

Complaint

123 F.T.C.

IN THE MATTER OF

BST ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9276. Complaint, Sept. 27, 1995--Final Order, May 30, 1997*

This final order adopts the initial decision and order issued by the Administrative Law Judge which prohibits, among other things, the maker of ABS BrakeSafe Equipment and its president from using the term ABS in connection with their retrofitted brakes and from representing that their brakes: are an antilock braking system; will qualify a vehicle for an automobile insurance discount; comply with performance standards set by the Society of Automotive Engineers or the National Highway Traffic Safety Administration; or provide antilock benefits equivalent to those provided by genuine ABS systems. In addition, the order prohibits safety claims, unless the respondents possess competent and reliable scientific substantiation.

*Appearances*For the Commission: *Theodore Hoppock.*For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BST Enterprises, Inc., a corporation, and Michael Woodruff, individually and as an officer and director of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3139 National Circle, Garland, Texas.

Respondent Michael Woodruff is or was at relevant times herein an officer and director of BST Enterprises, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His office and principal place of business is at 3139 National Circle, Garland, Texas.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

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.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to the advertisements and promotional materials attached hereto as Exhibits A through D. Those advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE

In just 30 minutes or less, your car, truck, motorhome, or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium, it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result, wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

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In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

* With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.

* Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.

* * * *

* In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Exhibit B]

(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

* Mechanical Safety Braking System with Anti-lock Benefits

* Safer, Skid Resistant Stopping

* Controls Premature Lock-up

* Shorter, Smoother Braking

* Efficiency in Emergencies

* * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when traveling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums.

[Exhibit D]

PAR. 5. Through the use of the trade name ABS BrakeSafe and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that ABS BrakeSafe is an antilock braking system.

PAR. 6. In truth and if fact, ABS BrakeSafe is not an antilock braking system. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(e) Tests prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 8. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) Tests do not prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product.

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

PAR. 9. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

PAR. 10. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five, seven, and nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time they made the representations set forth in paragraph five, seven, and nine, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The acts and practices of respondents 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.

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EXHIBIT A

EXHIBIT A

How can any system that reduces brake pressure stop a vehicle faster on a dry road?

The key is wheel slip. In emergency stops, some amount of the brake pressure must be transferred from the road surface. More simply, a second, rolling motion stabilizes the tire on the dry road. A wheel that is in full contact exhibits more traction than a wheel that is slipping. The most effective way to reduce wheel slip is to reduce the weight of the load up at about 90 mph. The ABS system does this by reducing the brake pressure to the wheels. With any more pressure, you're asking for skidding. With any less, you're asking for a spin. So while drivers shouldn't expect to never have a wheel in a high slip condition, they should find that the tires' braking ability is stronger, and considerably longer, during emergency stops.

What can I expect on snow and ice?

You should not expect a marked improvement in braking. The brakes, as long as they have the ability to obtain adhesion with the road surface, will be as effective as in any other system. However, the ABS in any other system, in preventing skidding or wheel lockup, when it does have any adhesion, will be the same as on ice.

Will BrakeSafe™ improve the performance of worn brakes?

Yes, but probably not to the extent it will improve a brake system in good condition. And in ABS systems, an even better alternative is to replace the brakes with a newer system. That's why it's important for dealers to inspect the existing brake system and tires carefully before installing the BrakeSafe™ system. Worn brakes on tires, and worn tires on all types of vehicles, in fact, reduce the ability of the BrakeSafe™ system to stop vehicles faster, and safe. Some all types of brake fluid (DOT 3, 4, or equivalent) for use with BrakeSafe™.

Is there danger of the stoplight burning?

The standard indicator. The average range of operating pressure within a hydraulic brake system is 8 to 12 psi. It is possible to operate under 8 psi. According to the Department of Transportation, National Highway Traffic Safety Administration, technical brake companies should be able to withstand a maximum level of fluid pressure of 30 psi. That in fact is normally supervised using BrakeSafe™, compared to operating under 8 psi. The system will operate under 8 psi when the system will operate under normal conditions.

But what happens in the unlikely event it does fail?

Normal braking is restored. If an older, non-ABS vehicle is equipped with BrakeSafe™, you can continue to use the existing brake system in any way. If for any reason it should fail, you'll have the original brake's control system.

So it won't interrupt the manufacturer's warranty on the original brakes?

No. We advise manufacturers to require that BrakeSafe™ not be installed on vehicles for sale in any state that has a law that requires a warranty on a vehicle's original brakes.

Does BrakeSafe™ carry its own warranty?

Yes. If a component is defective, we will, at our discretion, repair or replace the component. The original installed brake system will remain as is, and we do not guarantee any performance or stopping distance. The only exception to this is if the original installed brake system is defective.

Can I take the system off my vehicle to re-install it in another?

Yes, but it is best to consult with the BrakeSafe™ licensed installer. We will transfer to the second vehicle.



1-800-257-8720
or 704-846-1177

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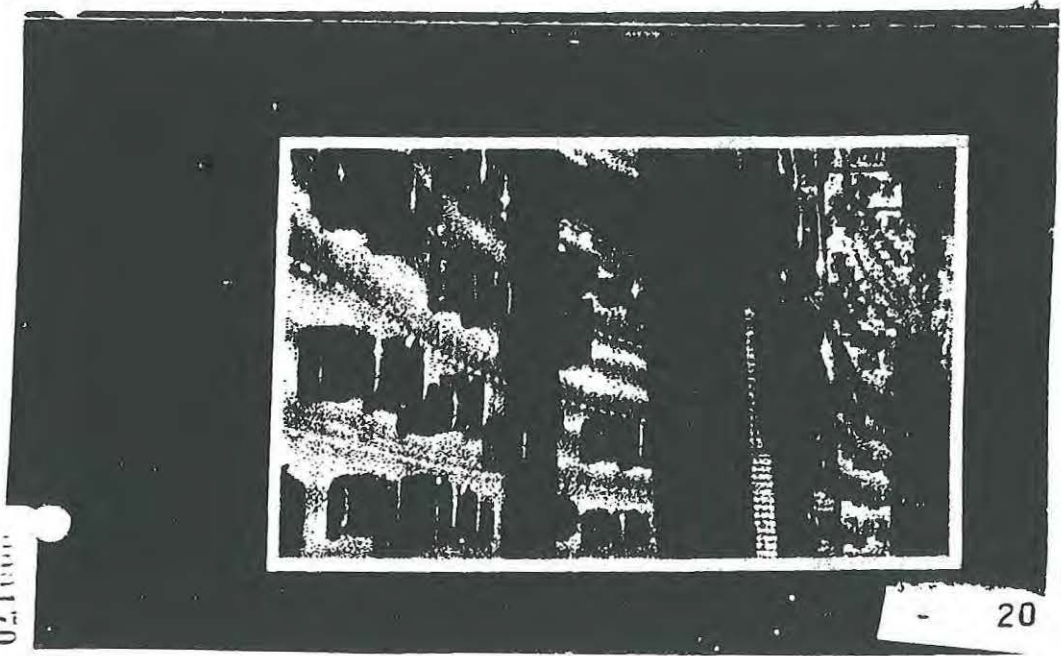
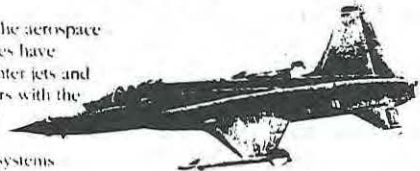


EXHIBIT A

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In just 30 minutes or less, your car, truck, motorhome or motorcycle can be RETROFITTED with the anti lock benefit braking of BrakeSafe™.

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state of the art airliners with the unmatched, non-skid action of hydraulic anti locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

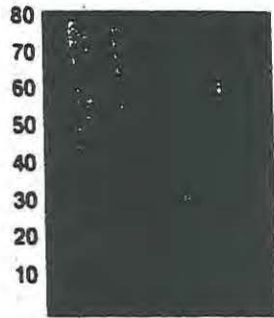


But now you don't have to own a new high priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium, if varies, but reductions as high as 10% are not unusual.

*Don't just brake
BrakeSafe*

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation. In addition, this all-mechanical system is unique in its Patented remote-mount design, allowing simple installation and a choice of both mounting and placement options.



While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 50% when aggressively decelerating from 60 to 0 mph.

After installation, most drivers say they find their brakes feel "more comfortable" and that less foot pressure is required to bring the vehicle to a safer stop. Shorter stopping distances are also realized, not just during panic stops or on wet roads. And with the unit's pro-active action, brake wear is also significantly reduced because pressure is applied more evenly and efficiently each time the driver depresses the brakes.

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Here's How BrakeSafe Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. It's almost like a hydraulic "shock

absorber" for your brakes, because it absorbs excess brake pressure before it ever reaches the wheels. (Pressure is created when ABS BrakeSafe™ is assembled, permanently charged and sealed, affecting a dynamic seal between the diaphragm and its chamber.)

Installed on your vehicle's existing brake lines, one unit controls the front brakes; another the rear brakes.

It works equally well on both drum or disc brakes and there are no complex sensors, wires or pumps and BrakeSafe™ is automatically regulated to your vehicle's application and various load factors.

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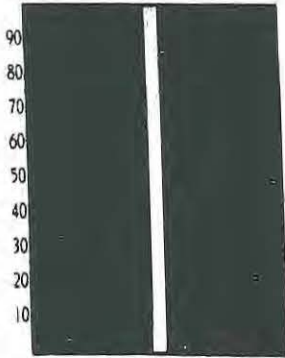
EXHIBIT A



HOW BRAKESAFE™ WORKS

BrakeSafe™ is an accumulator that equalizes brake shoe and or pad pressure against the drums and rotors. Braking is coordinated by modulating brake line pressure to all four wheels simultaneously, assisting in control of the rotational wheel lock-up before it occurs. It's similar to having a hydraulic "shock absorber" for your brakes-it absorbs excess brake pressure before it ever reaches the wheels.

EXHIBIT B



While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20' in aggressively decelerating from 60 to 0 mph.

Adjustability for Weight Differences

A unique and unparalleled BrakeSafe™ feature is its Adjustability for handling significant vehicle weight differences. Each BrakeSafe™ unit is preset for the standard weight factor of most vehicles, but can be adjusted prior to installation for more efficient braking, e.g. if the vehicle is very light, like many of today's small and foreign vehicles; or exceptionally heavy, such as limousines, motor homes or larger trucks. This adjustment can only be performed by a qualified technician.

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp
CROCYCO RACING

"...I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major accident..."

Bob Beaucond
NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

BrakeSafe™ carries its own warranty for as long as the purchaser owns the vehicle. The Limited Warranty will be void if the units are transferred to a second vehicle. BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

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Mechanical Safety Braking System with
Anti-lock Benefits

PROTECT YOUR FAMILY,
YOURSELF & OTHERS WITH
MORE EFFICIENT STOPPING.



Los Angeles Times Photo

NOW YOU CAN BRAKESAFE™
NO MATTER WHAT YOU DRIVE.

EXHIBIT B

You Now Have an Opportunity to Add a Marvelous New Safety System to Your Vehicle

What BrakeSafe™ offers:

- BrakeSafe™ enhances most braking systems by providing uniform friction during the rotation of each drum or rotor.
- With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.
- Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.
- The need for less pedal effort creates lower rotor temperatures resulting in the extended life of standard braking units.
- This system does not alter your existing brake system. If the BrakeSafe™ units should fail, your original braking system will continue to operate in its normal manner.
- In summary, Safer Operation, Greater Control, and Reduced Brake Wear more than justify the small investment.



Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking brake systems. In the late 1980's electronic variations were offered on expensive European luxury cars, and later on selected domestic models.



Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

In less than an hour your vehicle can be retro-fitted with this safety system

This all-mechanical system is unique in its patent-pending, remote-mount design, allowing simple installation and choice of both mounting and placement options. A complete installation and information video is included with each kit.

How can any system that reduces brake pressure stop a car faster on a dry road?

The key is wheel slip. To engineers, that's a measure of the static vs. kinetic friction of a tire and the road surface. More simply, a smoothly rolling tire exhibits static friction-or zero slip. A locked tire in full skid exhibits kinetic friction-or 10% slip. The most efficient, quickest braking occurs just at the verge of lockup - at about 5% or 10% slip. And that's the friction point BrakeSafe™ aims to maintain. With any more pressure, you're locked and skidding. With any less, you're adding stopping distance. So while drivers shouldn't expect to never "leave rubber" in a high-speed braking situation, they should find that the tire's "footprint" will be straight and shorter.

What can I expect on snow and ice?

You should see a marked improvement in braking effectiveness as long as tires have the ability to retain cohesion with the road surface - which is often the case in pure snow. However, ABS or any other system can prevent skidding or shorten stopping when tires have no cohesion, such as on ice.

Will BrakeSafe™ Improve the performance of worn brakes?

Possibly, but not to the extent it will improve a brake system in good condition. No ABS system can cure brakes that are inherently unsafe. That's why it's important for installers to inspect the existing brake system and tires carefully before installing BrakeSafe™. Worn brakes or tires, contaminated brake fluid, even improper tire inflation can all impede the ability of BrakeSafe™ to stop cars shorter and safer. [Note: all types of brake fluid are acceptable for use with BrakeSafe™.]

So it won't interrupt the manufacturer's warranty on the original brakes?

No, because manufacturers recognize that BrakeSafe™ is a replacement brake system per se, not simply an enhancement for existing brakes.

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EXHIBIT C

EXHIBIT C

PROTECT YOUR FAMILY.

(As used in the airline industry)



- Mechanical Safety Braking System with Anti-lock Benefits
- Safer, Skid Resistant Stopping
- Controls Premature Lock-up
- Shorter, Smoother Braking
- Efficiency in Emergencies
- Extends Life of Brake Parts
- Fits Most Vehicles
- Lifetime Warranty

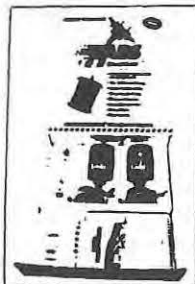
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NOW YOU CAN BRAKESAFE™ NO MATTER WHAT YOU DRIVE.

EXHIBIT D

EXHIBIT D

New Products Section • New Products Section



THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. One of the unique features of BrakeSafe is the units automatically adjust to the weight and unique personality of your vehicle. BrakeSafe is engine-mounted, it installs anywhere under the hood. Some of the many enhance-

ments to conventional braking is that you normally stop straighter and shorter. The life of most brake parts are greatly increased, thereby saving dollars as well as lives. In independent testing, the BrakeSafe devices have proven to stop at least 20 percent shorter when traveling at 60 mph. If BrakeSafe should discontinue operating, it reverts to the original braking system. In some cases, your customers may also be offered decreased insurance premiums. BST is also offering Motorcycle BrakeSafe units and will be offering retrofit air bags (SRS) for most vehicles in 1993.

BST Enterprises Inc.
 4711 E. Falcon Dr., 3rd Fl.
 Mesa, Ariz. 85205
 800/257-8720
 Fax 602/924-8166
 Circle 312 on Service Card

DEFAULT JUDGMENT AGAINST RESPONDENTS
BST ENTERPRISES, INC., AND MICHAEL WOODRUFF

I. INTRODUCTION

Complaint counsel have moved, pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, for the entry of a default judgment against respondents in Docket 9276, BST Enterprises, Inc. ("BST") and Michael Woodruff.

The motion is based on the failure of respondents BST and Woodruff to answer the complaint in this matter or to respond to various discovery requests served upon them, and the failure of Woodruff to appear at a deposition in response to a subpoena.

II. BACKGROUND

*A. Respondents Were Properly Served With
The Complaint and Notice Order*

Beginning on approximately October 6, 1995, the U.S. Postal Service made repeated, unsuccessful efforts to get respondents to claim the registered mail package containing the Commission's complaint and notice order in this matter. Thereafter, on November 21, 1995, an investigative assistant in the Commission's Dallas Regional Office hand-delivered to BST's corporate offices, at 3139 National Circle, Garland, Texas, an additional copy of the complaint and notice order, as well as complaint counsel's first set of interrogatories and first *subpoena duces tecum* to respondents, motion to consolidate, and other pleadings and orders issued prior to that date.¹

Respondents were located at this address at the time the complaint was issued, and they received the pleadings. The address, 3139 National Circle, was then currently used on BST's stationery and other BST documents. The FTC investigator who delivered the pleadings to this address noted that the building entrance bore the trade name of the BST braking product, BrakeSafe. Moreover, employees present at BST's offices on November 21 confirmed that

¹ See Spears Declaration and Griggs Declaration, dated November 22, 1995, and filed with the Secretary's Office on November 28, 1995 (Attachments 1 and 2 to complaint counsel's motion); Complaint Counsel's Response to Respondent BST's Motion for Thirty Day Extension to Submit Documents, at footnote 1, filed December 15, 1995 (Attachment 3 to complaint counsel's motion). Accompanying the complaint was the standard Secretary's letter informing respondents of the need to file an answer within the time set by the Commission's Rules. (Attachment 1, ¶2 to complaint counsel's motion).

BST operated out of the location and led FTC personnel to respondent Woodruff's private office. *See* Spears Declaration; Griggs Declaration. Most importantly, respondents' opposition to the motion to consolidate, and their partial responses to complaint counsel's first subpoena and first set of interrogatories, although incomplete, are irrefutable evidence of the fact that respondents received the complaint and notice order.²

B. Respondents Failed to Comply With Duly Issued Subpoenas

In addition to their failure to answer the complaint, respondents BST and Woodruff have disobeyed my order that they respond to complaint counsel's November 17, 1995 *subpoena duces tecum* by January 5, 1996. On December 18, 1995, I issued an order requiring respondents to produce all documents responsive to complaint counsel's November 11, 1995 *subpoena duces tecum* by January 5, 1996. Respondents have yet to turn over such documents.³ Moreover, it is apparent that respondents' failure to comply with my December 18 order is due to their unwillingness to defend this action and not to an inability to do so. Respondents have neither attempted to discuss the subpoena return with complaint counsel nor filed a motion to quash it.

BST and Woodruff also failed to respond to complaint counsel's February 6, 1996 requests for admissions, or to respond to complaint counsel's motion for partial summary judgment as to the advertising claims made by them. On May 22, 1996, I entered a partial summary decision against respondents BST and Woodruff ruling that respondents made each of the claims alleged in the complaint. My findings of fact were based in part upon the failure of respondents to answer the February 6 request for admissions. *See* Rule 3.32(b) (matters deemed admitted unless replied to within ten days of service).

² *See* BST's Answer to Motion to Consolidate (stamped Dec. 15, 1995) (Attachment 4 to complaint counsel's motion); November 17, 1995 *Subpoena duces tecum* to BST and BST's December 22, 1995 Partial Response thereto (Attachment 5 to complaint counsel's motion); November 17, 1995 Interrogatories to BST and BST's December 26, 1995 Partial Responses thereto (Attachment 6 to complaint counsel's motion). *See also*, BST's request for a thirty day extension on the subpoena return (stamped Dec. 15, 1995) (Attachment 7 to complaint counsel's motion). These are all of the pleadings respondents have submitted in this proceeding. None of these pleadings dispute respondents' receipt of the complaint or other documents.

³ *See* Order Granting Extension of Time to BST, D. 9276 (Dec. 18, 1995) (Attachment 8 to complaint counsel's motion); Hoppock Declaration (Attachment 9 to complaint counsel's motion) (complaint counsel never received the documents ordered to be turned over by January 5, 1996).

Finally, Woodruff failed to appear for deposition pursuant to a subpoena issued by me on June 4, 1996. In light of respondents' failure to respond to the outstanding discovery requests, complaint counsel had intended to depose respondent Woodruff, individually and as an officer of BST Enterprises, as to all issues to be adjudicated in this case. Complaint counsel have substantial proof that, despite Woodruff's ongoing efforts to evade service in this proceeding, the subpoena was successfully served upon him.⁴ Woodruff not only failed to appear at his deposition; he also neglected to contact complaint counsel either before or after the date of deposition to attempt to comply with the subpoena.

III. DEFAULT JUDGMENT IS APPROPRIATE UNDER RULES 3.12(c)
AND 3.38(b)(5) OF THE COMMISSION'S RULES OF PRACTICE

Default judgment against respondents BST and Woodruff is appropriate under both Rules 3.12(c) and 3.38(b)(5) of the Commission's Rules of Practice.

Rule 3.12(c) provides that the failure of a respondent to file an answer to a complaint:

authorize[s] the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

Respondents BST and Woodruff failed to answer the complaint in this action, despite the fact they clearly were served with the complaint and notice order almost one year ago. A default order is, therefore, appropriate. *See Griffin Systems, Inc.*, 1993 FTC LEXIS

⁴ Since the complaint was issued, respondents BST and Woodruff have changed addresses several times without notifying complaint counsel, me, or the Secretary's Office. Despite this fact, complaint counsel have attempted to serve all pleadings to respondents' most current known address.

In May 1996, complaint counsel learned from the U.S. Postal Service that respondents had changed their address to a post office box in Dallas, Texas at zip code 75355. Hoping to effect personal service of a *subpoena ad testificandum* upon Woodruff, complaint counsel obtained the street address given by him in registering for the post office box. When it was determined that Woodruff did not reside at this address, an employee of the Commission's Dallas Regional Office hand-delivered a *subpoena ad testificandum* to the station manager for zip code 75355 for placement in respondent Woodruff's post office box. (*See Elliott Declaration*) (Attachment 10 to complaint counsel's motion). The station manager's sworn declaration states that the subpoena was picked up from the post office box the following day. (*See Brown Declaration*) (Attachment 11 to complaint counsel's motion). Accordingly, Woodruff was properly served with the *subpoena ad testificandum*.

Moreover, Woodruff and BST Enterprises continue to accept mail at this address. (*See Teague Declaration*) (Attachment 12 to complaint counsel's motion). On June 7, 1996, the same date that the subpoena was picked up, respondents renewed the post office box. At that time Woodruff changed his street address to 3131 National Circle, Garland, Texas – evidently just doors down from BST's former corporate address of 3139 National Circle. (*See Teague Declaration*).

167 (Order Granting Default Judgment Against Robert W. Boughton), *affirmed*, *Boughton v. FTC*, unreported (11th Cir. 1996);⁵ *American Tractor Trailer Training, Inc.*, 86 FTC 654, 663-64 (1975); *Joseph Richard Horvath t/a Sew Rite*, 85 FTC 1081, 1085 (1975); *Robertson Investment Co.*, 83 FTC 1717, 1721-22 (1974).

Commission Rule 3.38(b)(5) provides that if a party fails to comply with a subpoena, or with an order for the production of documents or the answering of interrogatories, the Administrative Law Judge may rule that a "decision of the proceeding be rendered against the party." Respondents BST and Woodruff failed to comply with my order requiring the production of documents and failed to appear for testimony pursuant to subpoena.

In a recent Commission action against RustEvader Corp., the ALJ struck RustEvader's answer, pursuant to Rule 3.38(b)(5), on the grounds that the corporate respondent had failed to comply with the ALJ's order directing it to answer discovery requests. The ALJ then held that the entry of default judgment was appropriate under both Rule 3.12(c) and 3.38(b) where the corporate respondent generally had failed to respond to discovery as to all aspects of the litigation. *See RustEvader Corp.*, Docket No. 9274 (Initial Decision) (May 24, 1996) (Timony, ALJ). A default judgment is also appropriate here since respondents BST and Woodruff have failed to answer the complaint, failed to appear for testimony pursuant to subpoena, and failed to comply with a subpoena or my order for the production of certain documents relevant to the central issues for adjudication in this case.

Commission Rules 3.12(c) and 3.38(b)(5) are modeled closely after Rules 37 and 55(b) of the Federal Rules of Civil Procedure. Under Rule 55(b) default judgment is available "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend [the lawsuit]. . . ." Under Rule 37, a court may issue "an order rendering a judgment by default" if a party disobeys a discovery order, fails to attend its own deposition, fails to serve answers to interrogatories, or fails to respond to a request for inspection. The federal rules provide for default judgment in order to allow the courts to manage their dockets efficiently and effectively.

⁵ The circuit court's unpublished opinion is included as Attachment 14 to complaint counsel's motion. Both the ALJ and the circuit court found that the entry of a default judgment against the respondent for failure to answer the complaint was appropriate under Rule 3.12(c) where the complaint was properly served upon a post office box, respondent's only known address. In this instance, service was made at respondents' place of business, which unquestionably is appropriate under Rule 3.12(c).

Merrill Lynch Mort. Corp. v. Narayan, 908 F.2d 246, 252 (7th Cir. 1990). As the Supreme Court has stated:

The most severe in the spectrum of sanctions must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League v. Met. Hockey Club, Inc., 427 U.S. 639, 643 (1976).

The federal courts frequently enter default judgments, pursuant to Rule 55(b), as a result of a party's failure to answer the complaint. For instance, in *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D.C. Minn. 1985), the court held that Fed. R. Civ. P. 55(b) does not require a hearing before the entry of default where a defendant has failed to answer the complaint:

If the court determines that a defendant is in default, the factual allegations of the complaint will be taken as true. This rule applies to cases seeking equitable as well as legal relief.

FTC v. Kitco of Nevada, Inc., 612 F. Supp. at 1297 (citations omitted).

The federal courts also frequently enter default judgments pursuant to Rule 37 where, as here, the defendant has failed to comply with duly served subpoenas or other discovery requests. In *FTC v. Packers Brand Meats, Inc.*, 562 F.2d 9, 10 (8th Cir. 1977), the defendant, after nearly six months, had failed to respond to the lower court's order to show cause why it should not be required to testify or produce documents pursuant to a subpoena issued by the FTC ALJ. The appellate court held that the district court was "fully justified" in entering a default where the defendant's failure to comply did not constitute either good faith mistake or excusable neglect.

Similarly, the appellate court in *U.S. v. DiMucci*, 879 F.2d 1488 (7th Cir. 1989), held that the district court did not abuse its discretion in entering default where:

Defendants' repeated failure to comply with discovery, to obey court orders regarding the same, and to appear for their depositions clearly constitute contumacious conduct which seriously hampered [plaintiff's] trial preparation.

U.S. v. DiMucci, 879 F.2d at 1494.

A default judgment is appropriate and necessary to ensure the functioning of the judicial process when a defendant's actions or inactions amount to willful misconduct. "A defendant cannot be permitted to avoid or delay a plaintiff's right to judicial resolution of a dispute by ignoring the proceeding." *Frank Keevan & Son v. Collier Steel Pipe & Tube*, 107 F.R.D. 665, 670 (1985). See also *Home Port Rentals, Inc. v. Ruben*, 957 F.2d 126, 133 (4th Cir.), cert. denied 113 S. Ct. 70 (1992) (The district court was justified in entering default where defendant: failed to cooperate in discovery matters; refused to submit to depositions; and failed to participate in the prosecution and defense of the matter); *Crocker National Bank v. M.F. Securities (Bahamas)*, 104 F.R.D. 123, 127 (1985) ("As a result of defendants' willful failure to comply with the court's order to appear for deposition, this court is authorized in issuing an order rendering judgment by default against defendants."); *Minnesota Min. & Mfg. Co. v. ECO Chem., Inc.*, 757 F.2d 1256, 1261 (Fed. Cir. 1985) (district court did not abuse its discretion in entering default where the defendant repeatedly had engaged in dilatory tactics).

For the reasons given above,

It is ordered, That respondents BST Enterprises, Inc., and Michael Woodruff be, and they hereby are, found in default of this proceeding; and

It is further ordered, That because of respondents' default, and pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, the following initial decision be, and it hereby is, entered.

INITIAL DECISION

BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

OCTOBER 16, 1996

I. FINDINGS OF FACT

1. Respondent BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3131 National Circle, Garland, Texas.

2. Respondent Michael Woodruff is an officer and director of BST Enterprises, Inc. His office and principal place of business is at 3131 National Circle, Garland, Texas, and he also receives mail at Post Office Box 551355, Dallas, Texas.

3. Respondent Michael Woodruff, individually or in concert with others, formulates, directs, and controls the acts and practices of the corporate respondent.

4. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

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

6. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to Exhibits A through D attached to the complaint. These advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

In just 30 minutes or less, your car, truck, motorhome or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium; it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Complaint Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

- * With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.
- * Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.
- * * * *
- * In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a mojour [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Complaint Exhibit B]

Initial Decision

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(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

- * Mechanical Safety Braking System with Anti-lock Benefits
- * Safer, Skid Resistant Stopping
- * Controls Premature Lock-up
- * Shorter, Smoother Braking
- * Efficiency in Emergencies
- * * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Complaint Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when travelling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums.

[Complaint Exhibit D]

7. On May 22, 1996, a Partial Summary Decision was issued in which, *inter alia*, respondents' advertising claims were discussed and analyzed at length. Thus, it has previously been found that respondents' ads, logos and promotional material make and have made the claim that the ABS BrakeSafe braking device is an antilock braking system. (Partial Summary Decision, at p. 27) (May 22, 1996).

8. In truth and in fact, ABS BrakeSafe is not an antilock braking system. Therefore, respondents' representation set forth in finding 7 was, and is, false and misleading.

9. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration⁶;

⁶ This finding was articulated in my May 28, 1996 order clarifying the May 22, 1996 Partial Summary Decision.

(e) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(f) Consumer testimonials appearing in their ads and promotional materials reflect the typical or ordinary experience of members of the public who have used the ABS BrakeSafe device.

(g) Tests prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

(Partial Summary Decision, at pp. 27-28) (May 22, 1996).

10. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems;

(f) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product; and

(g) Tests do not prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

Therefore, respondents' representations as set forth in finding 9 were, and are, false and misleading.

11. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

(Partial Summary Decision, at p. 28) (May 22, 1996).

12. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claim that at the time respondents made the representations set forth in findings 7, 9, and 11, they possessed and relied upon a reasonable basis that substantiated such representations.

13. In truth and in fact, at the time respondents made the representations set forth in findings 7, 9, and 11, they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representations set forth in finding 12 were, and are, false and misleading.

II. CONCLUSIONS OF LAW

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

2. The acts and practices of respondents as described in findings 1 through 13 above constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

3. The following order is necessary and appropriate under applicable legal precedent and the facts of this case.

III. ORDER

DEFINITIONS

For the purposes of this order:

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

2. "*Purchasers for resale*" shall mean all purchasers of ABS BrakeSafe for resale to the public, including but not limited to franchisees, wholesalers, distributors, retailers, installers, and jobbers.

I.

It is ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ABS BrakeSafe or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the initials or term ABS in conjunction with or as part of the name for such product or the product logo.

II.

It is further ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ABS BrakeSafe or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

A. Is an antilock braking system;

B. Prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping situations;

C. Will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

D. Complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

E. Complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

F. Has been proven in tests to reduce stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph; or

G. Provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems.

III.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. In emergency stopping situations, a vehicle equipped with the system, accessory, or device will stop in a shorter distance than a vehicle that is not equipped with the system, accessory, or device; or

B. Installation of the system, accessory, or device will make operation of a vehicle safer than a vehicle that is not equipped with the system, accessory, or device;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

A. The contents, validity, results, conclusions, or interpretations of any test or study;

B. The compliance of any such product with any standard, definition, regulation, or any other provision of any governmental entity or unit, or of any other organization;

C. The availability of insurance benefits or discounts arising from the use of such product; or

D. That any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product represents the typical or ordinary experience of members of the public who use the product, unless:

(1) Such representation is true, or

(2) Respondents disclose clearly, prominently, and in close proximity to the endorsement or testimonial either:

(a) What the generally expected results would be for users of such product, or

(b) 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.

V.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling,

advertising, promotion, offering for sale, sale, or distribution of any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the absolute or comparative attributes, efficacy, performance, safety, or benefits of such system, accessory, or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall:

A. Within forty-five (45) days after the date of service of this order, compile a current mailing list containing the names and last known addresses of all purchasers of ABS BrakeSafe since January 1, 1990. Respondents shall compile the list by:

1. Searching their own files for the names and addresses of such purchasers; and

2. Using their best efforts to identify any other such purchasers, including but not limited to sending by first class certified mail, return receipt requested, within five (5) days after the date of service of this order, to all of the purchasers for resale with which respondents have done business since January 1, 1990, an exact copy of the notice attached hereto as Appendix A. The mailing shall not include any other documents. In the event that any such purchaser for resale fails to provide any names or addresses of purchasers in its possession, respondents shall provide the names and addresses of all such purchasers for resale to the Federal Trade Commission within forty-five (45) days after the date of service of this order.

3. In addition, respondents shall retain a National Change of Address System ("NCOA") licensee to update this list by processing the list through the NCOA database.

B. Within sixty (60) days after the date of service of this order, send by first class mail, postage prepaid, to the last address known to respondents of each purchaser of ABS BrakeSafe identified on the mailing list compiled pursuant to subparagraph A of this Part, an exact copy of the notice attached hereto as Appendix B. The mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a prominent fashion the phrases "FORWARDING AND RETURN POSTAGE GUARANTEED" and "IMPORTANT NOTICE--U.S. GOVERNMENT ORDER ABOUT ABS BRAKESAFE BRAKING DEVICE."

C. Send the mailing described in subparagraph B of this Part to any person or organization not on the mailing list prescribed in subparagraph A of this Part about whom respondents later receive information indicating that the person or organization is likely to have been a purchaser of ABS BrakeSafe, and to any purchaser whose notification letter is returned by the U.S. Postal Service as undeliverable and for whom respondents thereafter obtain a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondents' receipt of a corrected address or information identifying each such purchaser.

D. In the event respondents receive any information that, subsequent to its receipt of Appendix A, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisement or promotional material.

E. Terminate within ten (10) days the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use any advertisement or promotional material that contains any representation prohibited by this order after receipt of the notice required by subparagraph A of this Part.

VII.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. The list compiled pursuant to subparagraph A of Part VI of this order;

B. Copies of all notification letters sent to purchasers pursuant to subparagraphs B and C of Part VI of this order;

C. Copies of notification letters sent to purchasers for resale pursuant to subparagraphs A and D of Part VI of this order, and all other communications with purchasers for resale relating to the notices required by Part VI of this order.

VIII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IX.

It is further ordered, That respondent BST Enterprises, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order, within three (3) days after the person assumes his or her position.

X.

It is further ordered, That respondent BST Enterprises, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

XI.

It is further ordered, That respondent Michael Woodruff shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII.

It is further ordered, That this order will terminate twenty years from the date of its issuance, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never 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.

XIII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the 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.

APPENDIX A

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Reseller:

Our records indicate that you are or have been a distributor or retailer of the ABS BrakeSafe, a brake product. This letter is to advise you that the Federal Trade Commission recently obtained an order against BST Enterprises, Inc. regarding certain claims made for the ABS BrakeSafe device. Under that order, we are required to notify our distributors, wholesalers and others who have sold ABS BrakeSafe to stop using or distributing advertisements or promotional materials containing these claims. We are also asking for your assistance in compiling a list of ABS BrakeSafe purchasers, so that we may contact them directly. Please read this letter in its entirety and comply with all parts.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises' advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;
- (c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;
- (d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;
- (e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;
- (f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency stopping situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

We need your assistance in complying with this order.

Please immediately send us the names and last known addresses of all persons or businesses, including other resellers, to whom you have sold an ABS BrakeSafe since January 1, 1990. We need this list in order to provide the notification required by the FTC Order. If you do not provide this information, we are required to provide your name and address to the FTC.

Please stop using the ABS BrakeSafe promotional materials currently in your possession. These materials may contain claims that the FTC has determined to be false or unsubstantiated. You also should avoid making any of the representations as described in this letter. Under the FTC Order, we must stop doing business with you if you continue to use the prohibited materials or make the prohibited representations.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

APPENDIX B

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Customer:

Our records indicate that you previously purchased an ABS BrakeSafe for your vehicle. This letter is to advise you that the Federal Trade Commission ("FTC") recently obtained an order against BST Enterprises, Inc. regarding certain claims made for ABS BrakeSafe. Please read this letter in its entirety.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises, Inc.'s advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

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(c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at the speed of 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

FINAL ORDER

The Administrative Law Judge filed his Initial Decision in this matter on October 16, 1996, and entered a Default Judgment against the respondents. An appropriate order against the respondents to remedy the violations was appended to the Initial Decision and Default Judgment. Service of the Initial Decision and Default Judgment was completed on March 27, 1997. Neither the respondents nor complaint counsel filed an appeal.

The Commission having determined that this matter should not be placed on its docket for review and that the Initial Decision and the order therein shall become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, 16 CFR 3.51(a).

It is ordered, That the Initial Decision and the Order therein shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

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Decision and Order

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, June 3, 1997*

This consent order prohibits each dealer, among other things, from agreeing with any other Detroit area dealer or dealer association to establish, maintain or adhere to any hours of operation, or requesting or encouraging any dealer or dealer association to maintain any hours of operation; prohibits each from exchanging information with any dealer or dealer association concerning hours of operation except in certain circumstances; and limits a minimum weekly hours-of-operation requirement to the time during which the dealers were already in compliance.

Appearances

For the Commission: *Ernest Nagata, Willard Tom and William Baer.*

For the respondents: *Lawrence Raniszeski, Colombo & Colombo, Bloomfield Hills, MI. John Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI. and Kenneth Wilson, Stringari, Fritz, Kreger, Ahearn, Goodnow, Bennett & Hunsinger, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondents identified in Attachment A to this order, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count I of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only, and waivers and other provisions as required by the Commission's Rules; and

* Complaint previously published at 108 FTC 193.

The Secretary of the Commission having thereafter withdrawn Count I of the of the complaint from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent dealers identified in Attachment A are all corporations with their principal places of business located at the addresses shown in Attachment A.

2. Individual respondents identified in Attachment A are officers of various dealers, as shown in Attachment A, and as such they formulate, direct and control the acts and practices of the dealers for which they are officers.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as it relates to Count I of the complaint and of the identified respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. "*Person*" means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. "*Dealer*" means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. "*Dealer association*" means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. "*Detroit area*" means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. "*Hours of operation*" means the times during which a dealer is open for business to sell or lease motor vehicles.

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6. "*Weekday hours*" means the hours of 9:00 a.m. to 6:00 p.m. Monday through Friday.

7. "*Non-weekday hours*" means hours other than 9:00 a.m. to 6:00 p.m. Monday through Friday.

8. "*Respondent*" means any dealership, individual, or association respondent.

9. "*Commission*" means Federal Trade Commission.

I.

It is further ordered, That the order issued in this matter by the Commission on February 22, 1989, as modified by the order issued by the Commission on June 20, 1995, shall be and hereby is incorporated as part of this order except as provided below:

A. Respondents' compliance to date with Part III of said orders shall constitute full compliance with Part III.

B. The period for which compliance reports are required under Part X of the order of February 22, 1989, shall run for five (5) years from the effective date of the order of June 20, 1995. Any reports filed pursuant to said orders to date shall be construed to have been filed in compliance with said orders as modified herein.

C. All other obligations under said orders shall be construed to have commenced on the effective date of the order of June 20, 1995, and shall run for the periods specified in said orders.

ATTACHMENT A

Dealer Respondents

Crestwood Dodge, Inc.
32850 Ford Road
Gardner City, MI 48135

Bob Borst Lincoln-Mercury, Inc.
a/k/a Bob Borst Lincoln-Mercury Sales Inc.
1950 W. Maple Road
Troy, MI 48084

Bob Dusseau, Inc.
a/k/a Bob Dusseau Lincoln-Mercury
31625 Grant River Avenue
Farmington, MI 48024

Individual Respondents

Robert C. Borst
c/o Bob Borst Lincoln-Mercury, Inc.,
1950 W. Maple Road
Troy, MI 48084

Robert Dusseau, a/k/a/ Robert F. Dusseau
c/o Bob Dusseau Lincoln-Mercury
31625 Grant River Avenue
Farmington, MI 48024

Robert Maxey
c/o Bob Maxey Lincoln-Mercury Sales Inc.
16901 Mack Avenue
Detroit, MI 48224

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Bob Maxey Lincoln-Mercury Sales, Inc.
16901 Mack Avenue
Detroit, MI 48224

Crest Lincoln-Mercury Sales, Inc.
36200 Van Dyke Avenue
Sterling Heights, MI 48077

Stewart Chevrolet, Inc.
23755 Allen Road
Woodhaven, MI 48183

Woody Pontiac Sales, Inc.
12140 Joseph Campau
Hamtramck, MI 48212

Jack Demmer Ford, Inc.
a/k/a/ Jack Demmer Ford
37300 Michigan Avenue
Wayne, MI 48184

Al Long Ford, Inc.
13711 E. Eight Mile Road
Warren, MI 48089

Ed Schmid Ford, Inc.
21600 Woodward Avenue
Ferndale, MI 48220

Ray Whitfield Ford
a/k/a/ Ray Whitfield Ford, Inc.
10725 S. Telegraph Road
Taylor, MI 48180

William Ritchie, a/k/a/ William R. Ritchie
c/o Crest Lincoln-Mercury Sales, Inc.
36200 Van Dyke Avenue
Sterling Heights, MI 48077

Gordon L. Stewart, a/k/a/ Gordon Stewart
c/o Stewart Chevrolet, Inc.
23755 Allen Road
Woodhaven, MI 48183

Woodrow W. Woody
c/o Woody Pontiac Sales, Inc.
12140 Joseph Campau
Hamtramck, MI 48212

John E. Demmer, a/k/a/ Jack E. Demmer
c/o Jack Demmer Ford, Inc.
37300 Michigan Avenue
Wayne, MI 48184

Edward F. Schmid, a/k/a/ Edward Schmid
c/o Ed Schmid Ford, Inc.
21600 Woodward Avenue
Ferndale, MI 48220

Raymond J. Whitfield
a/k/a/ Raymond Whitfield
c/o Ray Whitefield Ford
10725 S. Telegraph Road
Taylor, MI 48180

IN THE MATTER OF
MAHLE GMBH, 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-3746. Complaint, June 4, 1997--Decision, June 4, 1997

This consent order requires Mahle, among other things, to divest, within 10 days, Metal Leve's U.S. piston business, which includes plants in Orangeburg and Sumter, South Carolina, and a research and development center in Ann Arbor, Michigan, as well as technology outside the United States which supports the business of manufacturing and selling pistons in the United States.

Appearances

For the Commission: *Howard Morse, Morris Bloom and William Baer.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C. and Jay Herbst, Driggers, Schultz, Herbst & Patterson, Troy, MI.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mahle GmbH, the parent company of Mahle, Inc., has acquired more than 50 percent of the voting securities of Metal Leve, S.A., the parent company of Metal Leve, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, 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. THE RESPONDENTS

Mahle GmbH and Mahle, Inc.

1. Respondent Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46,

D-70376 Stuttgart, Germany. Mahle GmbH has had annual worldwide sales of approximately \$1.7 billion.

2. Respondent Mahle, Inc., a majority-owned subsidiary of Mahle GmbH, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 Mahle Drive, Morristown, Tennessee. Mahle, Inc. has had annual U.S. sales of approximately \$135 million.

3. Mahle GmbH, which operates in the United States through Mahle, Inc., manufactures and sells pistons for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Mahle, Inc. produces pistons in the United States at plants located in Tennessee.

4. At all times relevant herein, Mahle GmbH and Mahle, Inc. (collectively, "Mahle") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

Metal Leve, S.A. and Metal Leve, Inc.

5. Respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business located at Rua Brasilio Luz 535, Sao Paulo SP 04746-901, Brazil. Metal Leve, S.A. has had annual worldwide sales of approximately \$315 million.

6. Respondent Metal Leve, Inc., a wholly-owned subsidiary of Metal Leve, S.A., is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan. Metal Leve, Inc. has had annual U.S. sales of more than \$60 million.

7. Metal Leve, S.A., which operates in the United States through Metal Leve, Inc., manufactures and sells pistons, pins, bearings, bushings, and thrust washers for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Metal Leve, Inc. produces pistons in the United States at two plants in South Carolina, and conducts research and development at a facility in Michigan.

8. At all times relevant herein, Metal Leve, S.A. and Metal Leve, Inc. (collectively, "Metal Leve") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

II. THE ACQUISITION

9. On or about June 26, 1996, Mahle GmbH acquired more than 50 percent of the voting securities of Metal Leve, S.A. (the "Acquisition"), for approximately \$40 million.

III. THE RELEVANT MARKETS

10. Research, development, design, production and sale of articulated pistons constitute one relevant line of commerce within which to analyze the effect of the Acquisition on competition. A piston is an engine component that fits snugly into the hollow of an engine cylinder and moves back and forth under pressure generated by combustion within the cylinder. In a reciprocating engine, pistons are connected to piston rods which turn the crankshaft to generate the power that makes the engine turn. Each engine cylinder contains a separate piston. Articulated pistons are two-piece pistons with a crown made of steel and a skirt made of aluminum, in which the crown and skirt are able to articulate; that is, to move independently of each other. The crown and skirt are joined together by means of a piston pin. Articulated pistons of up to 150 millimeter in diameter are used in engine applications, such as Class 8 diesel truck engines, which require pistons that can withstand high temperatures and pressures to maintain engine performance while meeting increasingly stringent government emissions requirements. There are no economic substitutes for these articulated pistons.

11. Research, development, design, production and sale of large bore two-piece pistons constitute another relevant line of commerce within which to analyze the effect of the Acquisition on competition. Large bore two-piece pistons are pistons with a crown made of steel and a skirt made of aluminum in bore sizes ranging from 150 to 300 millimeters and higher. The crown and skirt of a large bore two-piece piston may be separate pieces joined together by the piston pin, as in

an articulated piston, or may be permanently joined together, as in a composite piston. Large bore two-piece pistons are used in high output diesel and natural gas engines, such as new generation locomotive engines and stationary power generators as well as engines for various marine and industrial applications. There are no economic substitutes for large bore two-piece pistons.

12. The United States is one relevant geographic area within which to analyze the likely effect of the Acquisition on competition in articulated pistons. Several factors limit the competitive significance of foreign-made articulated pistons in the United States. Articulated pistons are designed specifically for the U.S. market to meet technical requirements largely attributable to pollution control regulations. In addition, relatively high manufacturing costs in Europe make articulated pistons manufactured overseas uncompetitive in the United States. Moreover, engine manufacturers' use of just-in-time inventory management practices creates a preference for articulated piston suppliers located in the United States. As a result, articulated pistons consumed in the United States are manufactured in the United States, with the exception of a small quantity of specialized articulated pistons manufactured by Mahle outside the United States.

13. The relevant geographic area within which to analyze the likely effect of the Acquisition on competition in the large bore two-piece pistons may be worldwide. There are significant imports of large bore two-piece pistons into the United States from Europe. Factors that limit the competitive significance of imported articulated pistons in the United States do not have a significant impact on large bore two-piece pistons imports, in part because large bore two-piece pistons are used in engines that are produced in smaller quantities.

IV. CONCENTRATION

14. Prior to the acquisition, Mahle had more than a 50 percent share and Metal Leve had nearly a 45 percent share of United States sales of articulated pistons, producing a combined market share of more than 95 percent. The United States articulated piston market is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The Acquisition increased the HHI by more than 4,500 points to nearly 9,500 points. The only other firm currently selling articulated pistons in the market is a weak competitor that has been losing business to Mahle and Metal Leve.

15. The market for two-piece large bore pistons is also highly concentrated. There are currently only four producers of two-piece large bore pistons in the world. Mahle and one other firm dominate the worldwide large bore two-piece piston market, while Metal Leve has made sales and is aggressively bidding in the market.

V. ENTRY CONDITIONS

16. Entry into the articulated piston or large bore two-piece piston markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the Acquisition on competition, because an entrant would have to develop manufacturing expertise, satisfy time-consuming customer qualification procedures, and acquire manufacturing equipment at a significant sunk cost. Engine manufacturers tend to be risk averse in choosing piston suppliers, because the cost of a piston tends to be small relative to the costs associated with poor piston performance or piston failure.

VI. EFFECT OF THE PROPOSED MERGER ON COMPETITION

17. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States articulated piston market, because, among other things:

- a. It increases concentration substantially in a highly concentrated market;
- b. It eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;
- c. It creates a monopoly or near monopoly;
- d. It eliminates competition between the two closest substitutes among differentiated products in the articulated piston market;
- e. It facilitates the unilateral exercise of market power by the merged firm;
- f. It will likely result in increased prices for articulated pistons; and
- g. It will likely result in reduced innovation as a result of delayed or reduced product development.

18. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States large bore two-piece piston market, because, among other things:

- a. It increases concentration substantially in a highly concentrated market;
- b. It eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;
- c. It eliminates a maverick competitor which has introduced increased competition in the market;
- d. It facilitates coordinated interaction among sellers of large bore two-piece pistons in the United States;
- e. It will likely result in increased prices for large bore two-piece pistons and
- f. It may allow the merged firm to reduce innovation by delaying or reducing product development.

VII. VIOLATIONS CHARGED

19. The Acquisition by Mahle GmbH of more than 50 percent of the voting securities of Metal Leve, S.A., described in paragraph nine, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Mahle GmbH, the parent corporation of Mahle, Inc., of more than 50 percent of the voting securities of Metal Leve, S.A., the parent corporation of Metal Leve, Inc., and having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondents, their attorneys, 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, 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 a comment filed thereafter, and having modified paragraph II.A in one respect, 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 Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46, D-70376 Stuttgart, Germany.

2. Respondent Mahle, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 Mahle Drive, Morristown, Tennessee.

3. Respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business located at Rua Brasilio Luz 535, Sao Paulo, SP 04746-901, Brazil.

4. Respondent Metal Leve, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan.

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

B. "*Respondents*" means Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., their directors, officers, employees, agents

and representatives, predecessors, successors and assigns; their subsidiaries, divisions, and groups and affiliates controlled by Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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

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

E. "*Metal Leve, S.A.*" means Metal Leve, S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Metal Leve, S.A., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

G. "*Articulated piston*" means any two-piece piston consisting of a separate crown and skirt, as well as each individual piece of an articulated piston, including, but not limited to, forgings, castings, and finished pistons.

H. "*Other diesel piston*" means any type of diesel piston, other than an articulated piston, including, but not limited to, forgings, castings and finished pistons.

I. "*Other piston*" means any other diesel piston or other type of piston, other than an articulated piston, including, but not limited to, castings and finished pistons.

J. "*Metal Leve, Inc. Business*" means:

1. All assets, properties, business and goodwill, tangible and intangible, of Metal Leve, Inc., including, but not limited to:

a. The manufacturing facilities located at Orangeburg and Sumter, South Carolina,

b. The research and development facility and corporate offices located at Ann Arbor, Michigan; and

2. All assets, properties, business and goodwill, tangible and intangible, of Metal Leve, S.A. worldwide relating to: (i) the research, development, manufacture, or sale of articulated pistons or other pistons manufactured in the United States, (ii) the research, development, manufacture, or sale of articulated pistons anywhere in the world, and (iii) the research, development, manufacture or sale of other diesel pistons sold in the United States; including, without limitation, the following:

a. All machinery, fixtures, equipment, tools and other tangible personal property, but excluding machinery, fixtures, and equipment located outside the United States related to the manufacture of other diesel pistons sold in the United States;

b. All rights, titles and interests in and to owned or leased real property together with appurtenances, licenses and permits, but excluding real property located outside the United States related to the manufacture of other diesel pistons sold in the United States or to the manufacture of articulated pistons sold in Brazil;

c. All inventory;

d. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;

e. All research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of articulated pistons;

f. All Metal Leve, S.A. research and development projects for Metal Leve, Inc., including, but not limited to, all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses

thereto, relating to all such research and development projects, including, but not limited to, the following: (i) lightweight articulated ppt, (ii) oxidation resistant steels, (iii) iron aluminide, (iv) steel material evolution, (v) thermal barrier steel crown coatings, open versus closed articulated gallery, (vi) analytical software development, (vii) rapid solidification aluminum alloy, and (viii) bowl rim life prediction.

g. Rights that are equal to the rights held by Metal Leve, S.A. to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of other diesel pistons sold in the United States or other pistons manufactured in the United States;

h. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

i. All rights under warranties and guarantees, express or implied;

j. All books, records, and files; and

k. All items of prepaid expense.

Provided, that this definition of the Metal Leve, Inc. Business does not include research and development conducted after the divestiture required by this order.

K. "*Metal Leve, S.A. Piston Business*" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of articulated pistons and other pistons by Metal Leve, S.A. or Metal Leve, Inc. anywhere in the world, including, without limitation, the following:

1. The Metal Leve, Inc. Business, plus all Metal Leve S.A. assets anywhere in the world relating to research, development, manufacture or sale of articulated pistons or other pistons, including, but not limited to:

- a. The manufacturing facilities located at Santo Amaro and Limeira in Brazil,
 - b. The research and development facility located at Santo Amaro in Brazil;
2. All trademarks;
 3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
 4. Inventory and storage capacity;
 5. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;
 6. Exclusive rights to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas relating to the manufacture of articulated pistons or other pistons by Metal Leve;
 7. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;
 8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
 9. All rights under warranties and guarantees, express or implied;
 10. All books, records, and files; and
 11. All items of prepaid expense.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, no later than ten (10) days after the date on which this order becomes final, the Metal Leve, Inc. Business as a fully viable and competitive ongoing business. Provided, however, that Metal Leve S.A. may retain a non-exclusive licence from the acquirer of the Metal Leve, Inc. Business to intellectual property for the sole purpose of producing for Volvo Brazil and Volvo Sweden service part number

P-2067 in Brazil, and may retain the right to supply Volvo Brazil and Volvo Sweden service part number P-2067.

B. Respondents shall divest the Metal Leve, Inc. Business only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Metal Leve, Inc. Business is to ensure the continuation of the Metal Leve, Inc. Business as an ongoing, viable, and competitive operation engaged in the same business of researching, developing, manufacturing, and selling articulated pistons and other pistons, in which the Metal Leve, Inc. Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. A condition of approval by the Commission of the divestiture shall be the submission by the acquirer to the Commission of an acceptable five-year business plan for the Metal Leve, Inc. Business demonstrating that the acquirer will establish the Metal Leve, Inc. Business as a viable and competitive business free of all continuing relationships with respondents in the research, development, manufacture or sale of articulated pistons and other pistons, except as set forth in paragraph II.D, below.

D. On reasonable notice to Metal Leve, S.A. from an approved acquirer, Metal Leve, S.A. shall provide technical assistance and know-how to the acquirer with respect to the Metal Leve, Inc. Business. Such technical assistance shall include, without limitation, consultation with knowledgeable employees of Metal Leve, S.A. and training at the manufacturing facilities of Metal Leve, S.A. Metal Leve, S.A. may charge the reasonable costs incurred in providing such technical assistance, including reimbursement (commensurate with the salary and benefits of Metal Leve, S.A. personnel involved) for the time plus expenses of Metal Leve, S.A. personnel providing the technical assistance. Metal Leve, S.A. shall continue to provide such technical assistance until the acquirer of the Metal Leve, Inc. Business is satisfied that it is capable of producing, and of developing for production, commercially saleable articulated pistons and other pistons utilizing the assets of the Metal Leve, Inc. Business; provided, however, Metal Leve, S.A. shall not be required to continue providing such technical assistance and training for more than two (2) years after the date on which the divestiture required by this order is made.

E. Pending divestiture of the Metal Leve, Inc. Business, respondents shall take such actions as are reasonably necessary to maintain the viability, competitiveness, and marketability of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business.

F. Respondents shall comply with all terms of the Agreement to Hold Separate signed by the respondents and accepted by the Commission on August 30, 1996, which is attached to this order and made a part hereof, and which shall continue in effect until such time as respondents have accomplished the divestiture required by this order.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Metal Leve, Inc. Business within ten (10) days of the date this order becomes final, then the Commission may appoint a trustee to divest the Metal Leve, Inc. Business. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business and to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by any of the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondents shall consent to the

following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Metal Leve, Inc. Business and shall have the power to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to accomplish the divestiture required by this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business, to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business, and to divest such additional ancillary assets of Metal Leve S.A. and effect such additional arrangements, in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this order.

4. The trustee shall have twelve (12) months to accomplish the divestiture required by this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional terms of six (6) months each.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business, or to any other

relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the respondent shall extend the time for divestiture under this paragraph III in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission (and, in the case of a court-appointed trustee, by the court), of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's accomplishing the divestiture required by this order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any

claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business.

12. The trustee shall report in writing to respondents and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in the sale of articulated pistons or other pistons in the United States within the year preceding such acquisition; provided, however, an acquisition of securities will be exempt from the requirements of this paragraph if, after such acquisition of securities, respondents will hold cumulatively no more than two (2) percent of the outstanding shares of any class of securities of such person; or

B. Enter into any agreement or other arrangement to transfer direct or indirect ownership, management, or control of any assets used for or previously used for (and still suitable for use for) the manufacture or sale of articulated pistons or other pistons in the United States; provided, however, prior notice shall not be necessary for: the acquisition of assets in the ordinary course of business or the acquisition of assets valued at less than \$100,000 from the same person within any twelve (12) month period; or for transfers to or from manufacturers of diesel engines.

The prior notifications required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that: no filing fee will be required for any such notification; notification shall be filed with the Secretary of the Commission and a copy shall be delivered to the Bureau of Competition; notification need not be made to the United States Department of Justice; and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to the consummation of any such transaction (hereinafter referred to as the "initial phase of the waiting period"). If, within the initial phase of the waiting period, the Commission or its staff makes a written request for additional information and documentary material, respondents shall not consummate the transaction until at least twenty (20) days after complying with such request for additional information and documentary material. Early termination of the waiting periods in this paragraph may, where appropriate, be granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, and prior notification shall not be required by this paragraph for acquisitions by respondents Mahle GmbH or Mahle, Inc. of Metal Leve, S.A. stock or assets.

V.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which respondents intend to comply, are complying, and have complied with paragraphs II and III 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 paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted

respondents or that have been contacted by respondents. 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 divestiture.

VI.

It is further ordered, That one (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with paragraph IV of this order.

VII.

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, the creation or dissolution of subsidiaries, or any other change in Mahle GmbH, Mahle, Inc., Metal Leve, S.A., or Metal Leve, Inc. that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and respondents shall permit any duly authorized representatives 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 (5) days' notice to respondents, and without restraint or interference, to interview officers, employees, or agents of respondents.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and among Mahle GmbH, a German corporation and an entity included within its "ultimate parent entity" as that term is defined in 16 CFR 801.1(a)(3), MABEG, e.V., with its principal office and place of business at Pragstrasse 26-46, D-70376 Stuttgart, Germany; Mahle Inc., a corporation organized and existing under the laws of Delaware and a wholly-owned subsidiary of Mahle GmbH, with its principal office and place of business at 1 Mahle Drive, Morristown, Tennessee, (collectively referred to as "Mahle"); Metal Leve, S.A., a Brazilian corporation with its principal office and place of business at Rua Brasilo Luz 535, Sao Paulo, SP 04746-901, Brazil; Metal Leve, Inc., a corporation and an indirect wholly-owned subsidiary of Metal Leve S.A. organized and existing under the laws of Michigan, with its principal office and place of business at 560 Avis Drive, Ann Arbor, Michigan (collectively referred to as "Metal Leve"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on June 11, 1996, Mahle entered into a Purchase Agreement to acquire 50.1% of the voting shares of Metal Leve S.A. (hereinafter the "Acquisition"); and

Whereas, this Acquisition was subject to the prior notification requirements of the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a ("HSR Act"); and

Whereas, on or before June 26, 1996, Mahle consummated the Acquisition without MABEG, e.V. or Mahle filing notification with the Commission or the Department of Justice pursuant to the HSR Act, and without observing the waiting periods required by that Act; and

Whereas, on July 22, 1996, Mahle, on behalf of MABEG, e.V. and Metal Leve submitted filings pursuant to the HSR Act; and

Whereas, Mahle and Metal Leve produce pistons for sale in the United States; and

Whereas, the Commission is now investigating the Acquisition to determine if it violates Section 7 of the Clayton Act, 15 U.S.C. 18;

Section 5 of the FTC Act, 15 U.S.C. 45; or any other statute enforced by the Commission; and

Whereas, the Commission is concerned that if an understanding is not reached, further changes in the operation and organization of Metal Leve by Mahle or its nominees during the period prior to the final resolution of the Commission's investigation of the Acquisition, may preclude an effective remedy; and

Whereas, the Commission is concerned that it is necessary to preserve the Commission's ability to seek an effective remedy and the Commission's right to seek to restore Metal Leve as a viable competitor; and

Whereas, the purpose of this Agreement is to:

(i) Preserve Mahle's and Metal Leve's piston businesses and other businesses as viable independent businesses pending the Commission's investigation, and

(ii) Prevent any anticompetitive effects resulting from the Acquisition; and

Whereas, Mahle and Metal Leve entering into this Agreement shall in no way be construed as an admission by Mahle or Metal Leve that the Acquisition is in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act; and

Whereas, Mahle and Metal Leve understand that this Agreement shall in no way limit civil penalties of up to \$10,000 per day under Section 7A(g)(1) of the Clayton Act for failing to file notifications and for continuing to hold stock in violation of the HSR Act; and

Whereas, Mahle and Metal Leve understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement; and

Whereas, the Commission has not yet determined whether the Acquisition will be challenged under any statute it enforces.

Now, therefore, Mahle and Metal Leve agree, in consideration of the Commission's agreement that the Commission will not seek further relief from Mahle or Metal Leve under Section 7A(g)(2) of the Clayton Act, 15 U.S.C. 18(A)(g)(2), except that the Commission may exercise any and all rights to enforce this Agreement, and, in the event that the Parties do not comply with the terms of this Agreement, to seek further relief, as follows:

1. Mahle and Metal Leve agree to execute and be bound by this Agreement.

2. Mahle and Metal Leve agree that from the date they sign this Agreement until the earliest of the dates listed in subparagraphs 2.a - 2.b, they will comply with the provisions of paragraph 3 of this Agreement:

a. The expiration of all waiting periods under the HSR Act with respect to the Acquisition;

b. Such time as specified in any Consent Agreement accepted by the Commission in resolution of antitrust concerns raised by the Acquisition.

3. Mahle will hold Metal Leve separate and apart on the following terms and conditions:

a. Metal Leve shall be held separate and apart and shall be operated independently of Mahle (meaning here and hereinafter, Mahle excluding Metal Leve) except to the extent that Mahle must exercise direction and control over Metal Leve to assure compliance with this Agreement;

b. Mahle shall place its Metal Leve shares in trust pending the outcome of the Commission's investigation, and shall not vote those shares or in any other manner exercise control over Metal Leve;

c. Mahle shall not exercise direction or control over, or influence directly or indirectly, Metal Leve or any of its operations or businesses, and Metal Leve shall not receive direction from Mahle;

d. Mahle and Metal Leve shall maintain the viability and marketability of Metal Leve as a separate entity and shall not reorganize its operations in any way that would reduce the value or competitiveness of Metal Leve or Metal Leve Inc.'s business;

e. Mahle shall not permit any director, officer, employee, consultant or agent of Mahle, or any person affiliated with or associated with Mahle, to also be a director, officer, or employee of Metal Leve;

f. No Mahle employees, consultants, or agents shall consult with, advise on, or participate in any manner in the planning or conduct of Metal Leve operations;

g. Except as required by law, and except to the extent necessary information is exchanged among outside counsel in defending investigations or litigation, Metal Leve shall not give and Mahle shall

not receive or have access to, or use of, any of Metal Leve's confidential information and Mahle shall not give and Metal Leve shall not receive or have access to, or use of, any of Mahle's confidential information, except as such information would be available to Mahle or Metal Leve in the normal course of business if the Acquisition had not taken place ("confidential information," as used herein, means competitively sensitive or proprietary information and includes but is not limited to financial information, customer lists, price lists, prices, engineering, manufacturing, and marketing methods, patents, technologies, processes, research and development or other trade secrets);

h. Mahle shall not change the composition of the Board of Directors or any officers of Metal Leve; and

i. Metal Leve shall not pay to Mahle, nor shall Mahle accept from Metal Leve any dividends.

4. Should the Commission or the United States institute any action under this Agreement, the FTC Act, or the Clayton Act, arising from this Acquisition, Mahle and Metal Leve waive any objection based on lack of personal jurisdiction. Mahle and Metal Leve appoint the attorneys identified below to accept service of process in any such action.

5. Should the Commission seek in a proceeding to compel Mahle to divest itself of Metal Leve or to compel Mahle to divest any assets or businesses of Metal Leve, or seek any other injunctive or equitable relief, neither Mahle nor Metal Leve shall raise any objection based upon this Agreement; and should the United States seek civil penalties under the HSR Act, neither Mahle nor Metal Leve shall raise any objection based on this Agreement. Mahle and Metal Leve also waive the right to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Mahle and Metal Leve made to their principal offices, Mahle and Metal Leve shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Mahle or Metal Leve 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 Mahle or Metal Leve relating to compliance with this Agreement;

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Decision and Order

b. Upon five (5) days' notice to Mahle and Metal Leve, and without restraint or interference from them, to interview their officers or employees, who may have counsel present, regarding any such matters.

7. For the purpose of determining or securing compliance with this Agreement:

a. Metal Leve shall provide the Commission with reports every 30 days following the signing of this Agreement by Metal Leve which describe each change in organization, production, investment, sales, or research and development conducted by Metal Leve or its U.S. subsidiary;

i. Since June 11, 1996 and

ii. Since the date of the last report filed under this subparagraph;

and

b. Mahle shall provide the Commission with reports every 30 days following the signing of this Agreement which describe its compliance with this Agreement.

8. The Parties agree to publicize this Agreement by taking the following actions:

a. The Commission making public this Agreement after acceptance by the Commission;

b. Mahle and Metal Leve promptly providing copies of this Agreement to all of Mahle and Metal Leve's officers and directors; and

c. Mahle and Metal Leve promptly providing notice of this Agreement to all Mahle and Metal Leve employees in the United States and to all U.S. pistons customers.

9. This Agreement shall be effective and binding immediately upon signing by Mahle and Metal Leve, but is subject to acceptance of the Commission.

Complaint

123 F.T.C.

IN THE MATTER OF

AMERIFIT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3747. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the Connecticut-based marketer of diet supplements to pay \$100,000 for disgorgement, and prohibits the use of the name "Fat Burners" unless it is part of the trade name, "Fat Burners Diet, Exercise and Supplement System," and that the material containing the name includes the specified disclosure statements clearly and prominently. The consent order also requires the respondent to possess scientific substantiation for any claim that a food, drug or dietary supplement will cause weight loss or reduce body fat.

Appearances

For the Commission: *Jeffrey Feinstein.*

For the respondent: *Nancy Buc and Phillip Katz, Buc & Bearsdley, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that AmeriFIT, 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 AmeriFIT, Inc., is a Delaware corporation with its principal office or place of business at 166 Highland Park Drive, Bloomfield, Connecticut.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed products to the public, including "Fat Burners," "Fast Burners," "Improved Formula Fat Burners," and "Extra Strength Fat Burners" (collectively, "the Fat Burners products"). 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 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 and promotional materials for the products referred to

in paragraph two, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements:

A. "WHEN IT COMES TO WEIGHT LOSS THERE'S NOTHING LIKE IT! FAT BURNERS™ is a 100% natural lipotropic formula designed to help people from every walk of life achieve the physique they desire. Fat that once created personal unhappiness and posed a hazard to one's health can now be utilized to one's advantage. FAT BURNERS™ may help active individuals lose weight and increase vascularity by increasing the body's ability to burn fat for energy. . . . 100% NATURAL WEIGHT LOSS SYSTEM." (Exhibit A).

B. "LOSE WEIGHT NOW! . . . introducing FAT BURNERS, America's choice for nutritional weight loss support. If your goal is a thinner, more attractive body, then let FAT BURNERS lead the way." (Exhibit B).

5. Through the means described in paragraph four, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that the Fat Burners products cause weight loss or reduce body fat.

6. Through the means described in paragraph four, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made. 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 and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

123 F.T.C.

EXHIBIT A



EXHIBIT A

EXHIBIT A

EXHIBIT B

LOSE WEIGHT NOW!
WEIGHT LOSS MANUAL LW-10001

LOSE WEIGHT NOW!

FAT FAT FAT
100% NATURAL

BURNERS
EASY TO SWALLOW

BURNERS
100% NATURAL

LOSE WEIGHT NOW!

LOSE WEIGHT NOW!

**WHEN IT COMES TO WEIGHT LOSS
THERE'S NOTHING LIKE IT!**

BURNERS
100% NATURAL
CAFFEINE FREE WEIGHT LOSS SYSTEM
EASY TO SWALLOW 50 CAPLETS

BURNERS
100% NATURAL
CAFFEINE FREE WEIGHT LOSS SYSTEM
EASY TO SWALLOW 50 CAPLETS

AMERIFIT

EXHIBIT B

DECISION AND ORDER

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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of the 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 determined that it had reason to believe that respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 AmeriFIT, Inc., is a Delaware corporation with its principal office or place of business at 166 Highland Park Drive, Bloomfield, Connecticut.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of 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 by others in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean AmeriFIT, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

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

4. "*The Fat Burners products*" shall mean products using the terms "fat burners" and "fast burners" in their trade names, including but not limited to, Fat Burners, Fast Burners, Improved Formula Fat Burners, and Extra Strength Fat Burners.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Fat Burners products or any other food, drug, or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That such product can or will cause weight loss; or
- B. That such product can or will reduce body fat,

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

II.

It is further ordered, That respondent, directly or though any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Fat Burners or any substantially similar product in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name "Fat Burners" or any other name that communicates the same or similar meaning for such product; provided, however, that nothing in this order shall prevent the use of the name "Fat Burners Diet, Exercise, and Supplement System" if the material containing the name clearly and prominently contains the following disclosure:

"THE DIETARY SUPPLEMENT IN THIS SYSTEM IS FOR NUTRITIONAL USE ONLY AND DOES NOT CONTRIBUTE TO WEIGHT LOSS OR LOSS OF BODY FAT."

For purposes of this order, "clearly and prominently" shall mean as follows:

A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. 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 such a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

B. In a video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. 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. Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or

address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement; and

E. On a product label, the disclosure shall be on the front panel of the label in immediate proximity to the largest presentation of the name, in a prominent type thickness and in a type size no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

III.

It is further ordered, That respondent shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., the sum of one hundred thousand dollars (\$100,000). Respondent shall make this payment on or before the thirtieth day following the date of issuance of this order. In the event of any default of any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment.

IV.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food

and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

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

VI.

It is further ordered, That respondent 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, labeling, 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.

VII.

It is further ordered, That, for a period of five years commencing with the date of issuance of this order, respondent 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 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.

VIII.

It is further ordered, That respondent 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.

IX.

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.

X.

This order will terminate on June 16, 2017, or twenty 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

2943174 CANADA INC., ET AL.

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

Docket C-3748. Complaint, June 16, 1997--Decision, June 16, 1997

This consent order requires, among other things, the Canadian company and its officer to have scientific substantiation for claims that any product or program controls appetite, increases human metabolism, reduces body fat, causes weight loss, causes long-term or permanent weight loss, reduces cholesterol, or provides any weight-related benefit. The consent order also requires scientific substantiation for claims about the benefits or efficacy of any drug or device. Finally, the consent order prohibits misrepresentations about the existence or results of any test or study.

Appearances

For the Commission: *Ronald Waldman and Donald G. D'Amato.*

For the respondents: *Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that 2943174 Canada Inc., a corporation, and Patrice Runner, individually and as an officer 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:

1. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

2. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of 2943174 Canada Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Svelt-PATCH," a skin patch that purports to melt away body fat. The Svelt-PATCH is a "drug" or "device" within the meaning of Sections 12 and 15 of the

Federal Trade Commission Act. Advertisements for Svelt-PATCH have appeared in numerous publications, including but not limited to: TV Guide, Woman's Day, Cosmopolitan, Red Book Magazine, Woman's World, American Woman, McCalls, Complete Woman, Family Magazine, Ladies Home Journal, Women's Own, The National Enquirer, The Star, USAir, World Traveler, Luxury Lifestyle, Farm Magazine, Hemisphere, Soap Opera Digest, Dell Puzzle, Sterling Woman's Group, Low Fat Meals, Black Group, Grit, Destination, Hairdo Ideas, Harris Hairdo, Lose Weight Stay Fit, All Around Kentucky, Mother Earth News, True Story Plus, The Globe, The Examiner, The Sun, San Antonio, The Denver Post, The New York Daily News, The Weekly World News, The LA Daily News, The Chicago Sun Times, The Boston Globe, Newsday, The Topeka News, The New York Post, and have been distributed as free standing inserts through Valassis FSI.

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

5. Respondents have disseminated or have caused to be disseminated advertisements for Svelt-PATCH, including but not necessarily limited to the attached Exhibit A (a newspaper advertisement). These advertisements contain the following statements:

"LOSING WEIGHT:

'Amazing Skin Patch Melts Away Body Fat'

Results of a study conducted for the United Research Center by G. Fleming

* Clinically tested in the United States

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals.

... [H]ere are the results:

* The measured effectiveness of the weight-loss patch was 100%: absolutely all participants lost weight.

* Fifty-six percent of the participants lost at least 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).

* Average weight losses [sic] in women was 4.9 pounds the first week, 12.8 pounds the first month, and 21.9 pounds in 2 months.

* Average weight loss in men was 4.7 pounds the first week, 15.7 pounds the first month, and 25.1 pounds in 2 months.

.....

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Complaint

Svelt PATCHES contain concentrated fucus. In contrast with most weight-loss products--which only work for a few hours following their consumption--SveltPATCH fucus is absorbed by your body, through the skin, *the entire* day and while you sleep--up to 24 hours per day.

How fucus helps your body

- Controls your appetite.
- Stimulates your metabolism
- Maintains weight loss . . .
- Reduces cholesterol

(Exhibit A)

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

- A. Svelt-PATCH controls appetite.
- B. Svelt-PATCH significantly increases human metabolism.
- C. Svelt-PATCH significantly reduces body fat.
- D. Svelt-PATCH causes significant weight loss.
- E. Svelt-PATCH causes long-term or permanent weight loss.
- F. Svelt-PATCH lowers serum cholesterol levels.

7. Through the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made.

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

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that clinical evidence prove that Svelt-PATCH causes significant weight loss.

10. In truth and in fact, clinical evidence does not prove that Svelt-PATCH causes significant weight loss. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. 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

AMAZING SKIN P... MELTS AWAY BODY

Results of a study conducted for the United Research Center by G. P. ...

- Clinically tested in the United States
- Recommended by doctors and pharmacists
- Hundreds of thousands of boxes sold in a few months in European pharmacies (simply by word-of-mouth)

Is this once-a-day **Swed PATICH** really revolutionary? And does it really give the promised results? Following a survey, the United Research Center is so convinced of the efficiency of this new weight-loss plan that now, for the first time, it is making an at-home, risk-free trial offer of the famous **Swed PATICH Weight-Loss Plan** to anyone willing to lose weight and stay slim — with no obligation to buy. Read how you can take advantage of this special offer.



These **Swed PATICH Weight-Loss Plan** brochures available in the United States without prescriptions. Before you will discover:

- How the new **Swed PATICH Weight-Loss Plan** is also enjoying phenomenal success in Europe. Within the next few years, this plan is likely to take the lead over all other weight-loss programs.
- Why it guarantees such long-lasting results.
- How, for the first time in the United States, you can receive your genuine **Swed PATICH Weight-Loss Plan**, with the famous **Swed PATICH Skin Cream** in European pharmacies, for a 30-day "at-home" risk-free trial offer — with no obligation to buy.

After having surpassed the achievement of all methods for quick weight loss, **Swed PATICH** has created a world-wide revolution.

How the new **Swed PATICH Weight-Loss Plan** is also enjoying phenomenal success in Europe. Within the next few years, this plan is likely to take the lead over all other weight-loss programs.

Why it guarantees such long-lasting results.

How, for the first time in the United States, you can receive your genuine **Swed PATICH Weight-Loss Plan**, with the famous **Swed PATICH Skin Cream** in European pharmacies, for a 30-day "at-home" risk-free trial offer — with no obligation to buy.

How many pounds do you want to lose? 15 pounds, 20 pounds, 25 pounds? How many weeks will it take? 2 weeks, 3 weeks, 4 weeks? The new **Swed PATICH Weight-Loss Plan** can only help you lose weight. Doctor **Marvin Kaplan**, advanced weight-loss specialist, has provided the first word of this plan — with an obligation to buy. That way, you can see the spectacular results of the **Swed PATICH Weight-Loss Plan** for yourself. There is no other offer like this.

The weight-loss plan of the 21st century is now available. Yes, the **Swed PATICH Weight-Loss Plan** can finally help you lose weight. **Swed PATICH** is the only weight-loss plan that has been clinically tested in the USA and has been recommended by the FDA. Each box includes a 30-day "at-home" risk-free trial offer. All purchases include a free trial offer. No other weight-loss plans are like this.

From a year of formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

From 1 year of formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

What is focus?

Focus is your formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

How focus?

How focus is your formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

How focus?

How focus is your formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

How focus?

How focus is your formal experiments, very high levels of results were obtained. The **Swed PATICH** plan was the first to show that it is able to reduce fat and to improve the "metabolism" of fat. From this study, the following results were obtained:

Exhibit A

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 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.a. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

1.b. Respondent Patrice Runner 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. His principal office or place of business is the same as that of 2943174 Canada Inc.

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 2943174 Canada Inc., a corporation, also doing business as UNITED RESEARCH CENTER, INC., its successors and assigns and its officers; Patrice Runner, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*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 labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that such product:

- A. Controls appetite;
- B. Increases human metabolism;
- C. Reduces body fat;
- D. Causes weight loss;
- E. Causes long-term or permanent weight loss;
- F. Reduces cholesterol levels; or
- G. Provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit,

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, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Svelt-PATCH, or any other "drug" or "device" as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, or efficacy of such product, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or device, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IV.

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

V.

It is further ordered, That respondents shall pay to the Commission as consumer redress the sum of three hundred and seventy-five thousand dollars (\$375,000) no later than January 15, 1997. Such payment shall be deposited into an escrow account, to be

established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the direction of the Commission, be used by the Commission to provide direct redress to purchasers of Svelt-PATCH in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer the funds from the escrow account to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

Respondents shall assist the Commission, and its agents, in locating and producing all records necessary to conduct any redress made under this paragraph, including, but not limited to, records identifying the names, addresses, and telephone numbers of consumers who paid for goods since January 1, 1994, and the amount the consumer paid including shipping and handling.

VI.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner 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;

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; and

D. All records needed to effectuate any redress made pursuant to paragraph V herein.

VII.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner, 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.

VIII.

It is further ordered, That respondent 2943174 Canada 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.

IX.

It is further ordered, That respondent Patrice Runner, 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 relating to the sale of any dietary supplement, drug, or device, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, for which any health, weight loss, weight maintenance, or cholesterol reduction claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and 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.

X.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on June 16, 2017, or twenty 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

WILLIAM E. SHELL, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3749. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the former officer of Interactive Medical Technologies, which market cellulose-bile products, from assisting entities that he knows or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, requires the monitoring of the business practices of certain parties to whom assistance is provided, and requires Shell to pay \$20,000 in redress over a period of one year; to post a \$1 million performance bond before he markets Lipitrol or any similar product, or holds any ownership interest or official position in any business that markets Lipitrol or any similar product; and a \$250,000 bond before he markets any weight loss, fat reduction or cholesterol reduction product or program or holds an ownership interest or official position in a business that markets any weight loss or fat or cholesterol reduction product or program.

*Appearances*For the Commission: *Nadine Samter* and *Patricia Hensley*.For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Interactive Medical Technologies, Ltd., and Effective Health, Inc., corporations, and William Pelzer, Jr., individually and as a former officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc., and William E. Shell, M.D., individually and as a former officer of Interactive Medical Technologies, Ltd. ("respondents"), have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Interactive Medical Technologies, Ltd. ("IMT"), is a Delaware corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California.

2. Respondent Effective Health, Inc. ("EHI"), is a California corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California. EHI is a wholly-owned subsidiary of IMT.

3. Respondent William Pelzer, Jr. ("Pelzer"), was chief executive officer and president of IMT and EHI from February 1993 to April 1995. Individually or in concert with others, he formulated, directed, controlled or participated in the acts and practices of IMT and EHI, including the acts and practices alleged in this complaint. His principal office or place of business is P.O. Box 269006, San Diego, California.

4. Respondent William E. Shell, M.D. ("Shell") was chairman of the board of IMT from January 1990 through February 1996, and served as that company's chief financial officer from May 1993 through June 1994. Individually or in concert with others, he formulated, directed, controlled or participated in the acts and practices of IMT and EHI, including the acts and practices alleged in this complaint. His principal office or place of business is 2934 ½ Beverly Glen Circle, Suite 209, Los Angeles, California.

5. Respondents IMT, EHI and Shell have advertised, labeled, offered for sale, sold and distributed products to the public, including Lipitrol, an over-the-counter fat reduction and weight-loss tablet. Lipitrol is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Respondents have advertised, distributed and sold Lipitrol, a combination of fiber and ox bile extract, to the public through direct mail.

6. Respondents also have assisted others who have advertised, labeled, offered for sale, sold and distributed products to the public, including SeQuester, an over-the-counter fat reduction and weight-loss tablet. SeQuester is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

7. 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.

Lipitrol Fat Reduction and Weight-Loss Tablets

8. Respondents IMT, EHI and Shell have disseminated or have caused to be disseminated advertisements for Lipitrol, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements:

A. INTRODUCING LIPITROL a patented dietary supplement that aids in your FIGHT against FAT by assisting in weight and cholesterol reduction.
NO ANCIENT FORMULA NO MAGIC NO MECHANICAL GADGETS NO SHOTS NO DRUGS
NO WILD PROMISES NO PATCHES NO SPECIAL FOOD TO PURCHASE NO SECRET

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Complaint

INGREDIENTS NO WRAPS NO SPECIAL TESTING MATERIALS O POWDERS O SURGERY
NO VERY LOW CALORIE DIETS NO GIMMICKS NO CURE-ALLS NO MOOD ELEVATORS
NO SUPER-SPEEDY WEIGHT LOSS NO HYPE DOESN'T EVEN DISSOLVE CELLULITE BUT
IT DOES WORK WHICH MAY SEEM LIKE A MIRACLE TO SOME PEOPLE

Effective Health knows of no other diet or weight loss program that is backed
by scientific data and a recognized patent for "Dietary Fat Reduction."

Lipitrol contains natural ingredients consisting of Activated Fiber Complex
(AFC). AFC forms an indigestible cellulose mesh containing molecules of bile.
Bile is the part of the digestive system which enables the body to use and/or store
fat. Fat droplets in stomach and intestines are naturally attracted to the AFC and
when they adhere to the enmeshed bile molecules, they can then be carried through
the intestinal tract and excreted rather than being absorbed for use or storage (sic).
If stools are lighter in color, or yellowish, and if they frequently tend to float
instead of sink in water, then the bile-bonded fat is now being excreted rather than
absorbed. The only adverse effect from using LIPITROL is occasional diarrhea
related to the excessive fat in the stools.

A major benefit of LIPITROL is that it imparts a feeling of satiety of fullness to
the user (sic). A second, highly significant benefit is the fact that LIPITROL has been
proven to lower blood cholesterol levels. Cholesterol is lowered as a result of the
weight loss.

.....
Effective Health believes LIPITROL meets an urgent need in society, and does
so in a healthy and genuine manner. LIPITROL is not an overnight solution to excess
weight, but it offers sincere and dedicated users an option whereby they can lose
weight and maintain the loss without doing violence to their lifestyles or drugging
their systems.

You have nothing to LOSE but FAT itself!

(Exhibit A -- direct mail solicitation)

B. NOW THERE'S AN EFFECTIVE WAY TO HELP REDUCE FAT -- NOW THERE'S
LIPITROL! -- DIETARY SUPPLEMENT

LIPITROL IS AN EFFECTIVE WEIGHT
CONTROL PRODUCT

LIPITROL can help you control
your weight by reducing FAT intake.
No kidding! LIPITROL actually helps
decrease the amount of FAT absorbed
by your body. . . .

IT HELPS FAT PASS THROUGH THE
BODY

LIPITROL'S fiber formula forms an
indigestible cellulose mesh
containing molecules of bile. Bile is
part of the digestive system which
enables the body to use and/or store
FAT. FAT droplets in the stomach and
intestines are naturally attracted to
the "Fiber Complex." When the FAT
adheres to the enmeshed bile

molecules, the FAT can then be
passed through the intestinal tract
and is excreted rather than absorbed
- Naturally and Comfortably. NO
DRUGS, NO CAFFEINE, NO DIURETICS -
EVER!

.....

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CONTROL FAT WITH LIPITROL:

Keeping FAT under control is important to good health.

FAT makes you FAT. There are 9 calories in 1 gram of FAT - plus your body stores FAT directly. Get FAT out of your diet. FAT laden diets may contribute to a variety of health problems including high blood pressure, diabetes, breast cancer, and heart disease.

Our clinical studies have shown LIPITROL to absorb approximately 5.9 grams of FAT per tablet from the foods you eat. Take hold of the FAT before the FAT takes hold of you. Use LIPITROL - Dietary Supplement DAILY!

....

A NATURAL FOOD PRODUCT

....

Remember, LIPITROL is not an overnight solution to excess weight, but offers you, the sincere and dedicated individual the option to reduce FAT absorption, lose weight, and maintain that loss, without doing harm to your body.

MORE ABOUT LIPITROL:

LIPITROL has been studied for over 7 years. One of the recent 4 week studies has indicated that diet and exercise will result in an average weight loss of about 2.1 lbs per month. With sensible eating, exercise and LIPITROL the average weight loss was 6.2 lbs per month -- with little or no FAT retention.

THE REAL ENEMY

Remember while excess "weight" is certainly a big concern, your real enemy is FAT. LIPITROL Fights FAT, and losing FAT takes time. Use LIPITROL for 60 days or more to see measurable results. LIPITROL helps remove a large portion of the FAT from the food you eat before it ends up on your body, or clogging your arteries.

You Have Nothing to LOSE, But Fat Itself!

(Exhibit B -- direct mail solicitation)

C. Effective Health Inc. is pleased to announce the development of LIPITROL through fat sequestrant technology. Our specially formulated product, marketed as a dietary food supplement, assists in weight and cholesterol reduction.

....

When taken as directed, our tablet attracts fat from the food you eat and helps eliminate it from your body. Cholesterol reduction occurs subsequent to weight loss. Overdoses result in nothing more serious than self/limiting diarrhea (sic).

....

LIPITROL has undergone independent open label trials. A technical brochure that substantiates the efficacy of LIPITROL is available upon request.

(Exhibit C -- direct mail solicitation)

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D.

Q: Should I Increase My Dosage?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and Fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets prior to every meal. Some people will even use 3 LIPITROL or more prior to their Fattiest meal. If diarrhea occurs, this is a form of controllable diarrhea and not the same as diarrhea caused by food poisoning. It does not require medication or any treatment. It just means that there is too much FAT in your stool to allow a normal bowel movement. This actually is a condition we regard as Desirable as it means the FAT is leaving your body. Whether the normal dosage or the Maxi FAT strategy described below is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: How Can I Get Maximum FAT Removal?

A: Each LIPITROL tablet has the capability to remove approximately 6 grams of FAT (the actual figure is 5.9 grams) from the food you eat. By determining as accurately as

(Exhibit D -- product package insert)

E.

Each LIPITROL tablet has been shown to absorb approximately 5.9 grams of FAT, from the foods you eat.

(Exhibit E -- product package label)

9. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that:

A. Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

possible, the number of grams of FAT you are consuming in your next meal, you can use that figure, divided by 6, and take the appropriate number of tablets to absorb that FAT -- this is what we call the Maxi-FAT strategy.

.

Q: When Should I Begin To See Weight Loss and/or Size Loss?

A: One of our four week studies indicates that diet and exercise alone will result in an average weight loss of about 2.1 pounds per month. With diet and exercise plus LIPITROL the average weight loss in our study was 6.2 pounds per month.

.

Q: NOTE: Please do not view your LIPITROL as an antidote for poor nutritional habits. Don't think that it is now o.k. to over indulge yourself and eat all the FAT-soaked food you want. NOT SO. You must realize that while some foods may be 40% or 50% FAT, the remaining 50% or 60% is not and still contains calories that won't be dealt with by taking LIPITROL.

.

B. Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

C. Scientific research demonstrates that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

E. Scientific research demonstrates that Lipitrol causes significant weight loss.

F. Scientific research demonstrates that Lipitrol lowers blood cholesterol levels.

10. In truth and in fact:

A. Lipitrol does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. Lipitrol does not absorb approximately 5.9 grams of dietary fat per tablet from consumed food.

C. Scientific research does not demonstrate that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

E. Scientific research does not demonstrate that Lipitrol causes significant weight loss.

F. Scientific research does not demonstrate that Lipitrol lowers blood cholesterol levels.

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

11. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph nine(A) and (B), at the time the representations were made.

12. In truth and in fact, respondents IMT, EHI and Shell did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph nine(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

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13. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that Lipitrol:

- A. Causes significant weight loss.
- B. Lowers blood cholesterol levels.
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease.
- D. Causes significantly greater weight loss than diet and exercise alone.
- E. Is beneficial and safe when taken in amounts sufficient to cause diarrhea.

14. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made.

15. In truth and in fact, respondents IMT, EHI and Shell did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

SeQuester Fat Reduction and Weight-Loss Tablets

16. Since at least May 1994, KCD, Incorporated, its holding corporation, KCD Holdings, Inc., their former principal, Clark M. Holcomb, and current principal, Bonnie L. Richards (collectively, "KCD"), have advertised, distributed and sold an over-the-counter fat reduction and weight-loss product to the public through, among other means, newspaper and radio advertisements disseminated nationally. KCD has wholesaled this product to retail drug stores and other retailers for resale to the general public. The product, sold under the name "SeQuester," is a combination of fiber and ox bile extract, and is the same or substantially the same as Lipitrol.

17. IMT, through its subsidiary EHI, Pelzer and Shell (hereinafter "IMT respondents") have provided KCD with, among other things, exclusive rights to sell SeQuester, technical assistance and "know how," clinical studies purporting to show that SeQuester is an effective fat reduction and weight-loss product, and certain

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promotional materials and information. Under the licensing agreement between the IMT respondents and KCD, KCD was required to make royalty payments to the IMT respondents based on sales of SeQuester.

18. KCD has disseminated or has caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits F through J. These advertisements contain the following statements and depictions:

F.	THIS IS WHAT SEQUESTER DOES TO THE FAT IN FOOD YOU EAT
----	--

Introducing SeQuester - the revolutionary tablet that "shrinks" the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat - safely and naturally - before it's absorbed, so it won't wind up on your body.

SeQuester's unique, patented ingredients bind fat molecules to vegetable fiber passing them gently and harmlessly through your digestive tract. It's like you never ate them at all. Shrink fat with SeQuester. Take advantage of introductory savings, and discover the safe, natural approach to fat reduction. It's in the diet section, today. (Exhibit F - newspaper advertisement)

G. THE FAT STOPS HERE

Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "shrink" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "remove" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy. Just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today. (Exhibit G - newspaper advertisement)

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H. For the holidays, don't cut it all out. Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say, "no." So consider your choices:

Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this coupon and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and effortlessly through the digestive tract. Just take one or more tablets 30 minutes before meals.

This season, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drugstores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of sensible nutrition and moderate exercise. By following this program, studies suggest that SeQuester contributes to a safe, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

(Exhibit H - newspaper advertisement)

I.

Q. SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

(Exhibit I - product package insert)

J.

SeQuester

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

(Exhibit J - product package)

19. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that:

A. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

B. SeQuester significantly reduces the body's absorption of sugar from consumed food.

C. Scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that SeQuester causes significant weight loss.

20. In truth and in fact:

A. SeQuester does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. SeQuester does not significantly reduce the body's absorption of sugar from consumed food.

C. Scientific research does not demonstrate that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that SeQuester causes significant weight loss.

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

21. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph nineteen(A) and (B), at the time the representations were made.

22. In truth and in fact, KCD did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph nineteen(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph twenty-one was, and is, false or misleading.

23. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. SeQuester causes significantly greater loss of weight and body fat than diet and exercise alone.

D. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease, and other health problems associated with a high-fat diet.

F. Use of SeQuester in amounts sufficient to cause diarrhea is beneficial and safe.

24. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph twenty-three, at the time the representations were made.

25. In truth and fact, KCD did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph twenty-three, at the time the representations were made. Therefore, the representation set forth in paragraph twenty-four was, and is, false or misleading.

26. The IMT respondents knew or should have known that the advertisements referred to in paragraph eighteen, including but not limited to the advertisements attached as Exhibits F through J, contained the false and misleading representations set forth in paragraphs nineteen through twenty-five above; but the IMT respondents nevertheless have provided services and promotional materials to assist KCD's marketing and sale of SeQuester, including but not limited to:

A. Studies purporting to show that SeQuester effectively reduces the body's absorption of fat from consumed food and causes significant weight loss;

B. The licensing rights to market and sell SeQuester to consumers;

C. Technical information regarding SeQuester; and

D. Various promotional materials and information.

27. Through the means described in paragraph twenty-six, the IMT respondents have provided means and instrumentalities and/or

have provided substantial assistance to KCD in furtherance of the unfair or deceptive acts or practices alleged in paragraphs nineteen through twenty-five, which the IMT respondents knew or should have known were unfair or deceptive.

28. 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.

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EXHIBIT A

INTRODUCING

LIPITROL

a patented dietary supplement
that aids in your FIGHT against FAT
by assisting in weight and cholesterol reduction.

NO ANCIENT FORMULA NO MAGIC NO MECHANICAL GADGETS
NO SHOTS NO DRUGS NO WILD PROMISES NO PATCHES
NO SPECIAL FOOD TO PURCHASE NO SECRET INGREDIENTS NO WRAPS
NO SPECIAL TESTING MATERIALS NO POWDERS NO SURGERY
NO VERY LOW CALORIE DIETS NO GIMMICKS NO CURE-ALLS
NO MOOD ELEVATORS NO SUPER-SPEEDY WEIGHT LOSS NO HYPE
DOESN'T EVEN DISSOLVE CELLULITE
BUT IT DOES WORK,
WHICH MAY SEEM LIKE A MIRACLE TO SOME PEOPLE

Effective Health knows of no other diet or weight loss program that is backed by scientific data and a recognized patent for "Dietary Fat Reduction".

LIPITROL contains natural ingredients consisting of Activated Fiber Complex (AFC). AFC forms an indigestible cellulose mesh containing molecules of bile. Bile is the part of the digestive system which enables the body to use and/or store fat. Fat droplets in stomach and intestines are naturally attracted to the AFC and when they adhere to the emeshed bile molecules, they can then be carried through the intestinal tract and excreted rather than being absorbed for use or storage. If stools are lighter in color, or yellowish, and if they frequently tend to float instead of sink in water, then the bile-bonded fat is now being excreted rather than absorbed. The only adverse effect from using LIPITROL is occasional diarrhea related to the excessive fat in the stools.

A major benefit of LIPITROL is that it imparts a feeling of satiety or fullness to the user. A second, highly significant benefit is the fact that LIPITROL has been proven to lower blood cholesterol levels. Cholesterol is lowered as a result of the weight loss.

Recommended dosage is 1 or 2 tablets with a full glass of water one-half hour prior to meals. A diet plan is included with each bottle and mild exercise is also suggested. Of course it is always necessary to consult with your physician before starting any weight loss program.

Effective Health believes LIPITROL meets an urgent need in society, and does so in a healthy and genuine manner. LIPITROL is not an overnight solution to excess weight, but it offers sincere and dedicated users an option whereby they can lose weight and maintain the loss without doing violence to their lifestyles or drugging their systems.

Our Special Price to you is **\$29.95** -- 90 tablet bottle - shipping/handling included
-- Calif. residents please add state tax

Send check or money order to: **EFFECTIVE HEALTH, INC.**
2139 Pontius Avenue
Los Angeles, CA 90025

You have nothing to LOSE but FAT itself!

COMPLAINT EXHIBIT A

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EXHIBIT B

**THE ANSWERS TO YOUR QUESTIONS:
 THE FIBER CONTENT IN FOODS
 NOW THERE'S AN EFFECTIVE WAY TO HELP REDUCE FAT
 -NOW THERE'S LIPITROL! - DIETARY SUPPLEMENT**

LIPITROL IS AN EFFECTIVE WEIGHT CONTROL PRODUCT

LIPITROL can help you control your weight by reducing FAT intake. No kidding! LIPITROL actually helps decrease the amount of FAT absorbed by your body. LIPITROL is produced under the U.S. Patent for "Dietary FAT Reduction," U.S. Patent #4,865,860.

IT HELPS FAT PASS THROUGH THE BODY

LIPITROL'S fiber formula forms an indigestible cellulose mesh containing molecules of bile. Bile is part of the digestive system which enables the body to use and/or store FAT. FAT droplets in the stomach and intestines are naturally attracted to the "Fiber Complex". When the FAT adheres to the enmeshed bile molecules, the FAT can then be passed through the intestinal tract and is excreted rather than absorbed - Naturally and Comfortably.

NO DRUGS, NO CAFFEINE, NO DIURETICS - EVER!

Adults: Take one (1) or (2) tablets with a full glass of water 1/2 hour before each meal.

SKEPTICAL?

Doctor:

The claims made in this folder are based on known scientific evidence concerning the attributes of vegetable fiber and their affect on absorption of FAT and resulting weight loss.

We claim no miracles. We are offering help for individuals who wish to reduce FAT retention and lose weight.

Technical material is available.

**TAKE THIS
TO YOUR
DOCTOR:**

CONTROL FAT WITH LIPITROL:

Keeping FAT under control is also important to good health.

FAT makes you FAT. There are 9 calories in 1 gram of FAT - plus your body stores FAT directly. Get FAT out of your diet. FAT laden diets may contribute to a variety of health problems including high blood pressure, diabetes, breast cancer, and heart disease.

Our clinical studies have shown LIPITROL to absorb approximately 5.9 grams of FAT per tablet from the foods you eat. Take hold of the FAT before the FAT takes hold of you. Use LIPITROL - Dietary Supplement DAILY!

A NATURAL FOOD PRODUCT

LIPITROL is composed of microcellulose particles (fiber), purified bile and all natural vegetable fibers from barley/rice, lemon pectin, carrot and acerola. Remember LIPITROL is not an overnight solution to excess weight, but offers you, the sincere and dedicated individual the option to reduce FAT absorption, lose weight, and maintain that loss, without doing harm to your body.

ALWAYS CONSULT WITH A PHYSICIAN BEFORE STARTING ANY DIET OR EXERCISE PROGRAM.

HOW CAN I ORDER LIPITROL ?

I understand that if for any reason I am not satisfied with LIPITROL, I may return the unused portion, within 30 DAYS for a 100% REFUND of the purchase price. No fs and/or buls!

- 90 tab supply - \$29.95 Please include \$3.00 for postage and handling
- 180 tab supply - \$43.95

California residents please add sales tax

I am enclosing CHECK MONEY ORDER FOR \$ _____

NAME _____

STREET ADDRESS _____

APT. BOX NO. _____

CITY _____

STATE _____

ZIP _____

MAIL THIS ORDER FORM ALONG WITH YOUR PAYMENT TO
EFFECTIVE HEALTH INC.
 2139 Forbus Ave. • L.A., CA 90025
 Please send technical material

COMPLAINT EXHIBIT B

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EXHIBIT B

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Which of these five questions on health will you miss?

- 1: What is a direct cause of chronic constipation?
 - Low acid in foods
 - Low fiber in foods
 - Low protein in foods
- 2: What is one of the contributors to diarrhea?
 - Low acid in foods
 - Low fiber in foods
 - Low protein in foods
- 3: What allows more fat into your body to produce cholesterol?
 - Low acid in foods
 - Low fiber in foods
 - Low protein in foods
- 4: What is one of the many contributors to weight gain?
 - Low acid in foods
 - Low fiber in foods
 - Low protein in foods
- 5: What can help with #1, 2 & 3 - plus help you lower your weight?
 - High acid in foods
 - High fiber in foods
 - High protein in foods

AFTER YOU'VE CHECKED YOUR ANSWERS IN THE APPROPRIATE BOXES, OPEN UP TO WHAT COULD BE YOUR GREATEST WEIGHT LOSS DISCOVERY EVER...

MORE ABOUT LIPITROL:

LIPITROL has been studied and tested for over 7 years. One of the recent 4 week studies has indicated that diet and exercise alone will result in an average weight loss of about 2.1 lbs per month. With sensible eating, exercise and LIPITROL the average weight loss was 6.2 lbs per month -- with little or no FAT retention.

THE REAL ENEMY

Remember while excess "weight" is certainly a big concern, your real enemy is FAT. LIPITROL Fights FAT, and losing FAT takes time. Use LIPITROL for 60 days or more to see measurable results. LIPITROL helps remove a large portion of the FAT from the food you eat, before it ends up on your body, or clogging your arteries

You Have Nothing to LOSE, But FAT itself!

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EXHIBIT C

EHI Effective Health Inc.

2139 Poston Avenue, Los Angeles, California 90025 310-477-1173 Fax 310-473-5442

Effective Health Inc. is pleased to announce the development of LIPITROL through fat sequestrant technology. Our specially formulated product, marketed as a dietary food supplement, assists in weight and cholesterol reduction.

LIPITROL is the creation of noted California Cardiologist and Director of the Beverly Hills Cardiology Research Group, Dr. William E. Shell. Dr. Shell has published more than 100 scientific articles and holds multiple patents.

LIPITROL's activated fiber preparation is produced by means of an exclusive process, U.S. Patent # 4,865,850. In addition, each tablet contains natural vegetable fibers from barley/rice, lemon pectin, carrot and acerola. LIPITROL contains no chemicals or additives, nor anything artificial.

When taken as directed, our tablet attracts fat from the food you eat and helps eliminate it from your body. Cholesterol reduction occurs subsequent to weight loss. Overdoses result in nothing more serious than self-limiting diarrhea. We ALWAYS recommend to first consult with your physician before use, follow a properly balanced diet (plan included) and exercise.

LIPITROL has undergone independent open label trials. A technical brochure that substantiates the efficacy of LIPITROL is available upon request.

Howard Greenberg
Marketing Director

1-TH

Thank you for purchasing LIPITROL...
this natural patented product helps reduce FAT absorption
and let's you lose weight naturally and comfortably.
"Take hold of the FAT, before the FAT takes hold of you!"

Please study the important information contained in this
pamphlet. It is designed to help you get the maximum benefit
from LIPITROL. You can take this pamphlet with you! It
contains many tips on food selection, food preparation,
exercise and how to use LIPITROL most effectively.

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YOUR LIPITROL
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THE REAL ENEMY... YOUR real enemy is not "weight."
YOUR real enemy is FAT! LIPITROL helps fight FAT.

HEALTHY HEART OBJECTIVES ...

- Number 1: To feed my body less FAT.
- Number 2: To train my body to burn FAT more efficiently.

PROBABLE BENEFITS ...

- Improved health • Reduced FAT intake • Reduced body weight • Increased energy level and productivity

THE EFFECTIVE HEALTH WAY TO TAKE YOUR LIPITROL

LIPITROL is a tested product which will help you lose
FAT. Many of us are used to weight loss programs which
"take the weight off" nearly overnight. Many of those
programs cause us to lose water weight, and even muscle
weight. But, weight is not our number one enemy...FAT is!
LIPITROL fights FAT, and losing FAT takes time. Read and
follow these instructions carefully. Make LIPITROL a
consistent part of your weight loss program. Give yourself 60
or more days to see measurable results. Follow our GoodFood
dietary guidelines and get into the GoodExercise habit. Good Luck!

Q: How Shall I Begin?

A: Begin by taking one or two tablets with a full glass (8
ounces) of water or juice. Take your tablet(s) 1/2 hour prior to
every meal. Taking LIPITROL during or after a meal will not
produce satisfactory results. Just be sure that "before you take
your first bite, take your LIPITROL!"

Complaint

EXHIBIT D

Q: How Many Tablets Should I Take Per Day?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people, the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3, 4, 5 and 6 tablets per day to see which is most effective for them.

Q: How Will I Know My Dosage Is Satisfactory?

A: You're on the right track when one or more of the following occur: 1) Stools appear lighter in color; 2) Stools appear bulkier; 3) Stools may float in water. These indications result from FATS being passed through your digestive tract and eliminated in the stool.

Q: Should I Increase My Dosage?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets prior to every meal. Some people will even use 2 LIPITROL or more prior to their fattiest meal. If diarrhea occurs, this is a form of considerable diarrhea and not the same as diarrhea caused by food poisoning. It does not require medication or any treatment. It just means that there is too much FAT in your stool to allow a normal bowel movement. The actuality is a condition we regard as Desirable as it means the FAT is leaving your body. Whether the normal dosage or the Maxi-FAT strategy described below is appropriate for you depends upon how your body responds to each dosage and upon the advice of your physician.

Q: How Can I Get Maximum FAT Removal?

A: Each LIPITROL tablet has the capability to remove approximately 6 grams of FAT (the actual figure is 5.9 grams) from the food you eat. By determining as accurately as possible the number of grams of FAT you are consuming in your next meal, you can use that figure, divided by 6, and take the appropriate number of tablets to absorb that FAT—this is what we call the Maxi-FAT strategy.

Q: Won't It Be Using More LIPITROL With the Maxi-FAT Strategy?

A: Yes, you will. If economics is a serious concern, then stay with the 2 tablets with each meal approach. If you want optimum results, then Maxi-FAT is for you. Just remember each gram of FAT contains 9 calories. Each tablet can absorb approximately 6 grams of FAT or 54 calories. It takes about 3,500 unused calories to add a pound of weight to your body. In other words, the Maxi-FAT strategy is designed to absorb more FAT or calories than you take more tablets.

Q: If I Eat A 100% FAT-Free Meal, Should I Still Take My LIPITROL?

A: If one of your meals contains absolutely no FAT, it is not necessary to take LIPITROL for that particular meal.

Q: Should I Use Vitamin Supplements While Taking LIPITROL?

A: If you wish to take vitamin supplements, we advise doing

so 1 hour prior to taking your LIPITROL—or 2 hours after taking LIPITROL. While we have observed no evidence of FAT-soluble vitamin deficiency during our human testing, however over an extended period of time, it is possible that levels of vitamins A, D, E, and K may drop, particularly if you follow the Maxi-FAT strategy.

Q: What About Additional Side Effects?

A: 3 out of 10 people in our test group experienced excess gas when taking LIPITROL. If this is a concern we strongly recommend that you go to a health food store and get a jar of activated charcoal tablets. They are very inexpensive. Activated charcoal is a fine aid to digestion, does not enter your blood stream and has the ability to absorb excess gas.

Q: Why Is Exercise So Important?

A: Reducing one's FAT intake (through a balanced diet and LIPITROL) are only part of the strategy for burning the "stored" FAT in our bodies. Consistent Regular Exercise actually increases our body's metabolism so that we burn FAT at a higher rate than when our lifestyles are sedentary. Mean Temperature Check with your physician before beginning any weight loss or exercise program.

Q: When Should I Begin To See Weight Loss And/or Size Loss?

A: One of our four week studies indicates that diet and exercise alone will result in an average weight loss of about 21 pounds per month. With diet and exercise plus LIPITROL,

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EXHIBIT D

the average weight loss in our study was 6.2 pounds per month. Everyone is unique, and we encourage our customers to make LIFTROL a consistent part of their weight loss program for at least 60 or more days in order to experience the best measure to how well LIFTROL is going to work for them.

Q: Any hints to help me be consistent with LIFTROL?

A: Yes! Lots of people tend to forget their LIFTROL when they get to work, or out to eat, etc. An easy solution is to purchase an extra bottle, or split your current bottle into two or more containers.

Q: How Long Will I Need To Take LIFTROL?

A: The answer depends upon where you are today and where you want to be tomorrow. Many people can testify from experience that a "quiet" weight loss program often begins with a quiet weight gain after the program is over. One of the reasons this happens is because gradually changing what you eat does not necessarily affect your metabolism. LIFTROL, plus cardiovascular habits and Good Exercise can result in having FAT while also stepping up body metabolism so that after you reach your goal, you keep the weight off FAT till!

NOTE: Please do not view your LIFTROL as an excuse for poor nutritional habits. Don't think that it is now O.K. to over-indulge yourself and eat all the FAT-soaked food you want. NOTE: SO You must realize that while some foods may be 40% or 50% FAT, the remaining 50% or 60% is not and still

contains calories that won't be dealt with by taking LIFTROL. In fact, you may be your own worst enemy by trying to beat the system.

Do You Have Other Questions? Please feel free to drop us a note at the address listed on page 14.

WHY DO DIETS OFTEN BACKFIRE?

Think of your body as a calorie burning machine. It runs on fuel (i.e. calories), which are obtained from food. The rate at which you burn fuel is your metabolism. Here are two ways you can instruct your calorie machine to burn slower (i.e. slow your metabolism). 1. Deplete it of fuel. When you fast or severely restrict your calorie intake, your body's natural protective mechanism is to "slow down" in an effort to conserve its fuel resources. Unfortunately, after prolonged exposure to this conservation mechanism (file in a very low calorie diet), your metabolism tends to stay slow even after the diet is concluded. When normal calorie intake is resumed, your body is likely to burn fewer calories per day than when you started the diet! This calorie machine has been told to "burn less" - "conserve fuel" - and unless the body is given new orders to "burn more fuel", it will continue in its slow burn mode. This is why so many people have lost significant amounts of weight...only to gain it back again soon afterwards! 2. Become Less Active. It should be obvious that the more sedentary we become, the less fuel we will need to fuel our body's decreasing activity levels. This body requires second-legs, and our metabolism slows down.

GOOD EXERCISE HURTS (Training your body to burn FAT)

Your body runs 24 hours a day, always burning fuel. In your normal routine you may be very fit at the end of the day, however you have not burned any stored FAT because you did not change your body's metabolism. Unfortunately, many people believe that grinding, pushing, and shoving with persistence are required for FAT burning and good health. This is a myth! During such high demand (anaerobic) activity your body will call upon its ultra high power fuel source—glycogen (sugar), and no FAT burning activity will take place—even though you have worked very hard. You must exercise just hard enough and long enough to turn up your body's need for fuel—gradually—then you will be giving instructions that will last long after the 12 to 45 minutes of exercise has passed. In practical terms, if you are halting and puffing, you need to slow down (i.e. walk, slow jog, slow, pedal faster, etc.). Why? Because to you (at this point in time), this is a high demand activity which tells your body to burn glucose not FAT. Also, if your heart rate becomes too high during exercise, it is dangerous, and you will likely not be able to sustain the exercise activity long enough to persuade your body that you really do want to make those metabolism changes! On the other hand, when you give sensible exercise instructions to your body several days per week, over time or slow, your body really believes that you want to burn FAT. And do you know what? It does!

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EXHIBIT D

FOUR ESSENTIALS OF GOOD EXERCISE

Caution: Unless you are presently participating in a consistent exercise program, do not attempt any exercise program without first consulting your physician.

Exercise comes in many forms. Beginner to competitive. Indoor and outdoor. Expensive and inexpensive. Standing up and sitting down.

No matter what form of exercise you choose, be certain it satisfies these four essentials:

1. **Talkable**—While exercise should cause you to breathe faster than when you are not exercising, you should not get out of breath. During the exercise, you should be able to carry on a light conversation or sing a simple song...but maybe not an opera.
2. **Uninterrupted**—at least 12 minutes for beginning joggers, and at least 30 minutes for most walkers. Remember, regardless of your choice of exercise, if you really want to "get in shape" don't make a 20 minute workout "harder". Instead make it longer...a 25, then 30, then 35 minute workout, and so on.
3. **Frequent**—Reasonable exercise has some benefit, however it takes frequency to convince your body that you really want it to eliminate FAT while increasing muscle and metabolism. Make it your goal to exercise daily. Begin with at least three days per week. Count how many minutes you exercise each week—not how far you run, walk, bicycle etc.
4. **Involves at least the major groups of my lower body**...the legs and buttocks. (Other muscle groups can be added).

GOOD EXERCISES (i.e. they fit the four essentials) include:

Walking, hiking, jogging, cross-country skiing, aerobic dancing, stair climbing, jumping rope, bench stepping, roller skating, treading, rowing, and mini-transpultine.

EXERCISES (that are either too slow, too fast, too steep and yet to satisfy the four essentials) include: Tennis, racquetball, squash, softball, golf, weight lifting, downhill skiing.

WHY YOU SHOULD NOT "GO ON A DIET"

Millions of Americans have gritted their teeth, lost the weight, and then regained it faster than they lost it! This is not fair...to work so hard and only end up right back where we started! Instead, let us go on a "quest"...a "mission" if you prefer. Our objective is not calorie deprivation! Our objective is good health through the choosing and using of gradual, maintainable lifestyle changes...and using LIPITROL everyday.

Instead of going on a diet, just reduce the FATS in your meals.

Benefit: You will automatically have a reduction in calories, plus cholesterol loss as a result of the lost weight. FATS have more than twice the calories of carbohydrates and protein. It is more important to count the FATS in your foods than to count the calories.

FAT FIGHTING TIPS:

In addition to taking LIPITROL before every meal, you should 1. Trim all FAT and remove all skin from meats and

poultry. Red meats are high in FAT. Meat preparations include bake, broil, boil, steam or open grill only. 2. Keep away from eggs. Use egg whites or egg substitutes as an alternative. 3. Eliminate butter and cheeses, palm and coconut oils, butter and lard which is high in cholesterol. Poly and mono unsaturated FATS help lower cholesterol. 4. Keep away from gravies, creams and sauces. 5. Greens are great—watch the dressing. Order all dressings on the side and use sparingly. Use reduced or low calorie dressing only. 6. Do not be a member of the clean plate club, take home what you cannot finish. Many restaurants serve more than one person can eat. Get two meals out of one.

Additional Tips: Drink eight, 8 oz. glasses of water daily. Chew food slowly and completely. Put your fork or spoon down between bites. Never take less than 20 minutes to finish a meal. Try a smaller plate. Do not skip meals, you will only overeat later. Eat dinner as early as possible.

At The Market: Make a list before you go shopping. Do not shop on an empty stomach. Read all labels carefully. Some products that claim to have "low" or "no" cholesterol may be high in FAT. Look for variety and choose good foods.

Reality Check: It's a tough assignment to tackle all of these FAT reducing tips at the same time. Consider trying one or two per month until they become your Food habits. Always look for new ways to reduce FATS in your diet.

HOW YOU CAN HAVE GOOD FOOD HABITS—Through the "Pyramid"
The Healthy, Balanced Diet includes daily quantities of foods

Complaint

EXHIBIT D

poultry. Red meats are high in FAT. Meat preparations include pork, beef, lamb, steaks or open grill only. 2. Keep away from eggs. Use egg whites or egg substitutes as an alternative. 3. Eliminate butter and cheese, palm and coconut oils, tallow and lard which is high in cholesterol. 4. Keep away from unsaturated FATS help lower cholesterol. 5. Keep away from gravies, creams and sauces. 6. Greens are great—wash the dressing. Order all dressings on the side and use sparingly. Use reduced or low calorie dressing only. 7. Do not be a member of the clean plate club, take home what you cannot finish. Many restaurants serve more than one person served. Eat two meals out of one.

Additional tips: Drink eight, 8 oz. glasses of water daily. Chew food slowly and completely. Put your fork or spoon down between bites. Never take less than 20 minutes to finish a meal. Try a smaller plate. Do not skip meals, you will only overeat later. Eat dinner as early as possible.

At The Market: Make a list before you go shopping. Do not shop on a empty stomach. Read all labels carefully. Some products that claim to have "low" or "no" cholesterol may be high in FAT. Look for variety and choose good foods.

Healthy Check: It's a tough assignment to tackle all of these 141 reducing tips at the same time. Consider trying one or two per month until they become your "new habits." Always read the new ways to reduce FATS in your diet.

HOW YOU CAN HAVE GOOD FOOD HABITS—Through the "Pyramid"
The Healthy, Balanced Diet includes daily quantities of foods

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from each of the 5 Basic Food Groups. These are:
1. & 2. Fruits & Vegetables: With the exception of avocados and olives (which have a very high FAT content), nearly all fruits and vegetables are low in FAT and calories, while high in fiber. Average serving size: 1 cup. Average daily servings: 5-6. Vegetables have high nutrition, lowest calories.
3. Breads & Cereals: "Whole" grains in wheat, rye, rice, corn, and oat products will tend to have less sugar, less calories, and a higher fiber content than processed, bleached, ground and refined bread and cereal products. Average serving size: 1/2 cup cereal, pasta, and rice; 1 slice bread. Average daily servings: 5-6.
4. Milk Products: include yogurts, cheeses and milk, having a wide range of FAT content. Cheeses range from 50% FAT (as a percentage of calories) to 0% or higher FAT content in Cheddar, Boursin, American and Cream cheeses. Use these high FAT cheeses as a flavorful garnish... and as a main ingredient. Average serving size: 1 cup milk, (skim or low FAT), yogurt (low FAT), or cottage cheese (low FAT); 1 ounce cheese. Average daily servings: 3-4. Skim, low FAT milk are best. No ice cream. Substitute non-fat frozen yogurt or ice milk products.
5. Meats: include beef, pork, poultry, fish, eggs, seafood and legumes (e.g., beans, split peas, lentils), with a wide variance of FAT content. The safest choices are high in fiber and protein while low in FAT. The worst choices due to their high FAT content include eggs, bacon, ham, sausage, hotdogs, liverwurst, sardines and pepperoni. Do not eat ribs and "ends". A 1/2 lb of ground corned beef about 500 calories and

75% FAT. Safe choices also include skinless chicken and turkey (white meat) and most white fish. Average serving size: 3 ounces. Average daily servings: 2.

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Study the "Food Pyramid" conceived by the U.S. Department of Agriculture. The Pyramid displays a well balanced diet in graphic form, and recommends limited use of FATS and sugars in our diet.

NEEDS TO BE MET: VITAMIN, MINERAL, 1500 CALORIES

Facilitate weight loss by selecting the appropriate quantities of food from the proper food groups.

	Milk	Meat	Fruit	Vegetable	Cereal/ Bread
Day 1	3	2	4	2	4
Day 2	2	3	2	3	4
Day 3	2	2	3	3	3
Day 4	3	2	4	4	2
Day 5	2	3	4	2	3
Day 6	3	3	2	2	2
Day 7	3	2	2	2	4

NOTE: 3 extra exchanges of foods per day are allowed.

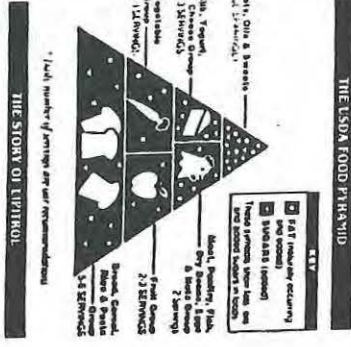
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EXHIBIT D

LIPITROL is the most effective weight loss supplement to date. It is the only supplement that is clinically proven to reduce fat in the body. It is the only supplement that is clinically proven to reduce fat in the body. It is the only supplement that is clinically proven to reduce fat in the body.



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With counsel of medical colleagues throughout the United States, the idea was tested in the laboratory and ultimately among family, friends and patients. In a large percentage of cases, people reported the first signs that the product really worked for them... simply a lightening in the waist, outer or bulk. And some patients even reported a buoyancy (floating) of their stools.

Interestingly, the tests also showed reduction in body weight, and when an accompanying drop in blood cholesterol and triglyceride levels, as a result of this weight loss. Two additional special clinical studies known as "double blind placebo" trials were completed during 1990 through October 1991.

LIPITROL causes some of the FATS to become attracted to the particles of the tablet. The tablet is made with natural Fiber ingredients (Guar/Guar, human pectin, carnitine and acetyl-L-carnitine). LIPITROL removes FAT before it is absorbed or broken down, so it does not end up on your body, or changing your arteries.

LIPITROL is patented under U.S. Patent #4,966,750, and is manufactured exclusively for Effective Health Inc.

**YOU HAVE NOTHING TO LOSE
 BUT FAT TISSUE!**

EFFECTIVE HEALTH INC.
 Los Angeles, CA 90048

14

LIPITROL

Effective Health's
 Guide To A
 Healthy
 Lifestyle

Effective Health

Los Angeles, CA 90048

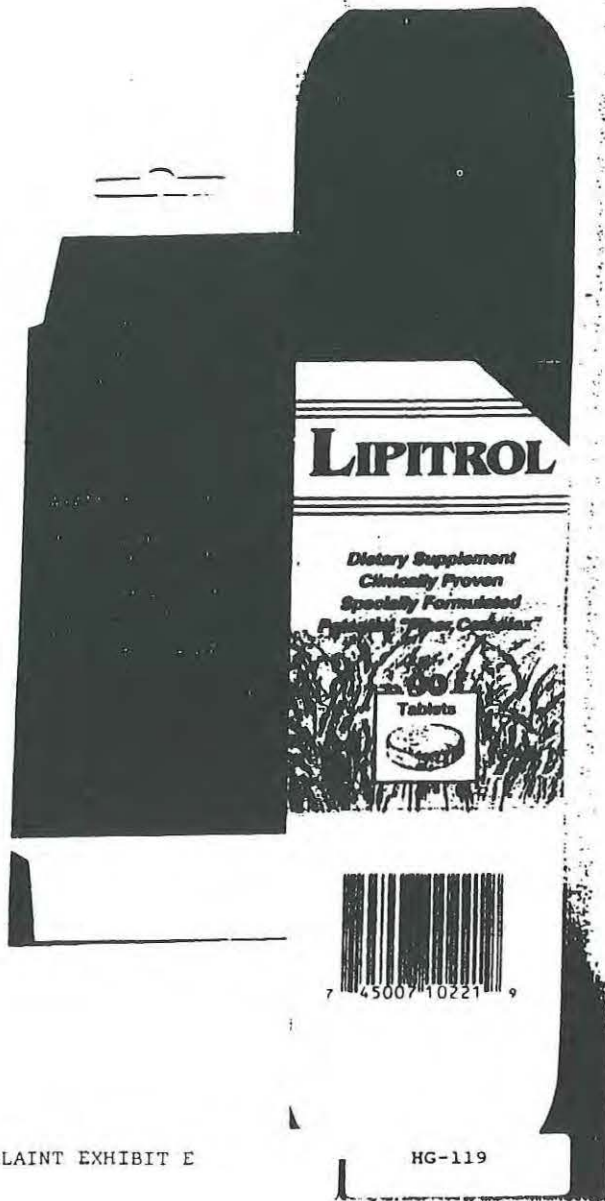
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EXHIBIT E



COMPLAINT EXHIBIT E

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EXHIBIT E



RECOMMENDED USE:
For Adults Only. Take 1 or 2 tablets, 3 times per day with full glass of water, 1/2 hour before meals. Each LIPITROL tablet has been shown to absorb approximately 5.9 grams of FAT, from the foods you eat.

NOTICE:
Before considering any weight control program it is advisable to consult with your physician. Do not use in the presence of diarrhea or abdominal pain. Store in a cool dry place.

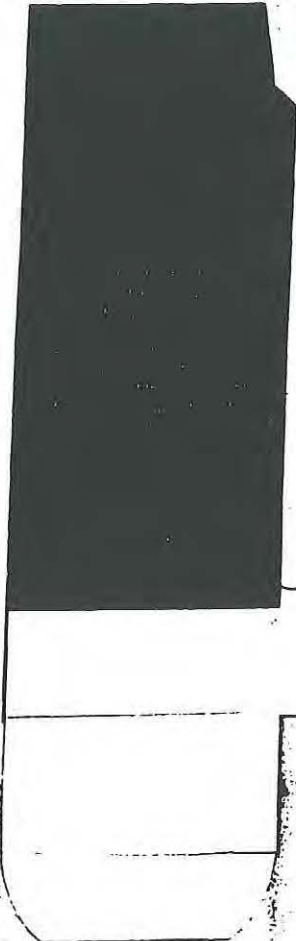
INGREDIENTS:
Barley/Fiber Fiber, Sodium Cholesteryl Complex, Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicon Dioxide, Magnesium Stearate & Acacia Powders.

COATING:
Hydroxypropylmethylcellulose, Propylene Glycol and Carnuba

**Nutritional Information per Tablet
Only 2 Calories Each**

Protein	35.0 mg
Fiber	180.0 mg
Ash	44.0 mg
Fat	60.0 mg
Carbohydrates	340.0 mg
Moisture	38.0 mg
Total Weight	= 700 Milligrams
Vitamins & Minerals	= Less than 2% RDA

By: Effective Health, Inc., L.A., CA 90025
Phone # 4 855 888 Made in U.S.A.



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Complaint

EXHIBIT F

THIS IS WHAT SEQUESTER DOES TO

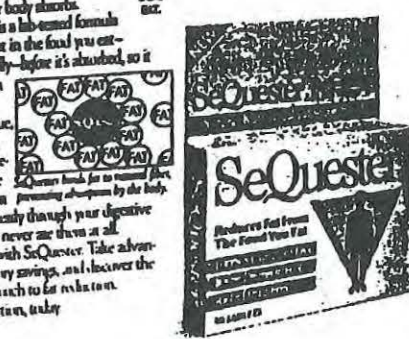
THE FAT IN FOOD YOU eat.

Introducing SeQuester—the revolutionary tablet that “shrinks” the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat—safely and naturally—before it’s absorbed, so it won’t wind up on your body.

SeQuester’s unique, patented ingredients bind fat molecules to vegetable fiber, passing them gently and harmlessly through your digestive tract. It’s like you never ate them at all.

Shrink fat with SeQuester. Take advantage of unnecessary savings, and discover the lik in the diet section, today.



(STORE IMPRINT)

10 # 2

SQ-141

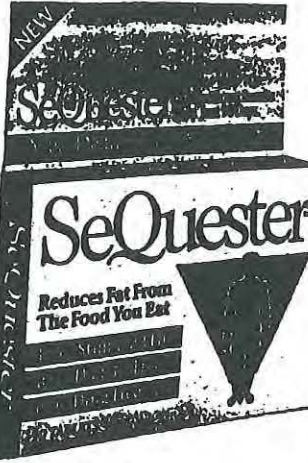
COMPLAINT EXHIBIT F

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EXHIBIT G

THE EAT STOPS HERE



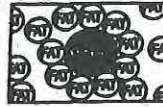
Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "block" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "rescue" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-created formula, shown to be effective in lowering fat absorption. It's easy, just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fat diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.



SeQuester binds fat to natural fiber, preventing absorption by the body.

\$2.00 OFF

Coupon & Terms of Use
 0001-94 Each one redeem per purchase

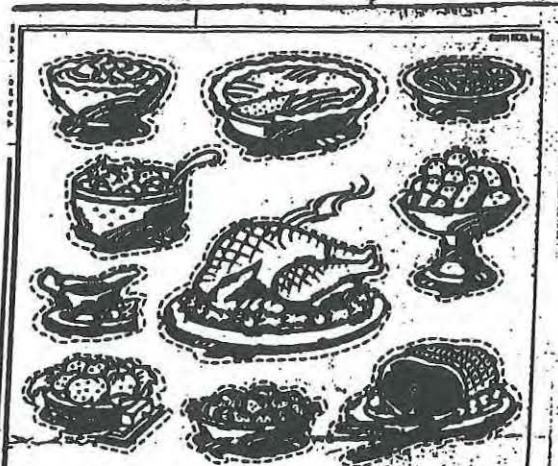
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AD #3

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EXHIBIT H



For the holidays, don't cut it all out.
Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look any weight watches, but the holidays are gaining on us. So many parties, so much good food, so hard to say "no." So consider your choices. Either you can cut out all those rich, delicious foods that make life wonderful.

Or you can cut out the calories and fat while yourself to SeQuester - a revolutionary discovery that helps your body eliminate fat absorption from the food you eat.

With SeQuester, you can plan on enjoying innumerable portions of all those great holiday foods, and know that their calories for calories won't be showing up on your scale - or in your mirror - since January 1st.

SeQuester is a safe, natural dietary supplement. It works, proven through help that fat molecules to neutralize and excrete them, so they pass gently and safely through the digestive tract. Just take one or more within 30 minutes before meals.



This means, with SeQuester the enjoyment of all your holiday meals. You'll find it in better drug stores and supermarkets, everywhere.

NOTE: SeQuester should be used as part of a regular program of health and fitness. It is not a substitute for a healthy diet and regular exercise. It is not a weight loss product. It is a dietary supplement that helps reduce fat absorption from the food you eat.

SeQuester
A Natural Dietary Supplement

\$2.00 OFF **RITE AID**

 An image of a Rite Aid store sign with the text "\$2.00 OFF" and "RITE AID".

SeQuester is now available at Rite Aid.

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Complaint

123 F.T.C.

EXHIBIT I



SeQuester.
 A guide to a healthy lifestyle

INSIDE:
 Valuable tips on SeQuester use.
 Plus: sensible eating & exercise habits.

NOTE: The following is the copy for the SeQuester insert

COMPLAINT EXHIBIT I

SQ-22

800 INQUIRY CENTER • 2837 TOWNSEND DRIVE • SUITE 110 • WESTLAKE, CALIFORNIA, CA 90909
 807-294-0087 • FAX 807-411-4120

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Complaint

EXHIBIT I

Page 2
SeQuester

Thank you for purchasing SeQuester™. This natural patented product helps reduce fat absorption and let's you lose weight naturally and comfortably.

Take hold of the fat, before the fat takes hold of you!

Please study the important information contained in this pamphlet. It is designed to help you get the maximum benefit from SeQuester. It contains many tips on food selection, food preparation, exercise and how to use SeQuester most effectively.

THE REAL ENEMY: Your real enemy is not *weight*. Your real enemy is *fat*. SeQuester helps fight fat.

HEALTHY HEART OBJECTIVE:

Number 1: To feed my body less fat.

Number 2: To train my body to burn fat more efficiently.

PROBABLE BENEFITS:

- Improved Health • Reduced fat intake • Reduced body weight
- Increased energy level and productivity

THE EFFECTIVE, HEALTHY WAY TO TAKE YOUR SEQUESTER:

SeQuester is a tested product that will help you lose fat. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of those programs cause us to lose water weight, and even muscle weight. But, weight is not our number one enemy - fat is. SeQuester fights fat, and *losing fat takes time*. Read and follow these instructions carefully. Make SeQuester a consistent part of your weight loss program. *Give yourself 90 or more days to see measurable results. (The initial few days of your SeQuester program may even show some weight increase. Don't panic. This is normal.)* Follow our GoodFood dietary guidelines and get into the good exercise habit. Good luck!

Q: HOW SHALL I BEGIN?

A: Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking SeQuester during or after a meal will not produce satisfactory results. *Just be sure that before you take your first bite, take your SeQuester.*

Complaint

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EXHIBIT I

Page 3
SeQuester

Q: HOW MANY TABLETS SHOULD I TAKE PER DAY?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3 to 6 tablets per day to see which is most effective for them.

Q: HOW WILL I KNOW MY DOSAGE IS SATISFACTORY?

A: You're on the right track when one or more of the following occur: (1) Stools appear lighter in color; (2) Stools appear bulkier; (3) Stools may float in water. These indications result from fats being passed through your digestive tract and eliminated in the stool.

Q: SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: IF I EAT A 100% FAT-FREE MEAL, SHOULD I STILL TAKE MY SEQUESTER?

A: If one of your meals contains absolutely no fat, it is not necessary to take SeQuester for that particular meal.

Q: SHOULD I TAKE VITAMIN SUPPLEMENTS WHILE TAKING SEQUESTER?

A: If you wish to take vitamin supplements, we advise doing so 1 hour prior to taking your SeQuester or 2 hours after taking SeQuester. We have observed no evidence of fat-soluble vitamin deficiency during our human testing, however taking a multiple vitamin/mineral supplement is always a good idea.

Q: WHAT ABOUT ADDITIONAL SIDE EFFECTS?

A: Three out of 10 people in our test group experienced excess gas when taking SeQuester. If this is a concern we strongly recommend that you get some activated charcoal tablets. They are very inexpensive and can be found

Complaint

EXHIBIT J

SeQuester™

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

The combination of special ingredients, through our patented manufacturing process, negatively affects the availability of fat and sugar. The mechanism that produces this action remains unclear.

100% money back guarantee.

Sequester should be used with a properly balanced diet and exercise program.

NUTRITIONAL INFORMATION PER TABLET (ONLY 2 CALORIES EACH)

Protein	35.0 mg	Fiber	180.0 mg
Fat	0.06 grams	Carbohydrates	340.0 mg

Vitamins & Minerals = less than 25% RDA Total Tablet Weight = 700 milligrams

RECOMMENDED USE: For adults only. Take 1 or 2 tablets 3 times per day 1/2 hour before meals with a FULL glass of water.

NOTICE: Before considering any weight loss program, it is advisable to consult with your physician. This product, when used in excess, may cause diarrhea, abdominal cramping, or gas. If this occurs, product dosage should be temporarily reduced or discontinued. Store in a cool dry place.

INGREDIENTS: Activated-Fiber Complex (Barley/Rice Fiber, Sodium Choleate Complex), Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicone Dioxide, Methylcellulose, Magnesium Stearate, Acerola and Propylene Glycol.

Manufactured Exclusively For:
KCD, Inc. Westlake Village, CA 91361

Made in the USA
U.S. Patent #4,865,850

LOT NUMBER [REDACTED] COMPLAINT EXHIBIT J [REDACTED]