

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of )  
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UNIVERSAL MERCHANTS, INC.)  
a corporation, and ) FILE NO. 952 3366  
)  
STEVEN OSCHEROWITZ, ) AGREEMENT CONTAINING  
individually and as an officer ) CONSENT ORDER  
of the corporation. )  
)  
\_\_\_\_\_)

The Federal Trade Commission has conducted an investigation of certain acts and practices of Universal Merchants, Inc., a corporation, and Steven Oscherowitz, individually and as an officer of the corporation (“proposed respondents”). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Universal Merchants, Inc., by its duly authorized officers, and Steven Oscherowitz, individually and as an officer of the corporation, and counsel for the Federal Trade Commission that:

- 1.a. Proposed respondent Universal Merchants, Inc. is a Delaware corporation with its principal office or place of business at 4727 Wilshire Blvd., Suite 510, Los Angeles, CA 90010.
- 1.b. Proposed respondent Steven Oscherowitz 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 Universal Merchants, Inc.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
  - a. Any further procedural steps;

- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## 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 Universal Merchants, Inc., a corporation, its successors and assigns and its officers; Steven Oscherowitz, individually and as an officer of the corporation; and each of the above 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.

## I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ChromaTrim or ChromaTrim-100 (ChromaTrim') or any food, dietary supplement, or drug, a "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that:

- A. ChromaTrim significantly reduces body fat;
- B. ChromaTrim causes significant weight loss;
- C. ChromaTrim significantly reduces ~~body~~ fat or causes weight loss without dieting or exercise;
- D. ChromaTrim increases lean body mass or builds muscle;
- E. ChromaTrim controls appetite or craving for sugar; or
- F. Nine out of ten people do not consume enough chromium to support normal insulin function, resulting in decreased ability to burn fat, preserve muscle, and control hunger and cravings,

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

## II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of ChromaTrim or any food, dietary supplement, or drug, 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, about the health benefits, performance, efficacy, or safety 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

### IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not represent, in any manner, expressly or by implication, that any endorsement of the product represents the typical or ordinary experience of members of the public who use the product or program, unless:

- A. At the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation, or
- B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
  - 1. what the generally expected results would be for users of the product, or
  - 2. the limited applicability of the endorsement experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, “endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).

V.

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.

VI.

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

VII.

IT IS FURTHER ORDERED that respondent Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz 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.

IX.

IT IS FURTHER ORDERED that respondent Universal Merchants, 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 respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent Steven Oscherowitz, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent Universal Merchants, Inc., and its successors and assigns, and respondent Steven Oscherowitz 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.

XII.

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

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

UNIVERSAL MERCHANTS, INC.

\_\_\_\_\_  
By: STEVEN OSCHEROWITZ  
President

\_\_\_\_\_  
STEVEN OSCHEROWITZ, individually  
and as an officer of the corporation

\_\_\_\_\_  
EDWARD F. GLYNN, JR.  
Venable, Baetjer, Howard & Civiletti, LLP  
Attorney for respondents

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RICHARD L. CLELAND  
Counsel for the  
Federal Trade Commission

APPROVED:

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C. LEE PEELER  
Associate Director  
Division of Advertising Practices

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JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of )  
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UNIVERSAL MERCHANTS, INC.)  
a corporation, and ) DOCKET NO.  
)  
STEVEN OSCHEROWITZ, )  
individually and as an officer )  
of the corporation. )  
)  

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COMPLAINT

The Federal Trade Commission, having reason to believe that Universal Merchants, Inc., a corporation, and Steven Oscherowitz, 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 Universal Merchants, Inc. is a Delaware corporation with its principal office or place of business at 4727 Wilshire Blvd., Suite 510, Los Angeles, CA 90010.
2. Respondent Steven Oscherowitz is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Universal Merchants, Inc.
3. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including ChromaTrim and ChromaTrim-100 (“ChromaTrim”), chewing gums containing chromium picolinate. ChromaTrim is “drug,” and/or “food,” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
5. Respondents have disseminated or have caused to be disseminated advertisements for

ChromaTrim, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements and depictions:

- A. "100% natural, ChromaTrim™ is the sugar-free, fat-reducing chewing gum that is proven to reduce body fat and decrease your appetite (especially sugar cravings). ChromaTrim works fast and is extremely safe. ChromaTrim's active ingredient Chromium Picolinate is so unique, it's patented by the U.S.D.A."

"No special diets, no tiring exercise, and no harmful chemicals, ChromaTrim is simply the secret to successful fat loss. Guaranteed. The fact is, thousands of formerly over-weight men and women have successfully changed their lives.

**"I lost 40 pounds with ChromaTrim-100!"** [The advertisement depicts a slender woman with the caption Belinda Woodruff.]

**"I lost 35 pounds using ChromaTrim!"** [The advertisement depicts a woman in a two-piece bathing suit with the caption Nicky Peters.]

(Exhibit A)

- B. Susan Ruttan: "This is not another fad diet or crash program. ChromaTrim is a chewing gum that contains chromium picolinate, a very special form of chromium. Now chromium is an essential mineral like iron and zinc. Your body needs it every day. It's important. And scientific research has shown that chromium works with your body's insulin, helping it to burn fat, preserve and build muscle, and control cravings and hunger. And when your body gets the chromium it needs by chewing ChromaTrim, listen to what can happen" (Exhibit B, p. 2)

Veronica Hall: "I lost 80 pounds. And I went down from a size 28, to a size 18." (Exhibit B, p. 2)

Donna Allison: "I've lost 36 pounds and I still have 20 or so more to lose." (Exhibit B, p. 2)

Susan Ruttan: "So how do you know it can work for you? Well, according to the U.S. Department of Agriculture, nine out of ten of us don't get enough chromium in our diet. . . . And if you don't get enough chromium in your diet, your body's natural system for burning fat, building muscle, and controlling cravings isn't going to work as well as it should." (Exhibit B, p. 3)

Susan Ruttan: "And with this system you don't have to starve yourself, or sweat buckets to see a real change." (Exhibit B, p. 3)

Susan Ruttan: "The real goal is to keep and even build muscle, and burn off that

fat. And that's where ChromaTrim comes in because it helps your body's natural fat burning and muscle building system work better. So, how do we know? Well, there have been studies, many of them testing what chromium does. (Exhibit B, p. 4)

Susan Ruttan: "ChromaTrim helps your body by helping it work better to burn fat, preserve and build muscle and to help control hunger and cravings. And it's so easy." (Exhibit B, p. 4)

Rick Gordon: "In the afternoon when I get this craving for a candy bar or sweets, I just grab the gum, throw it in my mouth. Cuts the craving just like that." (Exhibit B, pp. 4-5)

Wendy Wilburn: "I did notice that my cravings for chocolate and things like that changed. But I didn't go out of my way to make this a diet plan whatsoever." (Exhibit B, p. 5)

Susan Ruttan: "Look, your body needs chromium to work properly. And nine out of ten people don't get enough from their daily diet. In fact, in order to get enough chromium it's been estimated that the average person if they didn't change their diet would have to consume as much as 13,000 calories a day." (Exhibit B, p. 5)

Female Announcer Wearing Lab Coat: "Nine out of ten of us don't get enough chromium from our daily diet. And chromium . . . is an essential mineral. You need it to survive. So, what does chromium do? Scientists have shown that chromium plays a key role in helping your body's insulin work better. And insulin is your body's key to burning fat and preserving and building muscle. Insulin is also known as the hunger hormone. It helps control cravings and hunger. So you need to get enough chromium in your diet every day to help your insulin work the way it should. And remember, chances are nine out of ten you're not getting enough chromium right now." (Exhibit B, pp. 5-6)

Announcer in Lab Coat: "In a double blind study of 150 people conducted in conjunction with the University of Texas, . . . people who were given a chromium picolinate supplement lost an average of 4.2 pounds of body fat . . . [and] gained 1.2 pounds of muscle mass. . . . Now you can get the chromium advantage with ChromaTrim. . . . You simply chew two to three pieces of the mint flavored gum every day. That way your body gets the chromium it needs to help your insulin work better, to burn fat, preserve muscle and control cravings." (Exhibit B, p. 11)

6. Through the means described in Paragraph 5, respondents have represented, expressly or

by implication, that:

- A. ChromaTrim significantly reduces body fat.
- B. ChromaTrim causes significant weight loss.
- C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
- D. ChromaTrim increases lean body mass and builds muscle.
- E. ChromaTrim controls appetite and craving for sugar.
- F. Testimonials from consumers appearing in the advertisements for ChromaTrim reflect the typical or ordinary experience of members of the public who use the product.
- G. Nine out of ten people do not consume enough chromium to support normal insulin function, resulting in decreased ability to burn fat, preserve muscle, and control hunger and cravings.

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

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

9. Through the means described in Paragraph 5, respondents have represented, expressly or by implication, that scientific studies demonstrate that:

- A. ChromaTrim significantly reduces body fat.
- B. ChromaTrim causes significant weight loss.
- C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
- D. ChromaTrim increases lean body mass and builds muscle.
- E. ChromaTrim controls appetite and craving for sugar.

10. In truth and in fact, scientific studies do not demonstrate that
- A. ChromaTrim significantly reduces body fat.
  - B. ChromaTrim causes significant weight loss.
  - C. ChromaTrim significantly reduces body fat and causes weight loss without dieting or exercise.
  - D. ChromaTrim increases lean body mass and builds muscle.
  - E. ChromaTrim controls appetite and craving for sugar.

Therefore, the representations set forth in Paragraph 9 were, and are, 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.

Therefore, the Federal Trade Commission this      day of      , 1996 has issued this complaint against respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits A-B attached to paper copies of complaint, but not available in electronic form.]

## **ANALYSIS OF PROPOSED CONSENT FOR PUBLIC COMMENT**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Universal Merchants, Inc., the marketer of ChromaTrim, a chewing gum containing chromium picolinate sold as a weight loss aid, and its president, Steven Oscherowitz, hereinafter sometimes referred to as respondents.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter alleges that the respondents made unsubstantiated claims that ChromaTrim (1) reduces body fat, (2) causes significant weight loss, (3) significantly reduces body fat and causes weight loss without dieting or exercise, (4) increases lean body mass and builds muscle, and (5) controls appetite and craving for sugar. The complaint further alleges that respondents falsely represented that these effects have been demonstrated through scientific studies. In addition, the complaint alleges that respondents made unsubstantiated claims that (1) testimonials from consumers appearing in ChromaTrim advertisements reflect the typical or ordinary experience of users and (2) that nine out of ten people suffer decreased ability to burn fat, preserve muscle, and control hunger and cravings because of a chromium deficiency.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order requires substantiation for claims that ChromaTrim (1) significantly reduces body fat, (2) causes significant weight loss, (3) significantly reduces body fat or causes weight loss without dieting or exercise, (4) increases lean body mass or builds muscle, and (5) controls appetite or craving for sugar. Similarly, Part I prohibits the claim that nine out of ten people do not consume enough chromium to support normal insulin function, resulting in decreased ability to burn fat, preserve muscle, and control hunger and cravings, unless, such claim is substantiated by competent and reliable scientific evidence at the time it is made.

Part II of the proposed order requires substantiation for any health benefits, performance, efficacy or safety claim for any food, dietary supplement, or drug. Part III prohibits the misrepresentation of any test, study, or research. Part IV prohibits proposed respondents from representing that any testimonial is the typical or ordinary experience of users unless such claim is substantiated or respondents disclose, clearly and prominently, what the generally expected results would be or that consumers should not expect similar results. Parts V and VI allow representations permitted for drugs by the Food and Drug Administration or for foods under the

Nutrition Labeling and Education Act. Part VII requires proposed respondents to maintain certain records for five years, and Part VIII requires proposed respondents to distribute a copy of the order to certain persons who have responsibilities subject to the order. Part IX requires the corporate respondent to notify the Commission of any changes in the corporation that may affect compliance with the order and Part X requires that Steven Oscherowitz notify the Commission of changes in employment or of his affiliation with any new employment. This provision is effective for five years. Part XI requires that the proposed respondents file a compliance report and Part XII sunsets the proposed order at twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.