselberry, Florida 32707

Dear Mr. Chace:

I make the following Declaration of Purchase.

On or about **[DATE]**, I purchased **[NUMBER OF BOTTLES]** of **[PRODUCT]** at **[PRICE PER UNIT]**. Moreover, I incurred **[DOLLAR AMOUNT]** in shipping and handling charges and taxes as a result of this purchase(s). I request a refund for **[TOTAL DOLLAR AMOUNT FOR PRODUCT(S), SHIPPING AND HANDLING, AND TAXES]**.

I declare under penalty of perjury that the foregoing is true and correct.

[DECLARANT'S SIGNATURE]

ATTACHMENT C

LETTER SENT TO DISTRIBUTORS WITH WHOM RESPONDENTS HAVE DONE BUSINESS SINCE RESPONDENTS EXECUTED THIS ORDER

[To Be Printed on Body Systems Technology, Inc. letterhead]

[NAME AND ADDRESS OF RECIPIENT]

[DATE]

Dear **[DISTRIBUTOR'S NAME]**:

It is against the law to make false claims about any product or program or to make any health-related claims about any product or program of Body Systems Technology, Inc., which are not substantiated by competent and reliable scientific evidence. Competent and reliable scientific evidence is defined as tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Anecdotal evidence and consumer testimonials are not considered competent and reliable scientific evidence.

The Federal Trade Commission has determined that it has reason to believe that claims that Body Systems Technology, Inc.'s shark cartilage capsules are effective in the treatment or prevention of cancer are not substantiated by competent and reliable scientific evidence. Moreover, the Federal Trade Commission has determined that it has reason to believe that claims that Body Systems Technology, Inc.'s uña de gato capsules and uña de gato liquid are or are likely to be effective treatments for cancer, HIV, AIDS, and arthritis also are not substantiated by competent and reliable scientific evidence. Body Systems Technology, Inc. intends to abide by the law and demands that its distributors do the same. Therefore, as a condition of your becoming and remaining a distributor of Body Systems Technology, Inc.'s products and programs, you must agree not to use, rely on, or distribute any advertising or promotional materials containing false or unsubstantiated claims. You must further agree not to make false or unsubstantiated oral representations with regard to any product or program of Body Systems Technology, Inc. You must also agree to notify your retail or wholesale customers to do the same. If you or your retail or wholesale customers use such materials or make such representations, we will stop doing business with you.

In order that Body Systems Techonology, Inc. may assure itself that you are in compliance with the aforesaid requirements, you must, as a condition of your becoming and remaining a distributor of Body Systems Technology, Inc. agree to submit to Body Systems Technology, Inc. in advance and prior to use, dissemination, or publication, all advertisements or promotional materials that you intend to use, publish, or disseminate with regard to any Body Systems Technology, Inc. product or program. You must further agree not to use, disseminate or publish any such advertisement or promotional materials without obtaining our prior approval.

If you should fail or refuse to comply with the terms of this letter, your distributorship with Body Systems Technology, Inc. will be terminated immediately. Furthermore, if Body Systems Technology, Inc. believes that you have misrepresented or made claims with respect to any product or program of Body Systems Technology, Inc. which are false or not substantiated by competent and reliable scientific evidence, Body Systems Technology, Inc. will report your violation to the Federal Trade Commission.

Please sign, date, and return this letter to Body Systems Technology, Inc. at the above address acknowledging your agreement to the terms set forth herein. A copy of this letter has been provided for your files.

Thank you very much for your cooperation.

William E. Chace
President
Body Systems Technology, Inc.

ACKNOWLEDGMENT AND AGREEMENT

The undersigned acknowledges receipt of this letter and hereby agrees to its terms and conditions.

_____ _____

Date Signature

IN THE MATTER OF

MELINDA R. SNEED, ET AL.

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

Docket C-3896. Complaint, Sept. 7, 1999--Decision, Sept. 7, 1999

This consent order, among other things, prohibits the Texas-based sole proprietorship, doing business as Arthritis Pain Care Center, from representing that their products containing CMO or any substantially similar product is effective in the treatment, prevention, or cure of arthritis, provides permanent relief from the symptoms of arthritis, and is effective in the treatment of multiple sclerosis, lupus, and other diseases unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. In addition, the consent order prohibits any unsubstantiated claims regarding the health benefits, performance, efficacy, or safety of any such product or program.

Participants

For the Commission: *Judith Shepherd, Thomas Carter* and *Louis Silversin.*

For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Melinda R. Sneed and John L. Sneed, d/b/a Arthritis Pain Care Center, 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. Respondent Melinda R. Sneed does business under the assumed name, Arthritis Pain Care Center. Respondent John L. Sneed participates with Melinda R. Sneed in formulating, directing, or controlling the policies, acts, or practices of Arthritis Pain Care Center, including the acts or practices alleged in this complaint. Respondents' principal office or place of business is 3615-F Pioneer Parkway, Arlington, Texas.

2. Respondents have promoted, offered for sale, sold, and distributed to the public products containing a substance described as cetylmyristoleate, cetyl myristoleate, cerasomal-cis-9-cetylmyristoleate, or CMO, including products identified with the

name CMO™ [hereinafter referred to collectively as "CMO"]. These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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

4. Respondents have disseminated or have caused to be disseminated advertisements or promotional materials for products containing CMO, including but not necessarily limited to the attached Exhibits A through H. Advertisements for respondents' CMO products have been disseminated through, among other media, a web site on the Internet. These advertisements and promotional materials contain the following statements:

A. **Arthritis - Arthritis - Arthritis**

[Depiction of gnarled, deformed hand.] **Do You Have It or Know Someone Who Does?**

Don't be fooled by reports from The Arthritis Foundation ...

There IS a natural treatment for your arthritis - CMO™

AS SEEN ON T.V.!!

* * *

The Arthritis Foundation and your doctor will often tell you that you can't treat arthritis with anything except prescription drugs. **THAT'S A LIE!**

Prescribed drugs have harmful, long-term effects. Methotrexate, for instance, when taken over time will DESTROY your liver. - **Ask your doctor.** That's why you must have monthly liver tests!

Prednisone is a STEROID. Steroids affect your adrenal glands. That's why you must be weaned off very slowly. -- **Ask your doctor.**

And surgery...of course they want to offer this option (lots of money), but do they guarantee these treatments? - **NO!**

Doesn't it make more sense to at least TRY a natural product which has NO SIDE EFFECTS?

Just read Dr. Len Sands (San Diego Clinic), **"Arthritis Defeated at Last"**

For a detailed, frank discussion of healing arthritis naturally.

[Depiction of Product Containers]

CMO™

(Cerasomal-cis-9-cetylmyristoleate)

An all-natural product with UNBELIEVABLE results!

9 Out of 10 report partial to TOTAL RELIEF

With just 1 treatment!

JOIN THE THOUSANDS WHO HAVE RECEIVED

FREEDOM FROM ARTHRITIS "ONCE AND FOR ALL"

Why do we get arthritis?

Most doctors agree that it is an auto-immune disease. We can't take an antibiotic for it, we can't build up our immune system to cure it once we have it, and we can't

seem to find anything that will reverse its devastating results...UNTIL NOW with CMO™!

The only product that has actually REVERSED the arthritic process for thousands!

Unlike everything else, CMO™ is not a pain reliever, not an anti-inflammatory, not a steroid or other cortisone. CMO™ is an IMMUNOMODULATOR, which helps to normalize the immune system.

Instead of treating the symptoms of pain and inflammation, CMO™ acts directly against the cause of the arthritis - the erroneously programmed "memory T-cells" of your own immune system that cause the attacks against your joints. The bad programming is why, as time passes, arthritis only gets worse. Once the problem is corrected, the attacks on your joints are halted and the symptoms of pain and inflammation are promptly remedied. CMO™ corrects the root cause of arthritis by erasing the memory of those badly programmed memory T-cells.

Once the destruction of your joints is halted, your body can begin to normalize. Although the major benefits come promptly, minor improvements continue for several months. With the pain and inflammation relieved, the joints can function normally.

Does CMO™ work for everyone? NO, and we offer no guarantees (but neither does your doctor). If you are generally healthy and temporarily willing to give up coffee, alcohol and caffeine, you can be one of the hundreds who have received COMPLETE relief for their arthritic condition.

Proven Results

The treatment of arthritis with CMO™ has been proven by actual case experiences and clinical studies. These studies are available in the book by Dr. Len Sands, "Arthritis Defeated at Last." Our customer base includes individuals, clinics, M.D.s, D.O.s and chiropractors. We have helped hundreds find relief with CMO™.

* * *

CMO™ is a registered trademark of the San Diego Clinic.

* * *

[Exhibit A, http://www.choicemall.com/apcc]

B. **ATTENTION ARTHRITIS PAIN SUFFERERS**
NEW 100% NATURAL PRODUCT
THAT CAN ACTUALLY REVERSE
THE EFFECTS OF ARTHRITIS
ONCE & FOR ALL!

* ALL NATURAL
* ONE TIME TREATMENT
* NO SIDE EFFECTS
* IMAGINE! NO MORE DRUGS
* STUDIES & TESTIMONIALS
* CREDIT CARDS ACCEPTED

DON'T SUFFER ANOTHER DAY!!

* * *

What causes arthritis?

The arthritic process is regulated by 'memory T-cells' which have been erroneously programmed causing attacks on your joints and cartilage. In osteoarthritis this faulty programming usually results from physical damage . . . . The damage results

in an immune response involving the memory T-cells producing attacks against the affected joints. . . . Although various types of rheumatoid arthritis are caused by infective micro-organisms, memory T-cells are again involved in the same arthritic process. Without CMO™ it continues to worsen.

* * *

Does CMO™ improve joint mobility?

Absolutely! If the joint can be moved just slightly (by the afflicted person or even by someone else) joint mobility can usually be restored. . . .

Does CMO™ stop arthritis pain?

Arthritis pain will disappear completely in almost every instance. In a few extreme cases, pain was reduced by only 50% to 70% which was still such a major benefit that it allowed the persons to function almost normally again.

Does CMO™ reduce inflammation?

Yes, and it does so very effectively. . . .

How long before it takes effect?

Most people begin to feel relief within two to four days. . . . some may need as many as four weeks of treatment.

* * *

Is CMO™ used for any other ailments?

Current studies include CMO™ as part of therapeutic protocol for other disorders with auto-immune components including multiple sclerosis, lupus, emphysema, silicon breast disease, certain cancer treatments, benign prostate hyperplasia and possibly other lung disorders. . . .

* * *

What about more severe cases?

Even persons previously confined to a bed or a wheelchair have responded dramatically and are now no longer dependent on others for care. A number of these received additional benefit from repeating the treatment again. . . .

What about joints where the cartilage is completely worn away?

Unless the bones have fused together, the usual problem is not lack of mobility but pain. The majority of such dramatic cases have responded favorably resulting in painless movement, even in the knees.

Does it work for everyone?

. . . . So far, CMO™ has been able to help everyone who has not suffered liver impairment . . . .

Currently, we are expreiencing [sic] an 80% to 90% success rate.

Is it expensive?

The cost of the treatment is very modest when compared with what most arthritis victims are spending monthly on pain and inflammation medications that only mask the symptoms. Since, in most cases, you only need to take one treatment of CMO™,,[sic] it actually saves you thousands of dollars, not to mention the pain and disability reversed.

* * *

Does that mean that a person takes CMO™ only once and that's it?

YES. Unbelievable isn't it! Most afflicted persons need to take the capsules for only a couple of weeks to be free of arthritis symptoms forever. No further medication is ever necessary, not even CMO™.

Does it work for both rheumatoid and osteoarthritis?
Both types respond equally well. It also works for most other types of arthritis such as those associated with ankylosing spondylitis, reiter's syndrome, sjogren's syndrome, behcet's syndrome and psoriasis. It has also been found to relieve various types of back pain of undetermined origin (probably arthritis related).
Is CMO™ harmful in anyway?
. . . . It's a prefectly [sic] safe naturally derived substance. . . .
Can I continue with my usual medications while taking CMO™?
Yes, but after a few days you probably won't need your pain medication. The only drugs that has any effect on CMO™ are Methatrexate and Rheumatrex. These two conventional arthritis drugs tend to nullify the CMO™. There are no adverse drug reactions, you simply won't feel anything or get any results with your CMO™. Always check with your doctor before changing or taking any medication. Avoid steroids.
[Exhibit B, consumer brochure]

C. * * *

CMO is an all natural oil substance which was discovered to exist in some animals such as cattle and whales. It is a third chain "fatty acid ester." One of the building blocks used to make CMO exists in beef tallow. Fatty acids have many functions essential to good health. This fatty acid can help control inflammation and may PREVENT arthritis.
Studies and Testimonials Available Upon Request
The treatment of arthritis with CMO™ and the supplements listed have been proven by actual case experience and clinical studies. Please E-Mail us at meljo@swbell.net for a copy of these studies and/or testimonials. Our customer base includes individuals, clinics, M.D's, D.O's, and chiropractors. Although no formal studies have been conducted, CMO has also been reported to help reduce the effects of emphazema, fibro-myalgia, lupus, chronic bronchitis and certain skin disorders. Thousands have used CMO successfully.
[Exhibit C, consumer brochure]

D. A Miracle Product of Nature
CMO™ No More Arthritis No More Pain
Attention Golfers:

* * *

CMO - Cerasomal-Cis-9-Cetyl-Myristoleate, is an all natural, completely safe, nutrient compound that is derived from an oil found in certain mammals. CMO corrects the root cause of arthritis erasing the memory of those malfunctioning "Memory T-Cells". Once the destruction is halted, the body can begin to normalize and the joints begin to function normally again - FREE FROM PAIN. Many sufferers of arthritis who have in the past had to limit their activity due to pain are now living their lives again - PAIN FREE after only 12-24 days of treatment.
[Exhibit D, advertisement in *Par-Fore* magazine, February 1997]

E. *San Diego Clinic*
MEMORANDUM
***Subject: Heart Disease Relative to* CMO™**
There have been no formal studies conducted with respect to the effects of CMO on individuals with heart disease.

However, considering that CMO is a naturally derived nutritional supplement that has shown to help normalize various physiological and immunological body processes in humans, and since it appears to be completely non-toxic in its use by thousands of consumers and in previous animal studies, we would expect that it would have no ill effect on individuals with coronary problems.
On the contrary, we have received interesting reports regarding persons with certain other ailments who have taken CMO for arthritis as recommended by their physicians and other health care professionals;

1) There have been reports on individuals suffering from hypertension (high blood pressure) whose blood pressure has completely normalized or lowered substantially.

2) There have been reports of individuals suffering from hypotension (low blood pressure) whose blood pressure has completely normalized or raised. substantially.

3) There have been reports of individuals with high and even extremely high blood sedimentation rates whose sed rates have normalized, even in Lupus patients.

4) There have been reports of individuals with cardiac arrhythmia (abnormal heartbeat rhythm) whose arrhythmia has disappeared.

* * *

[Exhibit E, San Diego Clinic memorandum, January 1997, available from Arthritis Pain Care Center]

F. **The New Arthritis Treatment**
CASE HISTORIES
Condensed Highlights From
Case Histories Recorded By
The San Diego Clinic

FROM CASE HISTORY #38:
Medical Doctor. Pain and stiffness in hands for several years. Unable to perform simple office surgery. One day of CMO brought relief. Dexterity and fine surgical ability returned gradually. Ordered CMO for his patients.

FROM CASE HISTORY #332:
Female. Age 66. Rheumatoid arthritis rendered hands useless, gnarled, inflexible, agonizingly painful six years ago. Pain relieved and full use of hands restored after five days of CMO.

FROM CASE HISTORY #39:
Male. Medical Doctor/psychiatrist. This physician complained of persistent pains along his spine and in his feet. He became completely free of pain in both the spine and feet within two days of starting CMO capsules. Remission continues.

FROM CASE HISTORY #33:
Medical Doctor. Auto wreck ten years earlier damaged hip, caused limp and arthritis. CMO relieved pain permanently in one day for the first time after many years. The limp problem is irreparable. Ordered CMO for his patients.

* * *

YOU CAN JOIN THE GROWING NUMBER OF PEOPLE WHO HAVE ENJOYED THE BENEFITS OF CMO

* * *

[Exhibit F, consumer brochure]

G. **CMO Testimonials**

* * *

As you know, I have had rheumatoid arthritis since I was 38, and am now almost 51. I have run the gamet as far as prescription medications go. The symptoms where of course suppressed over the years, but my condition slowly worsened none the less. I have been in constant pain over the years, and at times had to resort to prescription narcotics to relieve the agony. After . . . my purchase of CMO, my arthritis began to go into a remissive state quite rapidly. . . Should my arthritis ever decide to rear it's ugly head again, you can be sure I won't hesitate to purchase another bottle. . . *Tim Richards, Carson City, NV*

* * *

My arthritis pain and swelling in my hands is gone and there is no more pain in my back, hips or legs. I am also suffering from emphezemia and have noticed an improvement, I'd say at least 40%. It seems to be getting better every day. . . CMO seems to be the one thing I needed 10 years ago. . . *Gerald Youngblood, Texas*

* * *

I did the CMO treatment on a 12 day basis and before the 12 days were up, around the fifth or sixth day, I noticed remarkable improvement in my hands, especially those sore knuckles and my lower back. By the end of the twelve days I also noticed that a burning pain from the small of my back down through my leg to my foot was disappearing. It has been 8 weeks since I finished my treatment and I'm here to tell you that all my pain is gone. So golfers, tennis players, softball players and anybody with arthritis pain, do yourself a favor and do the CMO treatment.

John Sneed, Fort Worth, Texas

* * *

To potential users I would say that one bottle may be perfect for some; others may need more. It is worth the commitment to take a product that is natural, can not hurt you, and can only make you 'whole' once again. . . *Barbara, Dataw Island, SC*

[Exhibit G, consumer brochure]

H. * * *

Now where CMO comes from is quite an interesting history. The -- it was originally discovered at the United States Government National Institutes of Health. A researcher there by the name of Harry Deal (phonetic) back in 1971 discovered this substance existing in a string of mice, called Swiss Albino mice, which are generally used in laboratories for research.

And he found it had a remarkable property. It had the property of preventing the formation of arthritis in animals who were injected with arthritis inducing substances. And even more remarkably it had the property of literally and totally reversing all arthritic symptoms in these same laboratory animals.

He continued to research this pretty much of his own volition and as much as he could in the NIH without a great deal of funding for it. It didn't seem like the NIH had a great deal of interest in this particular substance.

At any rate, it is totally different. The significant thing about CMO is that it is not treating the symptoms of inflammation or pain. It is in fact going directly into the immune system and stopping the arthritic process itself, which allows the body to cope with and heal itself and rid itself of the inflammation and pain.

* * *

Once this is accomplished, there is no need for any further medication, not even for CMO. The CMO has gone in, done its job, and it is not needed any longer in most instances. There are a few cases where more quantities, larger and more prolong therapy with CMO can prove to be beneficial. But once it's over, it seems to be over.

* * *

[P]eople that were treated eight, ten, 12 years ago, as a result of the studies and the compounds produced by Harry Deal with the NIH, these people have not needed any further treatment for arthritis. They have been able to discontinue all medication. They haven't needed any more pain pills. They haven't needed any more anti-inflammatory drugs.

And this is of enormous benefit to most patients, simply because of the fact that many of these things are harmful. They're harmful to the liver. They're harmful to the kidneys. We had a patient in here just a -- just a few days ago, an antique dealer, a woman who was taking between, I believe, eight and 15 Tylenol every day. And her test results on liver function indicate that she was definitely suffering from liver impairment as a result of this kind of medication.

And this is -- she has -- she's been amazed. She was taking CMO for only a matter of five days, and she saw very significant improvement already, despite her liver damage. . . . So it's a great benefit, because once you're done with this program, it appears that you are likely to be done forever. We can't say for sure that perhaps at some point in the future this same individual may encounter some circumstances that could trigger the process anew. But should that happen ten years down the line, you know, you can just take CMO again.

* * *

CMO was rather buried in the NIH for a number of years, to the point that when the individual who discovered it retired, he himself had to continue on the research on his own. There was no funding available from the NIH. And once it was -- even though it was proved within the laboratories of the NIH to have these magnificent properties of seemingly permanently reversing the effects of arthritis.

* * *

We picked up the exploration of that substance, and we continued, and we did some studies on 48 patients. And we were absolutely amazed by the results. We got between 70 to 100 percent improvement in joint mobility and in pain reduction. Only two of the 48 patients didn't respond to CMO, and both of those, it turned out, have substantial liver damage.

* * *

Basically -- well, many people say that it's a blessing, because they were looking forward to spending thousands and thousands of dollars for the rest of their life taking -- just taking things to be able to allow them to just barely function during the day. Whereas they take CMO and they return to somewhere between 70 and 100 percent of their old selves. I did, personally.

* * *

And there have been another -- other disorders that people have -- various doctors who have been utilizing CMO have found to be beneficial, things like lupus, multiple sclerosis, emphysema and the like, simply because along with other medications, where CMO seems to work along with other medications to help the process along, as a result of its effect on the immune system.

* * *

We're getting about 96 percent success rate [with CMO].

* * *

[Exhibit H, audiocassette tape distributed by Arthritis Pain Care Center, "Health Program Interview On CMO with Dr. Len Sands"]

5. Through the means described in paragraph four, respondents have represented, expressly or by implication, that respondents' CMO products:

A. Are effective in the mitigation, treatment, prevention, and cure of most forms of arthritis, including rheumatoid arthritis and osteoarthritis.

B. Provide permanent relief from symptoms of arthritis, including pain, impaired mobility, swelling, and joint deformities.

C. Are as effective as or superior to prescription medications in the treatment of arthritis and the relief of arthritis symptoms.

D. Are completely safe and without adverse side effects.

E. Are effective in the treatment of multiple sclerosis, lupus, emphysema, chronic bronchitis, silicone breast disease, cancer, benign prostate hyperplasia, hypertension, hypotension, and cardiac arrhythmia.

6. Through the means described in paragraph four, respondents have represented, expressly or by implication, that "case histories" and testimonials of consumers appearing in the advertisements or promotional materials for respondents' CMO products reflect the typical or ordinary experience of members of the public who use the products.

7. Through the means described in paragraph four, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraphs five and 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 paragraphs five and six, at the time the representations were made. For example, studies have not examined the efficacy of the ingredients in respondents' CMO products in the prevention or cure of arthritis; or in comparison to prescription medications for the treatment of arthritis or the relief of arthritis symptoms; or in the treatment of multiple sclerosis, lupus, emphysema, chronic bronchitis,

silicone breast disease, cancer, benign prostate hyperplasia, hypertension, hypotension, or cardiac arrhythmia. In addition, there is insufficient information available to determine the reliability of other purported studies or the applicability of such studies to the respondents' products. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. Through the means described in paragraph four, respondents have represented, expressly or by implication, that:

A. Clinical studies prove that CMO™ is a safe and effective treatment for arthritis.

B. Studies were conducted at the National Institutes of Health that prove that CMO reverses the effects of arthritis.

10. In truth and in fact:

A. Clinical studies do not prove that CMO™ is a safe and effective treatment for arthritis.

B. No studies conducted at the National Institutes of Health prove that CMO reverses the effects of arthritis.

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

11. In the advertising and sale of CMO products, respondents have represented that John Sneed is an endorser of CMO products. Respondents have failed to disclose adequately that Sneed has a material connection with respondents' CMO products in that, at the time of providing his endorsement, Sneed had a financial interest in Arthritis Pain Care Center and received a financial benefit from respondents' sales of the product. These facts would materially affect the weight and credibility given by consumers to the endorsement and would be material to consumers in their decisions to purchase the product. Therefore, the failure to disclose adequately these facts, in light of the representations made, was, and is, a deceptive practice.

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.

EXHIBIT A

rthritis Pain Care Center http://www.choicemall.com/cgi-bin/...cc/index.tam&ipt=898274677&ancho

CATEGORIES | SESSIONS | STORE INDEX | SEARCH

ChoiceMALL

Arthritis Pain Care Center

Arthritis Treatment ... Stress ADD/ADHD Treatment ... Nutritional Support

Arthritis - Arthritis - Arthritis

Do You Have It or Know Someone Who Does?

Don't be fooled by reports from The Arthritis Foundation ...
There IS a natural treatment for your arthritis - CMOtm

AS SEEN ON T.V.!!

What is CMOtm? | Proven Results | Our Services | Our Products | Distributorships & Contact Information

The Arthritis Foundation and your doctor will often tell you that you can't treat arthritis with anything except prescription drugs. **THAT'S A LIE!**

Prescribed drugs have harmful, long-term effects. Methotrexate, for instance, when taken over time will DESTROY your liver. - **Ask your doctor.** That's why you must have monthly liver tests!

Prednisone is a STEROID. Steroids affect your adrenal glands. That's why you must be weaned off very slowly. – **Ask your doctor.**

And surgery...of course they want to offer this option (lots of money), but do they guarantee these treatments? - **NO!**

Exhibit A
Arthritis Pain Care Center

Doesn't it make more sense to at least TRY a natural product which has NO SIDE EFFECTS?

Just read Dr. Len Sands (San Diego Clinic), "Arthritis Defeated at Last"
For a detailed, frank discussion of healing arthritis naturally.

EXHIBIT A

Arthritis Pain Care Center http://www.choicemall.com/cgi-bin/...cc/index.tam&ipt=6v62746777&anch

CMOtm

(Cerasomal-Cis-9-Cetylmyristoleate)

An all-natural product with
UNBELIEVABLE results!

9 out of 10 report partial to

TOTAL RELIEF
With just 1 treatment!

JOIN THE THOUSANDS WHO HAVE RECEIVED
FREEDOM FROM ARTHRITIS "ONCE AND FOR ALL"

Why do we get arthritis?

Most doctors agree that it is an auto-immune disease. We can't take an antibiotic for it, we can't build up our immune system to cure it once we have it, and we can't seem to find anything that will reverse its devastating results...UNTIL NOW with CMOtm!

The only product that has actually REVERSED the arthritic process for thousands!

Unlike everything else, CMOtm is not a pain reliever, not an anti-inflammatory, not a steroid or other cortisone. CMOtm is an IMMUNOMODULATOR, which helps to normalize the immune system.

Instead of treating the symptoms of pain and inflammation, CMOtm acts directly against the cause of the arthritis - the erroneously programmed "memory T-cells" of your own immune system that cause the attacks against your joints. The bad programming is why, as time passes, arthritis only gets worse. Once the problem is corrected, the attacks on your joints are halted and the symptoms of pain and inflammation are promptly remedied. CMOtm corrects the root cause of arthritis by erasing the memory of those badly programmed memory T-cells.

Once the destruction of your joints is halted, your body can begin to normalize. Although the major benefits come promptly, minor improvements continue for several months. With the pain and inflammation relieved, the joints can function normally.

Does CMOtm work for everyone? NO, and we offer no guarantees (but neither does your doctor). If you are generally healthy and temporarily willing to give up coffee, alcohol and caffeine, you can be one of the hundreds who have received COMPLETE relief for their arthritic condition.

Proven Results

The treatment of arthritis with CMOtm has been proven by actual case experiences and clinical studies. These studies are available in the book by Dr.

EXHIBIT A

experiences and clinical studies. These studies are available in the book by Dr. Len Sands, "Arthritis Defeated at Last." Our customer base includes individuals, clinics, M.D.s, D.O.s and chiropractors. We have helped hundreds find relief with CMOtm.

Products

CMOtm 60 count capsules	**$120.00**	[redacted]
BeCalmed Stress Formula 50 count capsules	**$18.95**	[redacted]
Glucoasmine Sulphate 30 count tablets	**$13.95**	[redacted]
Herbal Care Pain Spray 2 fluid ounces	**$30.00**	[redacted]
"Arthritis Defeated at Last" (Dr Len Sands Book)	**$8.50**	[redacted]

Contact us for information on our other products:

KAL Enzyme	**$5.00**
APCC Pain Cream	**$20.00**
Alpha Lipoic Acid	**$12.95**
COMPLETE PACKAGE CMOtm, enzyme, book	**$125.50**

Add $5.00 per order for s/h
We accept all major credit cards

We will NOT be undersold!
If you find CMOtm at a lower price, tell us where and we'll match it!

Services

We deliver service AFTER the sale!

The Arthritis Pain Care Center is here to help you. We offer a variety of services
and products to help with your arthritis, Lupus, Fibromyalgia, etc., and we strive
to treat the WHOLE person. We are not in the business of "selling products," rather we want to help people find proven, alternative treatments for their condition.

EXHIBIT A

CMOtm is a registered trademark of the San Diego Clinic. Beware of copycat products. CMOtm is cerasomal-cis-9-cetlmyristoleate. THERE IS NO OTHER!

Arthritis Pain Care Center
3615-F West Pioneer Parkway
Arlington, TX 76013
817-460-4519
Fax: 817-274-4066
meljo@swbell.net

Contact us for Distributor Information and For quotes on bulk orders!

Complaint

EXHIBIT B

Questions & Answers

What makes CMOtm so different from other treatments I've tried?

Unlike everything else, CMOtm is not a pain reliever. It's not an anti-flammatory. It's NOT a cortisone or other steroid. CMOtm is an *immunomodulator* There's never been anything else like it before for arthritis. Instead of treating the symptoms of pain and inflammation, CMOtm capsules act directly against the cause of arthritis — the erroneously programmed "memory T-cells" of your immune system that cause the attacks against your joints. The bad programming is why, as time passes, arthritis only gets worse, never better. But once the program is corrected, the attacks on your joints are halted and the symptoms of pain and inflammation are promptly remedied. It's like a bad computer program. But once it's fixed, *it stays fixed.*

Does that mean that a person takes CMOtm only once and that's it?

YES. Unbelievable isn't it! Most afflicted persons need to take the capsules for only a couple of weeks to be free of arthritis symptoms forever. No further medication is ever necessary, not even CMOtm.

Does it work for both rheumatoid and osteoarthritis?

Both types respond equally well. It also works for most other types of arthritis such as those associated with ankylosing spondylitis, reiter's syndrome, sjogren's syndrome, behcet's syndrome and psoriasis. It has also been found to relieve various types of back pain of undetermined origin (probably arthritis related).

Is CMOtm harmful in anyway?

CMOtm studies began at the National Institutes of Health more than twenty years ago. Recently, clinical applications studies were conducted by the San Diego Clinic. No harmful short or long term effects were ever observed in humans or laboratory animals even at exand also in medicines and cosmetics. It's a prefectly safe naturally derived substance.

Can I continue with my usual medications while taking CMOtm?

Yes, but after a few days you probably won't need your pain medication. The only drugs that has any effect on CMOtm are Methatrexate and Rheumatrex. These two conventional arthritis drugs tend to nullify the CMOtm. There are no adverse drug reactions, you simply won't feel anything or get any results with your CMOtm. Always check with your doctor before changing or taking any medication. Avoid steroids.

ORDERING INFORMATION:
Price: $165.00 per package*

I wish to pay by:
Check Money Order Credit Card

Name: _____

Address: _____

City: _____ **State/Zip:** _____

Phone: _____

Name On Credit Card: _____

Card # : _____
Expiration Date: _____

Make Checks Payable To:
Arthritis Pain Care Center
3615-F West Pioneer Parkway
Arlington, Texas 76013

*Package: 50 cap CMOtm, Enzyme, Glucosamine Sulphate, Alpha Lipoic Acid

CMOtm is an unpatentable product from an all natural source, therefore it has not been approved by the the FDA. This product is not meant to cure or prevent any disease.

ARTHRITIS PAIN CARE CENTER
(817) 460-4519

NATURAL ALTERNATIVES

Pain Relief From Nature

ATTENTION!

ARTHRITIS PAIN SUFFERERS

Exhibit B
Arthritis Pain Care Center

NEW 100% NATURAL PRODUCT THAT CAN ACTUALLY REVERSE THE EFFECTS OF ARTHRITIS ONCE & FOR ALL!

- **ALL NATURAL**
- **ONE TIME TREATMENT**
- **NO SIDE EFFECTS**
- **IMAGINE! NO MORE DRUGS**
- **STUDIES & TESTIMONIALS**
- **CREDIT CARDS ACCEPTED**

DON'T SUFFER ANOTHER DAY!

Visit Us At: www.choicemall.com/apcc

EXHIBIT B

[illegible] cells"-which have been erroneously programmed causing attacks on your joints and cartilage. In osteoarthritis this faulty programming usually results from physical damage such as long term physical work, sports activities, continuous repetitive motions, a fall, vehicle accident, etc. The damage results in an immune response involving the memory T-cells producing attacks against the affected joints. Unfortunately, there's no "stop button" or "end program" command in the memory T-cells and the attack continues against healthy cartilage and joints as well. That's why arthritis is called an "auto immune" disease because your body is attacked by your immune system. Although various types of rheumatoid arthritis are caused by infective micro-organisms, memory T-cells are again involved in the same arthritic process. Without CMOtm it continues to worsen.

How does CMOtm work?

CMOtm corrects the root cause of arthritis by erasing the memory of those badly programmed memory T-cells. Once the destruction of your joints is halted, your body can begin its repair process without interference and joints begin to normalize. Although the major benefits come promptly, minor improvements *continue for several months after finishing* CMOtm. With the pain and inflammation relieved, the joints can function again normally.

What is CMOtm? Where Does It Come From?

Cetrasomial-cis-9-cetylmyristoleate is the biochemical name. CMOtm is the trade name. It's a completely natural substance found in certain animals such as cows, whales, beavers, and mice. It's a "fatty acid ester" that's manufactured through a series of highly (and costly) chemical processes that changes and then re-combines the all natural ingredients using the building blocks from beef tallow. Only the fatty acid ester is used. Scientifically speaking, CMOtm is a fatty acid. In less scientific terms, it is an oil derived from United States cattle.

the affilicted person or even by someone else) joint mobility can usually be restored. But if the bones have fused and grown together only surgery can help these particular joints.

Does CMOtm stop arthritis pain?

Arthritis pain will disappear completely in almost every instance. In a few extreme cases,pain was reduced by only 50% to 70% which was still such a major benefit that it allowed the persons to function almost normally again.

Does CMOtm reduce inflammation?

Yes, and it does so very effectively. The pressure in the joints caused by the inflammation is a major cause of stiffness and pain.

How long before it takes effect?

Most people begin to feel relief within two to four days. Often, that's all it takes to see a significant difference. Others may take a bit longer and some may need as many as four weeks of treatment.

Do I have to go on a special diet?

Alcohol, caffiene and chocolate must be avoided and a few other foods limited, but just for a couple of weeks. Afterward, there are no restrictions. You will also be taking an all natural enzyme to help with the absorbtion of the product.

Is CMOtm used for any other ailments?

Current studies include CMOtm as part of therapeutic protocol for other disorders with auto-immune components including multiple sclerosis, lupus, emphysema, silicon breast disease, certain cancer treatments, benign prostate hyperplasia and possibly other lung disorders. It has been especially helpful for lupus sufferers when combined with glucosamine sulphate. There have also been reports of its positive effects on persons suffering with psoriasis. This condition has been reported to have cleared with CMOtm. Animals with arthritis condition have also been cured. It works on dogs, cats and horses.

[illegible] bones out of place. Reduction of the swelling alone improves the appearance dramatically and often allows the dislocated bones to return to their normal position. Extreme cases may require some physical therapy.

What about more severe cases?

Even persons previously confined to a bed or a wheelchair have responded dramatically and are now no longer dependent on others for care. A number of these received additional benefit from repeating the treatment again. A few have found that physical therapy or exercise programs also helped. But,be careful and don't over-do it when pain and swelling subside, you could make your muscles sore and painful.

What about joints where the cartilage is completely worn away?

Unless the bones have fused together, the usual problem is not lack of mobility but pain. The majority of such dramatic cases have responded favorably resulting in painless movement, even in the knees.

Does it work for everyone?

No. There is not anything that will work for everyone. So far, CMOtm has been able to help everyone who has not suffered liver impairment which usually results from some disease, alcohol, steroid or conventional arthritis treatments such as Methotrex ate, Rheumatrex or steroidal medications. A good digestive system is an important factor in CMOtm's success. Currently, we are experiencing an 80% to 90% success rate.

Is it expensive?

The cost of the treatment is very modest when compared with what most arthritis victims are spending monthly on pain and inflammation medications tha only mask the symptoms. Since, in most cases, you only need to take one treatment of CMOtm, it actu ally saves you thousands of dollars, not to mention the pain and disability reversed.

EXHIBIT C

Arthritis Pain Care Center

3615-F West Pioneer Parkway, Arlington, Tx 76013 (817) 460-4519

CMOtm

Cerasomal-cis-9-Cetylmyristoleate

Exciting, New, All Natural Product Creates Unbelievable Results ..... 9 Out Of 10 Report Partial to TOTAL Relief

Freedom From Painful Arthritis In Days !

WHAT MAKES CMO SO DIFFERENT FROM THE SYMPTOM TREATMENTS I'VE TRIED?
JOIN THE 90% OF THOUSANDS WHO HAVE RECEIVED FREEDOM FROM ARTHRITIS, " ONCE AND FOR ALL"

Unlike everything else, CMO is not a pain reliever. It is not an anti-inflammatory. It is not a steroid or other cortisone. CMO is an IMMUNOMODULATOR, which helps to normalize the immune system.

Instead of treating the symptoms of pain and inflammatin of arthritis, CMO acts directly against the cause of the arthritis — the erroneously programmed "memory T-cells" of your own immune system that cause the attacks against your joints. The bad programming is why, as time passes, arthritis only gets worse , never better. But once the problem is corrected, the attacks on your joints are halted and the symptoms of pain and inflammation are promptly remedied. It's like a bad computer problem. But once it's fixed, it STAYS fixed. CMO corrects the root cause of arthritis by erasing the memory of those badly programmed memory T-cells. Once the destruction of your joints is halted your body can begin to normalize. Although the major benefits come promptly, minor improvements continue for several months after finishing CMO. With the pain and inflammatin relieved, the joints can function again quite normally.

CMO is an all natural oil substance which was discovered to exist in some animals such as cattle and whales .It is a third chain "fatty acid ester. One of the building blocks used to make CMO exists in beef tallow. Fatty acids have many functions essential to good health. This fatty acid can help control inflammation and may PREVENT arthritis.

Exhibit C
Arthritis Pain Care Center

EXHIBIT C

Studies and Testimonials Available Upon Request

The treatment of arthritis with CMOtm and the supplements listed have been proven by actual case experience and clinical studies. Please E-Mail us at meljo@swbell.net for a copy of these studies and/or testimonials.Our customer base includes individuals, clinics, M.D's,D.O's, and chiropractors. Although no formal studies have been conducted, CMO has also been reported to help reduce the effects of emphazema, fibro-myalgia, lupus, chronic bronchitis and certain skin disorders. Thousands have used CMO successfully.

Supplements that help to increase the effectiveness of CMOtm.

Kal-N-Zyme	An all natural enzyme that helps the body assimilate the CMO.
Alpha Lipoic Acid	This is best used by persons who have been on doctor prescribed arthritic drugs such as Methotrexate. The apiha lipoic acid will help to de-toxify the liver and increase the effectiveness of CMO.
Glucosamine Sulfate	This product can be used after the CMO treatment to help rebuild the cartilage

Please feel free to call our office at 817-460-4519 to discuss the product and/or treatment protocol.

Retail Distributors Are Needed In Local Regions. NOT MLM.

Arthritis Pain Care Centers offer you a complete package for treatment of your arthritic condition:

CMOtm , Kal-N-Zyme, Alpha Lipoic Acid, and Glucosamine Sulfate

Package Price: $165.00

Individual Prices:

CMOtm, 50 caps:	$150.00
Kal-N-Zyme:	$4.50
Alpha Lipoic Acid:	$12.50
Glucosamine Sulfate:	$15.00

Beware of Copycat products that attempt to use the trademark CMO. CMOtm is Cetylmyristoleate, there is no other.

Credit Cards Accepted: Visa, Master Card, American Express, Discover. You Can Order By Fax (817-460-4452, Phone (817) 460-4519 or E-mail meljo@swbell.net.

EXHIBIT D


FEBRUARY 1997
PAR★FORE
GOLF NEWS MAGAZINE OF DALLAS & FT. WORTH
WHAT'S INSIDE
BRIDLEWOOD OPENS IN FLOWER MOUND
by A.M. Stricklin
NEW LEASE ON LIFE FOR RUNAWAY BAY
by James Newsom
ARTHRITIS TREATMENT FOR GOLFERS
TIPS FROM THE PROS & MUCH MORE
PREVIEW OF
GOLF &
RESORT
SHOW
Exhibit D
Arthritis Pain Care Center

EXHIBIT D

Good Putter

One key ingredient to becoming a good putter is to know how to read the greens. It is important because putting is both direction and distance. If you do not have the right speed and direction, your chances of the ball going in the hole severely diminish.

In North Texas, golfers have the opportunity to play on two different types of putting surfaces. One is Bermuda grass and the other is bent grass. Bermuda grass is a thicker blade of grass while bent is a thinner blade. Usually, Bermuda is a slower surface than greens of bent grass. Both types of grass have grain, which means the direction the grass grows. The grain of a grass grows toward the setting sun as well as the flow of nearby water. Keep in mind that Bermuda grass is normally a much more grainy surface.

Grain is important because it can affect both the speed of a green as well as the direc-

ture and the color of the grass on
If the blades of the grass are flat ar
face has a shine, you are putting
grain, or down grain.

Another aspect of reading g
pay attention to the lay of the lar
the green. If one side of the greer
than the other, the ball will normall
the lay of the land.

Here are a few other helpfu
reading greens. When hitting an
or pitch shot, into the green, pay at

PAR*FORE READERS ASK FOR INFORMATION ON:

LONG DRIVE CONTEST

Terry Patton has been involved with long drive contests for the past 6 years. He was a qualifier for the Remax North America Long Drive Championship in 1994, where he went to Las Vegas, NV to compete in the finals. The sanctioning body for the tournament is the Long Drivers of America Association. There are two stages to reach the National Tournament. Participants hit in a local qualifier, which in the past has been held locally at City Point, Dallas, Tour Play, Mesquite, Leonard Golf Links, Fort Worth. Qualifiers from this stage go to the District Tournament. There are 16 held nationally. The qualifiers from the district level, plus the people that have exemptions comprise the national field.

This year Patton is excited to announce that his driving range, Jackson Road Golf Center in Carrollton, will be holding a local qualifier on June 28. The local qualifiers are open to anyone with a desire to compete, with a chance to go to a national tournament. We are also in the planning stages of a tournament for the Professional Long Drivers of America, with a purse of possibly $10,000.

Patton acquired Jackson Road Golf Center

improvements with more changes forthc
in the future. The target greens hav
reworked, the putting green will be en
and a chipping green will be added in the
The driving range is located in north Car
at 1084 W. Jackson. ■

EXHIBIT D

New Head Professional - Dan Budzius

We are offering golfers the ultimate putting surface all the time, and we think once they come out here and see the greens, they won't want to play on a regular (spiked) course again," head professional Dan Budzius said.

When golfers call for a tee time, Budzius said his staff makes it clear Bridlewood is a soft spikes golf course. Should golfers arrive at the course with metal cleats, he will either "rent" them a pair of soft-spikes shoes for their round or offer to change their cleats for free in just a matter of minutes.

"We think there are so many benefits to having a soft-spikes course and having perfect greens all the time," Budzius said. "When they come out here and try it for the first time, they'll be hooked."

The new Bridlewood course, located on Highway 1171, opened on Jan. 24. It was the first signature design for the PGA veteran Weibring and part of a larger residential community in the fast-growing part of the Metroplex. While home owners get a green fee reduction, the course is open to anyone.

"So many people have moved here recently, but there are not that many courses," Budzius said. "We wanted to set up this one for the average golfer, so they wouldn't beat their brains out."

What Weibring and his associates at Golf Resources, Inc. found is a parcel of gently rolling terrain spiced with large stands of native trees. Many of the trees have been placed strategically on the holes to force unique hitting areas.

The front nine, which contains several ponds visible from the highway, is more of an open, links-style layout. The back nine, which is intersected by Timber Creek, is more wooded with tight doglegs and scenic vistas. The greens are the new Cato/Crenshaw bent grass, named for the Fort Worth golfer Paul Cato and the Austin PGA superstar Ben Crenshaw, with the fairways a 419 bermuda.

"The gentle, rolling hills and thick hardwoods forest create an outstanding setting for an unique course," Weibring said. "Every golf course designer relishes the opportunity to start with a site as beautiful as Bridlewood."

Before golfers attack the first hole, Bridlewood features an expansive 134 x 85 yard practice center. The hitting range features two large practice fairways to groove your good shots along with a large putting green and practice bunkers.

The front side starts with a wide driving fairway. At 415 yards, this par 4 opening hole is an excellent warmup for a round full of challenges to come. Another characteristic is the numerous swales, mounds and grass hollows around the fairways and greens. It gives the course a gentle, meadowland-type feel.

"We've accentuated the rolling terrain and forests without disturbing them to create a truly classic round of golf," said Weibring.

The par 3 eighth hole is one of the shortest on the course, but is also among the prettiest and most challenging. The tees sit on the edge of a lake requiring a full shot over the water with a bailout area on the right. The pin can be tucked along the edge of the water behind a stone wall.

While both nines are par 36, the back nine is certainly tighter and requires more accuracy off the tee. Trees on the 10, 11 and 12 holes force driving decisions off the tee with consequences for the wrong choices.

"This really is a good decision maker's course, because you can play several of the holes many different ways. You have to be really thinking with your shots," Budzius said.

The course finishes with a 438 yard par 4. Golfers must cross Timber Creek to reach the fairway, then conquer the deep bunkers around an angled green. Timber Creek winds its way all along the right side of the fairway for any errant shots.

Budzius said Weibring and architect Maury Miller left many of the natural trees in place in order to frame the land. While the area is only minutes from the fast-growing cities of Lewisville and Flower Mound, golfers will feel like they're out in the country.

"Because of the variety and balance of the holes, players will find a well-rounded golfer's experience, unlike any other in the Metroplex," Weibring said.

After finishing the course, players can retreat to a spacious 9,600 square foot clubhouse. The rock and timber structure features large banquet rooms for tournament dinners and awards parties along with an outdoor terrace overlooking the starting holes, along with smaller private dining rooms and rental lockers.

Food choices range from a quick snack, to a hearty lunch or formal dinner with a full selection of drink options.

Bridlewood expects to cater to plenty of tournament play along with high-end daily fee golfers. The official grand-opening is set for March 31 with an exhibition by Weibring. Budzius said his staff is already booking tournament play for 1997 and expects to do 37,000 rounds this year.

"I think service is the key. We have a challenging and very scenic course along with a huge clubhouse and the best greens anywhere," Budzius said.

Green fees range from $40 from Monday through Thursday and $50 on Friday-Sunday & Holidays. Fees will go up slightly in the spring and summer. For more information and tee times, call 972-355-4800, and forget about knocking down spike marks on the greens when you get there.

Art Stricklin is a Dallas-based writer/author who contributes to many golf publications, including Golf Week *magazine.*

EXHIBIT E

Paragraph 8

San Diego Clinic

MEMORANDUM

Subject: Heart Disease Relative to CMO™

There have been no formal studies conducted with respect to the effects of CMO on individuals with heart disease.

However, considering that CMO is a naturally derived nutritional supplement that has shown to help normalize various physiological and immunological body processes in humans, and since it appears to be completely non-toxic in its use by thousands of consumers and in previous animal studies, we would expect that it would have no ill effect on individuals with coronary problems.

On the contrary, we have received interesting reports regarding persons with certain other ailments who have taken CMO for arthritis as recommended by their physicians and other health care professionals;

1) There have been reports on individuals suffering from hypertension (high blood pressure) whose blood pressure has completely normalized or lowered substantially.
2) There have been reports of individuals suffering from hypotension (low blood pressure) whose blood pressure has completely normalized or raised. substantially.
3) There have been reports of individuals with high and even extremely high blood sedimentation rates whose sed rates have normalized, even in Lupus patients.
4) There have been reports of individuals with cardiac arrhythmia (abnormal heartbeat rhythm) whose arrhythmia has disappeared.

Those reports are not the result of any formal study. They have been noted from comments provided to us by professionals who have been surprised at these secondary benefits of CMO which they have encountered in their patients during the treatment for arthritis. This tendency by CMO to normalize body processes confirms that it functions as an immunomodulator.

It must not be assumed that other patients will enjoy these same secondary benefits. No formal studies have been conducted to confirm that these benefits are repeatable on a consistent basis.

It must be emphasized that any individual with a serious ailment or condition of any sort should consult with and be closely monitored by their relevant health care professional any time that person undertakes any sort of therapeutic or even nutritional program.

^ ^ ^ ^ ^ January 1997 ^ ^ ^ ^ ^

Exhibit E
Arthritis Pain Care Center

EXHIBIT E

San Diego Clinic

MEMORANDUM

*Subject: CMO*tm *and Horses*

Our very first experience with horses involved a 19-year-old dressage stallion who is considered to be the best stud horse of that kind on the East Coast. The owners were distressed that the stallion was so severely afflicted with arthritis that he was unable to move out of his stall, much less participate in dressage practice or performances. In addition, the horse was not able to rest well because of the arthritic pain. Equally distressing was the fact that he could no longer perform his breeding duties without resorting to complicated artificial insemination procedures. We are happy to report that after the administration of four bottles of CMO the stallion was waking in the morning refreshed and free of pain and able to practice its dressage maneuvers. Furthermore he returned quite comfortably to breeding in the natural way. Needless to say, the owners were overjoyed – and we bet the stallion was too.

Another interesting case involved a 14-year-old mare who had become too lame to walk. In all three years of working with the horse, her trainer found that she had never been able to canter and sometimes just barely managed to trot. The mare had very distinct bulging in the tendons in her lower front legs. After two bottles of CMO, the horse was no longer lame and the swollen bulges had disappeared. The mare was able to trot comfortably and even canter again for the first time in years. On a ten point scale estimating pain relief and mobility, the trainer estimated that the horse had improved form a 2.5 level before CMO to a 7.5 level after.

More subtle improvements were evident in a case involving another dressage horse that was progressively becoming more and more resistant to a right lead. In this instance the trainer had already experienced great results with CMO for her own neck and shoulder problems, probably the result of being hauled around an arena by 1000 pound animals for so many years. So why not try CMO on the horse as well? Even before finishing the second bottle, the horse lost all resistance to the right lead and showed a marked increase in fluidity of motion which is so important in dressage work.

One horse was conclusively diagnosed as suffering from arthritis by x-ray which clearly revealed the presence of arthritic bone spurs. After administering three bottles of CMO the owner reports that the bone spurs have decreased in size and are disappearing. We are hoping soon to support the visual evaluation with x-ray confirmation as well.

We recently submitted blood samples of a horse undergoing treatment with CMO for the standard analysis required on the show horse circuit in California. Nothing unusual appeared in the analysis.

Administering CMO to horses can sometimes be a problem with finicky eaters. Some owners use a ball gun with great success, but some owners prefer to mix the contents of the capsules in with something of which the horse is particularly fond. Some find that applesauce works well. Others like grated carrots and apples. A commercial oat and molasses mixture often works well too. About 20 capsules a day seem to work well for an average size horse.

CMO has been effective on cats, dogs, hamsters, and pot-bellied pigs for arthritis and hip dysplasia as well. Small animals need only one capsule daily. Two capsules daily for each 50 pounds of body weight.

YOU CAN JOIN THE GROWING NUMBER OF PEOPLE WHO HAVE ENJOYED THE BENEFITS OF CMO

FROM CASE HISTORY # 29:
Female. Age 63. Despite devoted adherence to a truly natural diet, suffered severe osteoarthritis in most joints for over ten years. Woke to agonizing pain. Even simple chores were arduous. CMO brought total relief in ten days.

FROM CASE HISTORY # 11:
Male. Age 58. Ex football player. Clinically obese. Had knee surgery three times about 15 years ago. Had extreme pain upon lying down. Often slept in a recliner chair instead. With his first evening dose of CMO capsules, he slept soundly and arose the next morning completely free of pain. He has enjoyed continuing pain-free remission ever since the first day.

MORE REPORTS FROM CMO USERS:

"... Imagine my agony. I was a professional athlete all my life. CMO gave me back my life. Even knee surgery didn't do that for me. It's amazing how CMO ended up fixing *all* my joints."

"... As crippled as I was, I hadn't worn out a pair of shoes in seven years. Now I'm out shopping for them again *all by myself*."

"... CMO alters the immune response ... I'm really impressed with the reports I'm getting from my colleagues. This may well be the cure we have been looking for ... It's going to cost you ... to find out [if it works for you]. But I think it's worth the investment ..." Dr. William C. Douglass, MD.

"... rheumatoid arthritis damages tissues, causes extreme suffering, and premature death. And so do many of the other diseases that CMO reverses ... If you have rheumatoid arthritis ... then you know I am reporting a miracle ... A MIRACLE." Dr. Douglas Hunt, MD.

"... Even as a professional, I find CMO miraculous. It cured my knee problems, which solved my sex problems as well. And it's doing every bit as well for my patients, too. I've seen several *'miracle cures'* already."

"... The pain and stiffness in my hands kept me from performing even simple office surgery. CMO gradually returned my ability for fine control."

For more information about CMO or to place an order, contact:

Arthritis Pain Care Center
3615-F West Pioneer Pkwy
Arlington, Texas 76013

The New Arthritis Treatment

CASE HISTORIES

Exhibit F
Arthritis Pain Care Center

Condensed Highlights From Case Histories Recorded By The San Diego Clinic

FROM CASE HISTORY # 38:
Medical Doctor. Pain and stiffness in hands for several years. Unable to perform simple office surgery. One day of CMO brought relief. Dexterity and fine surgical ability returned gradually. Ordered CMO for his patients.

FROM CASE HISTORY # 332:
Female. Age 66. Rheumatoid arthritis rendered hands useless, gnarled, inflexible, agonizingly painful six years ago. Pain relieved and full use of hands restored after five days of CMO.

CMO.

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FROM CASE HISTORY # 39:
Male. Medical Doctor/psychiatrist. This physician complained of persistent pains along his spine and in his feet. He became completely free of pain in both the spine and feet within two days of starting CMO capsules. Remission continues.

FROM CASE HISTORY # 33:
Medical Doctor. Auto wreck ten years earlier damaged hip, caused limp and arthritis. CMO relieved pain permanently in one day for the first time after many years. The limp problem is irreparable. Ordered CMO for his patients.

FROM CASE HISTORY # 06:
Female. Age 45. Arthritis attack worsened rapidly over a period of only seven months. Required a wheelchair to be moved about. Frequently unable to leave bed in mornings because of debilitating pain. Seeking relief, she worked with a personal trainer. She was incapable of holding a five pound weight, unable to make a fist. Saw immediate improvement with CMO in just three days. Two weeks after the first, she took a second course of CMO. She is now able to perform a full workout, has no difficulty making a fist, wakes in the mornings free of pain, and has resumed a normal active life.

FROM CASE HISTORY # 22:
Female. Clinically obese. Arthritis in neck and spinal column resulting in joint mobility limitations. Despite impaired liver function which frequently inhibits the benefits of CMO, her range of motion increased by 100% within one week. A repeat course of CMO two weeks later has resulted in even greater and continuing improvement.

FROM CASE HISTORY # 03:
Male. Age 32. Rheumatoid arthritis at age 25. Family history of arthritis. Seven years of pain in hands, shoulders, legs, and ankles. Although subject saw substantial improvement after taking CMO for three days, he did not experience complete relief with continuing remission for about two weeks. He has subsequently enjoyed skiing holidays and has been able to return to playing golf without the discomfort of any pain

FROM CASE HISTORY # 17:
Female. Age 60. Physician. Relentless pain from hip injury one year prior. Diverse treatments and medicines brought little relief. With CMO and massages to reduce edema and improve muscle activity, her pain gradually diminished in two weeks. Now remains completely free of pain.

FROM CASE HISTORY # 15:
Life-long athlete. Arthritic pain and/or stiffness in hands, feet, knees, neck, and shoulders – especially with exposure to the cold. With three days of CMO, was totally free of pain with dramatically increased articulation in the joints. Further improved mobility came with a repeat set of CMO three weeks later. He now enjoys skiing and other activities with the vigor and delight he lost so many years ago.

FROM CASE HISTORY # 24:
Female. Age 50. Family history of arthritis. Pain in shoulders. Severe pain, limited mobility, and gross swelling in hands and fingers. By the third day of CMO, hands were free of pain, mobility had increased immensely, and finger swelling decreased so dramatically she had to have all her rings re-sized. Repeated treatment three weeks later. Totally free of pain and inflammation since. For the first time in many years, she was recently delighted to experience a pain-free skiing holiday.

FROM CASE HISTORY # 08:
Male. Medical Doctor/psychiatrist. Pains in feet daily for over five years. With CMO almost constant pain disappeared within a day. Ordered CMO for his patients.

Too Good To Be True? That's what I thought!!!

Rheumatoid arthritis hit my right knee about 40 yrs. ago. Caused from climbing a mountain. Since then, every time I over stressed my knee, It became worse.

I am now 70 yrs. old and knee through the years developed arthritis in my hands and wrist. Also have arthritis as well as Sciatica in my back.

I love to walk for exercise, but could not do that any more. My wrist and thumbs were so bad I could hardly comb my hair and wait on myself.

After the 5th day of taking C.M.O. I was so surprised that the swelling had all gone from my knee and I could rise from my chair much easier, climb stairs, and walk down an incline without the pain.

It has been one month since I took C.M.O. My hands are much better and continuity to improve. I wasn't expecting relief for my back, but to my surprise the pain is mostly all gone.

Thanks to my friends for introducing me to C.M.O.

Lillian Martin (Retired + loving it) Ruidoso, N.M.

CMO Testimonials

Melinda Sneed
Arthritis Pain Care Center
Arlington, Texas 76013

June 19, 1997

Dear Melinda,

Just wanted to get a short note off to you and let you know how CMO has affected my life. As you know, I have had rheumatoid arthritis since I was 38, and am now almost 51. I have run the gamut as far as prescription medications go. The symptoms where of course suppressed over the years, but my condition slowly worsened none the less. I have been in constant pain over the years, and at times had to resort to prescription narcotics to relieve the agony. After discovering your web site and subsequently contacting you for my purchase of CMO, my arthritis began to go into a remissive state quite rapidly. The first thing that I noticed was that my left hand, which I haven't been able to close for almost 3 years, loosened up, and by the third day of the treatment I was able to almost completely close it. It has been 8 weeks now since my first treatment(I did 2 more just to be sure) and am virtually pain free. I followed the diet and enzyme instructions to the letter. I have a little swelling in my right index knuckle and a little in my left wrist, that's it! I haven't touched a prescription medication since begining the treatment. As long as I don't over tax my joints I have no problems and am symptom free. Some of my joints had been badly damaged, but like I say, as long as you give your body a break and a chance to heal itself, it will. Needless to say I could go on and on as to how I am feeling. It was truely a blessing to discover a product that actually helps, my angel has been sitting on my shoulder. Should my arthritis ever decide to rear it's ugly head again, you can be sure I won't hesitate to purchase another bottle. Thanks so much for your informative web site.

Sincerely,

Tim Richard
Carson City, Nv

Exhibit G
Arthritis Pain Care Center

The testimonials included in this brochure are unsolicited. They represent a small portion of the letters we have received since we opened in November of 1996. We continue to receive letters and calls daily to inform us of the excellent results being experienced by our customers. Please feel free to call us with any quetions or comments (817-460-4519).

Thank You

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January 10, 1997

Dear Sirs,

I found out about CMO through a friend who let me listen to a tape. Even though I really could not afford it, I decided that I had to give it a try.

I am a 57 year old man. I have had three colon surgeries since 1988 that has left me with only 18" of a colon. I had arthritis in my back, hips and legs. I also had arthritis in my hands and they were always swollen. I had to sleep on my knees in a crouched position because the pain and discomfort of arthritis was driving me crazy. I was really bad off and the doctors told me to get my affairs in order because I didn't have long on this earth. I was willing to try CMO as a last resort. What did I have to lose except the cost of it if it didn't work. This is the results after 12 days on CMO.

My sleeping has improved by at least 85%. Now I can sleep in any position I want to and stretch out on the bed. My arthritis pain and swelling in my hands is gone and there is no more pain in my back, hips or legs. I am also suffering from emphesemia and have noticed an improvement, I'd say at least 40% It seems to be getting better every day. I can walk and do my shopping now and not have to stop every few steps to catch my breath. I have gained back most of my health in more ways than I can explain. CMO seems to be the one thing I needed 10 years ago. I am getting better every day.

After using the product I can say that it is well worth the cost. I would pay ten times the price if I ever need it again. If you think you can't afford it, think again. For what it does for your body and health, you can't afford not to get it if you really want to be helped. CMO does what it says and much more.

Thank You,
Gerald Youngblood
Texas

January 21, 1997

In early November of 1996, I was introduced to CMO through the Arthritis Pain Care Centers. The product impressed me so much that it overwhelmed my belief. Knowing that I had arthritis in my hands and elbows and lower back, I was willing to give it a try. Being an avid golf nut, I was willing to try anything that would give me some relief. So I did the CMO treatment on a 12 day basis and before the 12 days were up, around the fifth or sixth day, I noticed remarkable improvement in my hands, especially those sore knuckles and my lower back. By the end of the twelve days I also noticed that a burning pain from the small of my back down through my leg to my foot was disappearing. It has been 6 weeks since I finished my treatment and I'm here to tell you that all my pain is gone. So golfers, tennis players, softball players and anybody with arthritis pain, do yourself a favor and do the CMO treatment.

John Sneed
Fort Worth, Texas

Dear Marge,

In 1992 my thumb joints began to ache and swell. The right hand particularly bothered me and I am right handed. Heat, ice, stretching, resting, Advil - nothing helped. It was constant pain which I had to deal with but did not like.

Along came CMO! Three days into treatment I began to notice a subtle difference. After one bottle I felt considerably better and was beginning to use my hands again with much less pain. A few weeks later I did take four more days of CMO and can say that I am free of pain and able to open jars, turn pages, etc.,without thinking. It is wonderfull I feel 'free' again. As the days pass my joints feel even better.

To potential users I would say that one bottle may be perfect for some; others may need more. It is worth the commitment to take a product that is natural, can not hurt you, and can only make you 'whole' once again.

Thank you CMO! Thank you Marge!

Gratefully,
Barbara

Barbara
Datsaw Island, South Carolina

January 8, 1997

Mrs. Malinda Sneed
3615-F Pioneer Pkwy, West
Arlington, Texas 76013

Dear Malinda:

I would like to say "Thank You" for giving me back my life in front of a computer. Before I took CMO I had arthritis in my fingers that would only allow me to sit in front of a computer and type for short periods of times and also I have now been able to "crack" my knuckles without pain which is something that I have not been able to do for some time now. Also I have had two operations on both of my knees which left arthritis in them as well. I now have no problems going up and down stairs that I once had. I think that the CMO product is wonderful and will be recommending it to anyone that has or even thinks they have arthritis.

Again many thanks and I wish you God's speed in all that you do and in your future with the sales of CMO, cause you have a winner in that product to say the least.

Sincerely,

Bob Wieter
President and CEO

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PROCEEDINGS

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MALE VOICE: And now your host for the Nature of Help, Don Bodenbach.

MR. BODENBACH: Hello. Good to have you with us. This morning we're going to talk about a remarkable substance called CMO or cetyl myrastoliate (phonetic). And this substance, it may be well what we consider almost a miracle cure for arthritis. And the form of arthritis actually doesn't matter. It apparently works for all forms. What is more impressive is that once you undergo the appropriate treatment with cetyl myrastoliate or CMO, you are in most cases free from arthritis symptoms forever.

So one treatment and that's it. So CMO is -- it's not a pain reliever. It's not an anti-inflammatory. It doesn't work like cortisone drugs or steroids. It is essentially what is considered an immunomodulator. And an immunomodulator is obviously something that gets the immune system back to a more functional and appropriate state.

And that will be explained and talked about here by my guest and expert on the subject of CMO, Mr. Len Sands. And Mr. Sands is the Director of the San Diego Clinic Immunological Center. And the efforts of

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Arthritis Pain Care Center

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this clinic, and the research that has been done through the clinic and its associates, that is what has brought CMO now to the public attention.

He is a psychologist, who over the past 26 years, he has been the owner and director of four crisis counseling centers, six medical clinics, one hospital. And he has for the past ten years been focused primarily on medical research that utilizes or involves the immune system in treatment. And for the past three years, he's been the Director of the San Diego Clinic Immunological Center, and it was through this clinic and its research associates that CMO has been studied and brought to the public light.

So let's introduce Mr. Len Sands here on the program. Mr. Sands, welcome and thanks for being with us.

MR. SANDS: Thank you. It's a pleasure. I'm happy to have this opportunity to talk about something that we think is very important in the medical field.

MR. BODENBACH: Well, in looking over the information and the literature about it, and having had a little bit of information about it prior, I've -- I had mentioned to you that in the magazine that we publish, I wrote a little article in it. But in getting the information from you, it's obviously given me a lot more

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to go with in terms of understanding this.

And I'll tell you, this really -- I guess you could classify it or put it in the category of a real revolutionary breakthrough in medicine, since arthritis -- there are, you know, millions and millions of people that suffer with it. But first what I would like to do, just so we can lay some groundwork and help people to understand what we're talking about here, could you first just explain the acronym CMO, what that means, and tell us what the compound actually is?

MR. SANDS: Okay. Basically CMO is the commercial name, acronym for cetyl myrastoliate. And in the form that we are dealing with it here at the clinic, it is a syrasomalcisnine (phonetic) cetyl myrastoliate, which has been essentially modified from its original form into a form that is more readily digestible so that it does not have to be injected.

Now where CMO comes from is quite an interesting history. The -- it was originally discovered at the United States Government National Institutes of Health. A researcher there by the name of Harry Deal (phonetic) back in 1971 discovered this substance existing in a string of mice, called Swiss Albino mice, which are generally used in laboratories for research.

And he found it had a remarkable property. It

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had the property of preventing the formation of arthritis in animals who were injected with arthritis inducing substances. And even more remarkably it had the property of literally and totally reversing all arthritic symptoms in these same laboratory animals.

He continued to research this pretty much of his own volition and as much as he could in the NIH without a great deal of funding for it. It didn't seem like the NIH had a great deal of interest in this particular substance.

At any rate, it is totally different. The significant thing about CMO is that it is not treating the symptoms of inflammation or pain. It is in fact going directly into the immune system and stopping the arthritic process itself, which allows the body to cope with and heal itself and rid itself of the inflammation and pain.

The way it works is as we understand it here as we have investigated it, which is confirmed by a number of different other actions of CMO -- the way we see this is that arthritis is an autoimmune disease. That is, it is a disease where your own immune system is attacking your own body. And this occurs because there are memory T cells in the immune system, which get programmed to function against certain substances and organisms in the

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body.

Once this program is established, in this case for the purpose of attacking cartilage, it continues. And it continues -- it's originally programmed to more than likely destroy fragments of cartilage or damaged cartilage or unhealthy cartilage in the body. And unfortunately there is no stop button. There is no end program signal in these memory T cells, and attacks continue then against healthy cartilage as well.

This is why -- this is why we never see arthritis getting better in people. Of course, there are improvements that can be achieved through diet and the like. But generally speaking, arthritis progressively gets worse and worse year after year. And that's because this program is still there in this memory T cell directing the attack against your own cartilage -- against your own joints.

Now what CMO does that is so unique and so totally different from any other substance so far utilized for arthritis, is that it gets right in there, into the memory T cells, and it erases that program, and as a result, the arthritic process stops. At that point there are no further attacks against your own joints, and your joints can heal themselves in their own natural manner or with whatever other aid you may find beneficial

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to help that joint heal.

Now, what we see here essentially then is -- I like to compare it -- I like to compare it to a bad program in a computer. For example, where you hire a technician to come in to fix the program, and the technician goes home and his job is done, and the program stays fixed. The same thing is true with this reprogramming of the memory T cells.

Once this is accomplished, there is no need for any further medication, not even for CMO. The CMO has gone in, done its job, and it is not needed any longer in most instances. There are a few cases where more quantities, larger and more prolong therapy with CMO can prove to be beneficial. But once it's over, it seems to be over.

MR. BODENBACH: So a person basically -- as I mentioned in the beginning of the program, you can take -- there's basically a protocol, an amount that's given, and once a person takes that, the job of restructuring or reprogramming the immune response and the memory T cells is done. And once it's done, it's done. And then the arthritic process is basically stopped, and it will continue to be stopped indefinitely, is that what I'm hearing here?

MR. SANDS: Well, there is a possibility -- we

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are assuming this, because people that were treated eight, ten, 12 years ago, as a result of the studies and the compounds produced by Harry Deal with the NIH, these people have not needed any further treatment for arthritis. They have been able to discontinue all medication. They haven't needed any more pain pills. They haven't needed any more anti-inflammatory drugs.

And this is of enormous benefit to most patients, simply because of the fact that many of these things are harmful. They're harmful to the liver. They're harmful to the kidneys. We had a patient in here just a -- just a few days ago, an antique dealer, a woman who was taking between, I believe, eight and 15 Tylenol every day. And her test results on liver function indicate that she was definitely suffering from liver impairment as a result of this kind of medication.

And this is -- she has -- she's been amazed. She was taking CMO for only a matter of five days, and she saw very significant improvement already, despite her liver damage.

MR. BODENBACH: Um-hum.

MR. SANDS: So it's a great benefit, because once you're done with this program, it appears that you are likely to be done forever. We can't say for sure that perhaps at some point in the future this same

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individual may encounter some circumstances that could trigger the process anew. But should that happen ten years down the line, you know, you can just take CMO again.

MR. BODENBACH: But I wanted to ask you. The standard treatment that you mentioned, Tylenol, which when you start getting up into the doses that you had mentioned, it does get to be a problem on the liver. But we've also got the nonsteroid anti-inflammatory drugs that are known to actually -- actually continue or perpetuate the arthritic process.

Because although it does -- although it does block pain, it disrupts prostaglandin synthesis and is not really -- it's actually something that furthers joint destruction. So my question is, as far as arthritis, one of the main symptoms and problems with arthritis is the pain associated with it. Does the CMO also help with the pain, if it's actually stopping the process of the disease?

MR. SANDS: CMO itself does not stop pain. CMO's action is totally limited to the immune system itself. But the body itself -- when the inflammation is relieved as a result of the halting of the arthritic process, then the body itself makes all those corrections with the disappearance of the inflammation. With the

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pressure on the nerves and the like and the joints, the joint heals itself and the pain disappears. And this can be very rapid. It's really amazing how quickly the body can readjust itself in some instances.

When we introduced this product at the conference on aging in Los Vegas, the medical conference, there were three doctors there who tried CMO right there at the conference, and they had immediate results within 24 hours. It is really quite remarkable how quickly -- now that's not true in all instances, of course.

MR. BODENBACH: Um-hum. Mr. Sands, whenever we hear something like this and it has such remarkable benefits, there is always the question of, you know, number one, why haven't we heard about it before, you know, and number two, if it's so great, why isn't the medical profession using it. All those questions. I know the answers to that. Perhaps you could tell us what your feelings are about that?

MR. SANDS: Yes. Well, of course, CMO was rather buried in the NIH for a number of years, to the point that when the individual who discovered it retired, he himself had to continue on the research on his own. There was no funding available from the NIH. And once it was -- even though it was proved within the laboratories of the NIH to have these magnificent properties of

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seemingly permanently reversing the effects of arthritis.

And it's difficult to understand why these things happen, that is why they get buried. But they do. And one of the things that we've discovered, too, since then, or at least we've been told, that this particular substance was offered to three major pharmaceutical companies in the United States, all of whom rejected it.

Because being a natural substance, they didn't feel they could adequately patent it and protect it from other people basically utilizing the same substance, and they didn't want to make the investment. Frankly, it seemed that they didn't care at all whether it cured arthritis. All they cared about was whether they could have it as their own product without anyone else coming in and joining into the -- the utilization of it.

MR. BODENBACH: Yeah, the patent frenzy, as we know it.

MR. SANDS: Yes. Yes, very much so. And so it got buried. It got lost, and -- until late in 1993, when there was a small, two or three page article published in the Journal of Pharmaceutical Sciences. And in this article CMO was mentioned. The studies in the NIH that had taken place some ten years before were described. And our researchers here, our research associates, discovered this and thought it was a remarkable thing.

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We began to explore it then not long after that. It wasn't -- well, we didn't find it until some time after it was published. But early in 1995 we began making our own studies. As the article in the Journal of Pharmaceutical Sciences said, we hope somebody picks up the exploration of this particular substance.

Well, we did. We picked up the exploration of that substance, and we continued, and we did some studies on 48 patients. And we were absolutely amazed by the results. We got between 70 to 100 percent improvement in joint mobility and in pain reduction. Only two of the 48 patients didn't respond to CMO, and both of those, it turned out, have substantial liver damage.

One from alcoholism problems previous to taking CMO, and the other as a result of liver damage. He was a professional football player and had liver damage from steroid abuse when he was a professional athlete. So, it seems to be of benefit to virtually everybody, except people who do have liver damage.

And also we find that it has no effect on gouty arthritis. And there again, gout is a different problem. It's sort of a physical problem that results from the deposit of uric acid crystals in the joints, these very sharp, pointy crystals that irritate the joint and cause a great deal of pain, inflammation and the like. But

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that's something -- that is a physical thing that CMO, you know, doesn't reach in that way.

MR. BODENBACH: You mentioned that it won't have an effect on gouty arthritis, and that's understandable, because we know that that's a primary issue relating to uric acid buildup. What we're talking about here, though -- we've got rheumatoid and osteoarthritis. Many people suffer greatly from rheumatoid arthritis, of course.

That one is the one that has always been considered as the one to be potentially an autoimmune problem. I have not ever considered osteoarthritis in that way. We thought more it was a more of a mechanic type of arthritis. But now, in fact --

MR. SANDS: No, see, the mechanical damage to the joint that results -- the trauma that results in the damage to the cartilage triggers this very same autoimmune process, this very same misprogramming. I like to call it a misprogramming rather than a good programming.

MR. BODENBACH: Um-hum.

MR. SANDS: This misprogramming of the memory T cells to continue to attack those joints. So, it does relate back to the immune system, and it is autoimmune, as are many other forms of arthritis, like Beckett's

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syndrome, Sjogren's syndrome, writer's syndrome and psoriatic arthritis, surprisingly.

We had a patient who when he tried CMO, he had about 20 percent of his body covered with psoriasis, as well as very significant problems in his knees as a result of the psoriatic arthritis. And it not only affected his knees to the point where he stopped wearing a knee brace and has returned to full activity, but it cleared up the appearance of the psoriasis on the skin as well.

MR. BODENBACH: And with this -- I know that you had mentioned to me that in the beginning CMO, in order to extract it, it was costing somewhere around $100 per capsule?

MR. SANDS: Well, the way they were extracting it, they were grinding up these Swiss Albino mice by the thousands and dissolving out the CMO from what they were getting from this poor animal. And, of course, we've, we've been able to avoid that situation now. We're able to use a beef tallow substance to extract CMO from. And even though the raw materials are not all that expensive, the extraction process itself is quite expensive.

MR. BODENBACH: That's -- let's talk now, though, about the protocol and the expense -- actually the expense of going through basically this CMO protocol.

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MR. SANDS: Okay. Basically -- well, many people say that it's a blessing, because they were looking forward to spending thousands and thousands of dollars for the rest of their life taking -- just taking things to be able to allow them to just barely function during the day. Whereas they take CMO and they return to somewhere between 70 and 100 percent of their old selves. I did, personally.

MR. BODENBACH: Um-hum.

MR. SANDS: I had my own personal experiences with CMO.

MR. BODENBACH: Let's get back for a moment to the rheumatoid arthritis and the osteoarthritis. Now I know there are many people out there -- once rheumatoid arthritis advances to a certain point, some people are obviously crippled, and it's a very, very agonizing type of situation.

For people that are well advanced into the disease, how well does the CMO work on those people? And is it basically the same for people that have just the beginnings of it and people that are well advanced in it? Is there any changes that need to take place or differences in the protocols for the different levels of the disease process?

MR. SANDS: Generally speaking, that's what we

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did with the 48 patients. We were primarily examining the protocol necessary in the various different severities and forms of arthritis. And what we found is that the protocol is virtually the same. Some people may respond quicker, because their ability to heal faster is better than those of other individuals.

But even though a case may be very, very advanced, we've had people that have been in wheelchairs for two, three or four years that are back up walking again. As long as there is no physical damage to the bone, the CMO stops the arthritic process and the body begins to normalize. If there is physical damage to the bone, of course, that's something that, you know, a capsule cannot correct, and that may require surgery. But we've had --

I recall one case very distinctly, where this person was considering -- well, actually she was suicidal. And she reached the point where CMO -- she found CMO. She took the CMO. She had a frozen hip joint among all the other pains that she had. And by the time she was done with CMO, she said well, I've reached the point where I'm going to get surgery on my hip. Now it's worth it. And this is, you know, quite a step from suicide.

MR. BODENBACH: Yes. Now let me ask you this.

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People that are considering hip replacement surgeries and this type of thing, is there any way to potentially prevent that, or are they in that situation because the bone has deteriorated and there's nothing else that can be done?

MR. SANDS: It depends upon the individual situation. There have been several instances where we have actually -- CMO has actually intervened to the point where the individuals did not feel hip surgery was worth the effort beyond that point. The improvement was so dramatic that they felt no need.

And we have -- I remember the comments of one physician, as a matter of fact, who said that he had had knee surgery, a knee replacement, several years before. And he said the remarkable thing is that it didn't just fix one joint. It fixed all of my joints that were being attacked, and it turned his life around.

MR. BODENBACH: When joints are being affected like this and then the CMO is taken, the protocol is done, and the pain and inflammation is gone, what about exercise and weight bearing issues on the joint? Will it allow you to be able to exercise afterward, or is there still residual joint problems?

MR. SANDS: Well, yes. Exercise is not a problem. We recommend that people return to their normal

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activities gradually, simply because you -- you know, you don't want to overstress the joint again. One of our frequent encounters with patients afterwards indicates that I felt so good, I started doing things I hadn't done in so long, that they had developed muscle soreness, but not joint soreness. You know, you can overfatigue your muscles and get aches and pains in the muscles, but the joints seemed to do just well.

MR. BODENBACH: Um-hum.

MR. SANDS: We had one woman who was in physical therapy at the time that she started CMO. She couldn't even lift a four pound weight. And when she finished -- I think it was in about six days -- she was lifting ten pound weights. But here again, approach it with caution. Don't -- like any exercise program, you know, you don't want to overdo it initially. You just want to rebuild your strength quite gradually.

MR. BODENBACH: Many people suffer --

MR SANDS: Yes.

MR. BODENBACH: -- deformities as a result of the arthritis. You can see it in the hands, especially of older people. Now can it have an effect on changing or reversing these deformities, or is that something that once you have it, you have it?

MR. SANDS The deformities are usually the

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result of the inflammation itself. These huge nodules that form are the result of inflammation. Once the inflammation disappears, the appearance improves dramatically. And besides that, this very swelling -- the very same swelling of the joints often dislocates the bones and causes that twisted disfigurement appearance -- and because there is disproportionate pressure on the bones, twisting them out of their normal site.

And as a result, when the inflammation is gone, very frequently the bone is returned back to the normal positions and there is a remarkable improvement. We've had a number of people tell us that they had to get their rings re-sized and all sorts of things like that that occur as a result.

(Break in tape.)

MR. BODENBACH: -- precautionary note about other compounds that are out there and what we need to be looking for?

MR. SANDS: Yes. I would be happy to do that. As a matter of fact, we're rather upset. It's not a knock off and it's not a less expensive version. It is a totally different substance that -- whose molecules resemble CMO but don't function in the immune system. And they have actually counterfeited our label, the CMO label. And it is an unfortunate thing. They are

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capitalizing on a product that has become well known -- well, not all that well known, but certainly has proved to be very effective. And they have counterfeited it and it's no better than a counterfeit bill in actual fact. It doesn't work. And it may even bear a label that says CMO on it, but it is not.

MR. BODENBACH: It's not that. All right. So we've got that out there. People need to know that particular issue. And that's why, you know, I knew that this was the source, and that's why I had you here on the problem, so that we could, you know, really talk about the stuff that really works.

Now let's just --

(Break in tape.)

MR. BODENBACH: -- there are some callers, and we're not going to have time to really take them at this point. But just in review, first of all, that CMO, the treatment one time around through the protocol is really all you need for the majority of people, is that correct?

MR. SANDS: That's right, and they can just leave their medications behind after that.

MR. BODENBACH: And the types of arthritis that it's effective for would be the rheumatoid arthritis, the osteoarthritis, not the gouty arthritis, but also some of the other arthritic situations, like ankylosink

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spondylitis (phonetic) arthritis, writer's syndrome, Sjogren's syndrome, Beckett's syndrome and psoriatic arthritis have also responded to the treatment as well, correct?

MR. SANDS: That is absolutely right. And there have been another -- other disorders that people have -- various doctors who have been utilizing CMO have found to be beneficial, things like lupus, multiple sclerosis, emphysema and the like, simply because along with other medications, where CMO seems to work along with other medications to help the process along, as a result of its effect on the immune system.

(Break in tape.)

MR. BODENBACH: -- with quite a few people with the CMO, and if I'm hearing you correctly, what you said is, unless a person had not suffered some degree of liver function impairment, then the vast majority of people respond favorably to CMO?

MR. SANDS: We're getting about 96 percent success rate.

MR. BODENBACH: Folks, that's the story on CMO. Mr. Sands, I would like to first thank you very much for being here. And there is a lot more that we could talk about with this, and we've had just a phenomenal response here on the radio. I can see that the phone lines have

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been lit up from the time that we had mentioned it. So there's obviously a lot of interest in this.

Mr. Sands, thank you so much for being with us. I'll be talking to you shortly, and we'll have you back on the air shortly as well.

MR. SANDS: Well, I would love it. I would love to come back. And thank you so much.

MR. BODENBACH: You're more than welcome.

(Whereupon, the conference was concluded.)

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of it Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents Melinda R. Sneed and John L. Sneed are the proprietors of, and do business as, Arthritis Pain Care Center, with its principal office located at 3615-F Pioneer Parkway, Arlington, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise

of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "*CMO*" shall mean any product or substance that contains or purports to contain cetylmyristoleate (also known as cetyl myristoleate) or "CMO," any analog of cetylmyristoleate, or any formulation of cetyl alcohol and myristoleic acid, including but not limited to CMO™, purportedly useful to relieve the symptoms of, treat, mitigate, cure, prevent, relieve, heal or alleviate any disease or health condition.

3. Unless otherwise specified, "*respondents*" shall mean Melinda R. Sneed and John L. Sneed, individually and doing business as Arthritis Pain Care Center, and each of their agents, representatives and employees.

4. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

C. On a product label, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

5. "*Purchaser*" shall mean any transferee of any product covered by this order who acquires such product from respondents for valuable consideration.

6. "*Distributor*" shall mean any purchaser or other transferee of any product covered by this order who acquires product from respondents, with or without valuable consideration, and who sells, or who has sold, such product to other sellers or to consumers, including but not limited to individuals, retail stores, or catalogs.

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

I.

It is ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees or distributors, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of CMO or any substantially similar product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product:

A. Is effective in the mitigation, treatment, prevention, or cure of arthritis, including rheumatoid arthritis and osteoarthritis;

B. Provides permanent relief from symptoms of arthritis, including pain, impaired mobility, swelling, or joint deformities;

C. Is as effective as or superior to prescription medications in the treatment of arthritis or the relief of arthritis symptoms;

D. Is completely safe or has no adverse side effects; or

E. Is effective in the treatment of multiple sclerosis, lupus, emphysema, chronic bronchitis, silicone breast disease, cancer, benign prostate hyperplasia, hypertension, hypotension, or cardiac arrhythmia;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees or distributors, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of CMO products or any other food, dietary supplement or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the performance, safety, efficacy or health benefits of any such product or program, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

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

V.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees, or distributors, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

VI.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees or distributors, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product or program represents the typical or ordinary experience of members of the public who use the product or program, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product or program; or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

VII.

It is further ordered, That respondents, directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees, or distributors, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall disclose, clearly and prominently, and in close proximity to the endorsement, a material connection, where one exists, between a person providing an endorsement of any product or program, as "endorsement" is defined in 16 CFR 255.0(b), and any respondent, or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. For purposes of this order, "material connection" shall mean any

relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

VIII.

It is further ordered, That:

A. Respondents shall not disseminate to any distributor any material containing any representations prohibited by this order.

B. Respondents shall not, directly or indirectly, authorize any distributor to make any representations prohibited by this order.

C. Within thirty (30) days after service of this order, respondents shall send by certified mail, return receipt requested, an exact copy of the notice attached hereto as Attachment A to each distributor with whom respondents have done business since January 1, 1996, to the extent that such distributor is known to respondents through a diligent search of their records, including but not limited to computer files, sales records, and inventory lists. The mailing shall not include any other documents.

D. For a period of three (3) years following service of this order, respondents shall send by certified mail, return receipt requested, an exact copy of the notice attached hereto as Attachment A to each distributor with whom respondents do business after the date of service of this order who has not previously received the notice. Such notice shall be sent within one (1) week from the first shipment of respondents' products to said distributor. The mailing shall not include any other documents.

E. Respondents shall require distributors to submit to respondents all advertising and promotional materials and claims for any products or programs covered by this order for review prior to their dissemination and publication. Respondents shall not authorize distributors to disseminate these materials and claims unless they are in compliance with this order.

Respondents may also comply with the obligations set forth above in this subpart by: (a) disseminating to distributors marketing materials that do not contain representations prohibited by this order; and (b) requiring these distributors to submit for review all advertising and promotional materials for a particular product covered by this order that contain representations that are not substantially similar to the representations for the same product contained in the

advertising and promotional material(s) most recently forwarded to the distributors by respondents.

F. Respondents shall monitor distributors' advertising and promotional activities. In the event that respondents receive any information that, subsequent to receipt of Attachment A pursuant to subparts C and D of this Part, any distributor is using or disseminating any advertisement or promotional material or making any oral statement that contains any representation prohibited by this order, respondents shall immediately terminate said distributor's right to market respondents' products or programs and immediately provide, by certified mail, all relevant information, including name, address, and telephone number of the company at issue, the nature of the violation, and any relevant materials used or disseminated, to the Associate Director, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

IX.

It is further ordered, That respondents Melinda R. Sneed and John L. Sneed shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying: copies of all notification letters sent to distributors, communications between respondents and distributors referring or relating to the requirements of Part VIII, and any other materials created pursuant to Part VIII of this order.

X.

It is further ordered, That respondents Melinda R. Sneed and John L. Sneed shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradicts, qualifies, or calls 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.

XI.

It is further ordered, That respondents Melinda R. Sneed and John L. Sneed shall deliver a copy of this order to all current and future principals and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to 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.

XII.

It is further ordered, That respondents Melinda R. Sneed and John L. Sneed shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XIII.

This order will terminate on September 7, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

ATTACHMENT A

Attachment A

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
[To Be Printed on Arthritis Pain Care Center letterhead]

[date]

Dear [distributor's name]:

The owners of Arthritis Pain Care Center settled a civil dispute with the Federal Trade Commission ("FTC") on ____ involving advertising claims for our cetylmyristoleate (CMO) products. As a part of the settlement, we must make sure that you comply with the FTC order.

Our settlement with the FTC prohibits us from making unsubstantiated claims for any health-related product or program. Please see the attached FTC Complaint and Agreement Containing Consent Order for detailed information. We request your assistance by asking you NOT to use, rely on or distribute any advertising or promotional materials containing unsubstantiated claims and NOT to make unsubstantiated oral representations. Please also notify any of your retail or wholesale customers to do the same. If you or your retail or wholesale customers use such materials or make such representations in the future, we are required by the FTC settlement to stop doing business with you and to inform the FTC of your activities.

In addition, the FTC requires us to ensure that advertising and promotional materials and claims for any product or program covered by this order are in compliance with the FTC settlement requirements. Please see Part VIII of the enclosed Agreement Containing Consent Order for detailed information.

Although we do not admit that the FTC's allegations are true, we have agreed to send this letter as a part of our settlement with the FTC. At the present time, we do not sell CMO products.

Thank you very much for your assistance,

Melinda Sneed and
John Sneed