

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
) DOCKET NO. C-3755
DEAN DISTRIBUTORS, INC.,)
 a corporation, doing business as)
ADVANCED HEALTH CARE SYSTEMS,)
CAMBRIDGE DIRECT SALES, and)
MEDIBASE.)
)
)

COMPLAINT

The Federal Trade Commission, having reason to believe that Dean Distributors, Inc., a corporation, through Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has 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 ONE: Respondent Dean Distributors, Inc. (hereinafter "respondent"), is incorporated in California, with its offices and principal place of business located at 1350 Bayshore Hwy., Suite 400, Burlingame, California 94010. Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has its offices and principal place of business located at 2801 Salinas Hwy., Building F, Monterey, California 93940-6420. Advanced Health Care Systems also does business as Cambridge Direct Sales and as MediBase.

PARAGRAPH TWO: Respondent advertises, offers for sale and sells, and otherwise promotes throughout the United States, weight loss and weight-loss maintenance services and products, including the "Food for Life Weight Management System" and "MediBase," and makes them available to the public through a multilevel distribution system and through direct sales to physicians and medical clinics.

PARAGRAPH THREE: The Food for Life Weight Management System diet programs include the "Cambridge Diet Plan," the "Food for Life" programs, the "Maintain for Life" program, and related nutritional products. Certain Food for Life Weight Management

System diet programs provide 420 calories per day, obtained by drinking three formula drinks per day, and are referred to as very-low-calorie diet ("VLCD") programs. VLCDs are rapid weight loss, modified fasting diets of 800 calories or less per day requiring medical supervision. Other Food for Life Weight Management System diet programs allow an additional 400 calories per day in conventional food products. These programs, consisting of 820 calories per day, are referred to as low-calorie diets ("LCDs"). In addition, the Food for Life Weight Management System diet programs consist of behavior modification, motivational counseling, exercise, and weight-loss maintenance. The Food for Life Weight Management System diet programs consist of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52, 55.

PARAGRAPH FOUR: The MediBase diet program is a medically-supervised three step program. The first step is a VLCD program providing 420 calories per day, obtained by drinking three formula drinks per day. The second step is an LCD program combining 420 calories per day, obtained by drinking three formula drinks per day, and an additional 400 calories per day, in conventional food products. The third step is a weight-loss maintenance program. In addition, the MediBase diet program consists of behavior modification, motivational counseling, and exercise. The MediBase diet program consists of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52, 55.

PARAGRAPH FIVE: 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, 15 U.S.C. § 44.

PARAGRAPH SIX: Respondent has disseminated or has caused to be disseminated advertisements for weight reduction and weight control products and programs. Respondent has created and provided camera-ready advertising copy to its participating distributors, referred to as "counselors," for placement in various periodicals that are in general circulation to the public, to promote the Food for Life Weight Management System diet programs to prospective customers. Respondent has further advertised its weight loss programs and products through the use of promotional materials, including pamphlets and brochures, given to customers and prospective customers by individual distributors referred to as "counselors."

PARAGRAPH SEVEN: Respondent's advertisements include but are not necessarily limited to the advertisements and promotional

materials entitled "Program Guide" ©1992 (attached hereto as Exhibit A); "Program Guide" ©November 1992 (attached hereto as Exhibit B); "Physician Monitoring Guidelines" (attached hereto as Exhibit C); "A taste for success!" (attached hereto as Exhibit D); "Treat Your Body With Ultimate Respect" (attached hereto as Exhibit E); two issues of "Breakthrough" (attached hereto as Exhibits F and G); and "If You Have Weight-Related Health Problems and Must Lose Weight . . ." (attached hereto as Exhibit H).

SAFETY CLAIMS

PARAGRAPH EIGHT: Respondent's advertisements referred to in PARAGRAPHS SIX and SEVEN, including but not necessarily limited to attached Exhibits A-H, include the following statements:

- (a) "The Food for Life Weight Loss Programs deliver their promise. You can lose weight safely. ... as much as 7 pounds in just one week." (Exhibit A, page 2)
- (b) "Nothing is as Simple ... Safe ... Effective ..."
(Exhibit B, page 3)
- (c) "Fast, effective, safe weight reduction!" (Exhibit E)
- (d) "If You Have Weight-Related Health Problems And Must Lose Weight... ...There Is A Medically Directed Program For You ... Nutritionally complete, excellent tasting **MediBase**® meal replacement ... Proven safe and effective in University testing" (Exhibit H)
(emphasis in original)

PARAGRAPH NINE: Through the use of the statements contained in the advertisements referred to in PARAGRAPH EIGHT, including but not necessarily limited to the statements in the advertisements attached as Exhibits A, B, E, and H, respondent has represented, directly or by implication, that the Food for Life Weight Management System and MediBase VLCD diet programs are unqualifiedly free of serious health risks.

PARAGRAPH TEN: Respondent has failed to disclose adequately that physician supervision is required to minimize the potential risk of the development of health complications to consumers on very-low-calorie diet programs. In view of the representation that the Food for Life Weight Management System and MediBase VLCD diet programs are free of serious health risks, the disclosure as to the requirement for medical supervision is necessary. The failure to adequately disclose this fact, in light of the representation as set forth in PARAGRAPH NINE, was, and is, false and misleading.

PARAGRAPH ELEVEN: Respondent has provided purchasers and prospective purchasers who elect to follow a very-low calorie diet protocol with a pamphlet, entitled "Physician Monitoring Guidelines" (Exhibit C), which contains the following statement:

"Occasional side effects have been reported in association with the use of a VLCD. In general, these symptoms are mild and transient.

Fatigue

Cold intolerance

Headache

Orthostatic hypotension

and, with less frequency, halitosis, dry mouth, constipation, diarrhea, epigastric discomfort, flatulence, muscle cramps, amenorrhea, temporary hair loss, and decreased libido.

Most symptoms subside after the initial phase of dieting, or upon resumption of a normal eating pattern. Many of the side effects can be avoided by maintaining adequate fluid intake (i.e. two liters of water or non-caloric, low-sodium, decaffeinated liquid)."

Purchasers were instructed to give the pamphlet to the physician that they asked to monitor their progress through the very-low-calorie diet protocol that they chose to follow.

PARAGRAPH TWELVE: Through the use of the statements contained in the advertisement referred to in PARAGRAPH ELEVEN, including but not necessarily limited to the statements in the advertisement attached as Exhibit C, respondent has represented, directly or by implication, that the Food for Life Weight Management System diet programs have a risk of only mild side effects.

PARAGRAPH THIRTEEN: In truth and in fact, VLCD diet programs such as the Food for Life Weight Management System diet programs do not have only mild side effects, and entail the risk of developing serious adverse side effects. Therefore, the representation set forth in PARAGRAPH TWELVE was, and is, false and misleading.

SUCCESS CLAIMS

PARAGRAPH FOURTEEN: Respondent's advertisements referred to in PARAGRAPHS SIX and SEVEN, including but not necessarily limited to attached Exhibits A-H, include the following statements:

- (a) "No matter what your goal... just a few pounds or more weight than you care to think about... you'll find a

Food For Life weight loss program that exactly suits your needs." (Exhibit A, page 2)

- (b) "Most people fail... because they can't maintain their weight loss for long periods of time. ... [y]ou [as a Food For Life dieter] will be in 'Control for Life.'" (Exhibit A, page 2)
- (c) "The Cambridge Food For Life Nutrition and Weight Management System is remarkably effective in providing long-term weight management." (Exhibit B, page 11)
- (d) "Andrea Ileo has good reason to show off... she is a product of the product! Ten years ago Andrea went from 170+ lbs. ['before' photo] to ... WOW! ['after' photo]" (Exhibit F, page 7)
- (e) "... Marie Carner, an inspiration to many, who lost 40 pounds and has kept it off for 2 years. Recently Marie sole sourced, losing an additional 12 pounds. She's fit, feels tremendous, and looks fantastic!" (Exhibit G, page 1)

PARAGRAPH FIFTEEN: Through the use of the statements contained in the advertisements or promotional materials referred to in PARAGRAPH FOURTEEN, subparagraphs (a)-(c), including but not necessarily limited to the statements in the advertisements attached as Exhibit A and B, respondent has represented, directly or by implication, that most Food for Life Weight Management System customers reach and maintain their weight loss goals either long-term or permanently.

PARAGRAPH SIXTEEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOURTEEN, subparagraphs (a)-(c), including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time respondent made the representation set forth in PARAGRAPH FIFTEEN, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SEVENTEEN: In truth and in fact, at the time respondent made the representation set forth in PARAGRAPH FIFTEEN, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH SIXTEEN was, and is, false and misleading.

PARAGRAPH EIGHTEEN: Through the use of the statements referred to in PARAGRAPH FOURTEEN, subparagraphs (d) and (e), including but not necessarily limited to the advertisements

attached as Exhibits F and G, respondent has represented, directly or by implication, that testimonials from consumers appearing in the advertisements and promotional materials for Food for Life Weight Management System reflect the typical or ordinary experience of members of the public who have used the program.

PARAGRAPH NINETEEN: Through the use of the statements referred to in PARAGRAPH FOURTEEN, subparagraphs (d) and (e), including but not necessarily limited to the advertisements attached as Exhibits F and G, respondent has represented, directly or by implication, that at the time they made the representation set forth in PARAGRAPH EIGHTEEN, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PARAGRAPH TWENTY: In truth and in fact, at the time respondent made the representation set forth in PARAGRAPH EIGHTEEN, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH NINETEEN was, and is, false and misleading.

PARAGRAPH TWENTY-ONE: Respondent's advertisements referred to in PARAGRAPHS SIX and SEVEN, including but not necessarily limited to attached Exhibits A-H, include the following statement:

"A study conducted by Opinion Research Corporation of 600 users who had lost 60 pounds or more showed that of the 400 who could be contacted after two years, more than 80% of the weight loss had been maintained." (Exhibit C, page 2)

PARAGRAPH TWENTY-TWO: Through the use of the statement referred to in PARAGRAPH TWENTY-ONE, including but not necessarily limited to the advertisement attached as Exhibit C, respondent has represented, directly or by implication, that the study results referred to were based on a valid statistical sample of all Food for Life Weight Management System customers who had lost 60 pounds or more.

PARAGRAPH TWENTY-THREE: In truth and in fact, the study results referred to in PARAGRAPH TWENTY-ONE were not based upon a valid statistical sample of all Food for Life Weight Management System customers who had lost 60 pounds or more. Therefore, the representation set forth in PARAGRAPH TWENTY-TWO was, and is, false and misleading.

RATE OF WEIGHT LOSS CLAIMS

PARAGRAPH TWENTY-FOUR: The advertisements referred to in PARAGRAPHS SIX and SEVEN, including but not necessarily limited to attached Exhibits A-H, include the following statements:

- (a) "You can lose 2 to 5 pounds per week on the Regular Program." (Exhibit A, page 3; Exhibit B, page 10)
- (b) "You can lose weight safely, quickly, and easily. ... as much as 7 pounds in just one week." (Exhibit A, page 2)

PARAGRAPH TWENTY-FIVE: Through the use of the statement contained in the advertisements referred to in PARAGRAPH TWENTY-FOUR, subparagraph (a), including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of two to five pounds per week.

PARAGRAPH TWENTY-SIX: Through the use of the statement contained in the advertisement referred to in PARAGRAPH TWENTY-FOUR, subparagraph (b), including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that an appreciable number of consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of seven pounds per week.

PARAGRAPH TWENTY-SEVEN: Through the use of the statements referred to in PARAGRAPH TWENTY-FOUR, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that at the time respondent made the representations set forth in PARAGRAPHS TWENTY-FIVE and TWENTY-SIX, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH TWENTY-EIGHT: In truth and in fact, at the time respondent made the representations set forth in PARAGRAPHS TWENTY-FIVE and TWENTY-SIX, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH TWENTY-SEVEN was, and is, false and misleading.

PARAGRAPH TWENTY-NINE: In providing advertisements and promotional materials such as those referred to in PARAGRAPHS SIX and SEVEN to its individual distributors, referred to as "counselors," and to physicians, respondent has furnished the means and instrumentalities to those individual distributors to engage in the acts and practices alleged in PARAGRAPHS EIGHT through TWENTY-EIGHT.

PARAGRAPH THIRTY: The acts and practices of respondent alleged in this complaint constitute deceptive acts or practices in or affecting commerce and "false advertisements" in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Therefore, the Federal Trade Commission this sixteenth day of June, 1997, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL

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