

Set Aside Order

119 F.T.C.

IN THE MATTER OF

NATIONAL COMICS PUBLICATIONS, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 2 OF THE CLAYTON ACT*Docket 7614. Consent Order, July 6, 1960--Set Aside Order, June 14, 1995*

The Federal Trade Commission has reopened a 1960 consent order (57 FTC 69) -- which required the companies to offer promotional allowances for their publications on proportionally equal terms to all customers -- and has set aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On February 16, 1995, DC Comics and Warner Publisher Services, Inc. ("WPS"), as respondents and successors to National Comics Publications, Inc. and Independent News Company, Inc.¹ filed a Petition to Reopen and Set Aside Consent Order ("Petition"), in this matter. DC and WPS request that the Commission set aside the 1960 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In its Petition, DC and WPS affirmatively state that neither has engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in

¹ Since the Commission issued the order in this matter, National Comics has become DC Comics, a general partnership between Warner Communications, Inc., and Time Warner Entertainment Co., L.P. Independent has changed its name to Warner Publisher Services, Inc., and is now owned by Warner Communications Inc.

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the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."² The Commission's consent order in Docket No. 7614 was issued on July 6, 1960, and has been in effect for more than twenty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 7614.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 7614 be, and it hereby is, set aside as of the effective date of this order.

² See Sunset Policy Statement, 59 Fed. Reg. at 45,289.

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IN THE MATTER OF

INDEPENDENT NEWS COMPANY, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 2 OF THE CLAYTON ACT*Docket 7611. Consent Order, July 6, 1960--Set Aside Order, June 14, 1995*

The Federal Trade Commission has reopened a 1960 consent order (57 FTC 56) -- which required the company to offer promotional allowances for its publications on proportionally equal terms to all customers -- and has set aside the consent order as to respondent Warner Publisher Services, the successor of Independent News Company, pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER

On February 16, 1995, Warner Publisher Services, Inc. ("WPS"), as respondent and successor of Independent News Company, Inc.,¹ filed a Petition to Reopen and Set Aside Consent Order ("Petition"), in this matter. WPS requests that the Commission set aside the 1960 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In its Petition, WPS affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than

¹ Since the Commission issued the order in this matter, Independent has changed its name to Warner Publisher Services, Inc. and is now owned by Warner Communications Inc. The other respondent in this matter, The New American Library of World Literature, Inc., did not petition to have the order set aside as to it.

twenty years."² The Commission's consent order in Docket No. 7611 was issued on July 6, 1960, and has been in effect for more than twenty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 7611 as to WPS.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is further ordered, That the Commission's order in Docket No. 7611 be, and it hereby is, set aside as to respondent Warner Publisher Services, Inc., as of the effective date of this order.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to grant the request of Warner Publisher Services, Inc., the successor of Independent News Company, Inc., to set aside the 1960 order in this case. I dissent from the decision to limit the setting aside of the order to Warner, instead of setting aside the order in its entirety.

The decision to limit relief to Warner, one of the two respondents under the order, appears to be inconsistent with the Commission's announced policy to presume "that the public interest requires reopening and setting aside the order in its entirety" (emphasis added) "when a petition to reopen and modify a competition order is filed" and the order is more than twenty years old.¹ The Commission's recognition of the limitations of the findings underlying an order² further suggests that the presumption that an order will be terminated after twenty years should apply to the order in its entirety and not be limited to the petitioner.³

I previously have expressed my concern that the adoption of a presumption instead of an across-the-board rule in favor of sunset

² See Sunset Policy Statement, 59 Fed. Reg. at 45,289.

¹ FTC, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention To Solicit Public Comment with Respect to Duration of Consumer Protection Orders (July 22, 1994), at 8 (hereafter "Sunset Policy Statement").

² "[F]indings upon which [orders] are based should not be presumed to continue" for longer than twenty years. Sunset Policy Statement at 4.

³ The presumption of termination after 20 years applies automatically for new orders in competition cases and is not limited to individual respondents, further supporting the view that the twenty-year presumption in favor of sunset for existing orders should apply to the order, not to particular respondents.

"will impose costs by requiring respondents to file individual petitions and the Commission to assess in the context of each such petition whether the presumption has been overcome for that order."⁴ Now the Commission would further increase the burden on both public and private resources by applying the presumption in favor of sunset not only on a case-by-case basis but on a respondent-by-respondent basis.

The petition filed by Warner invoked the twenty-year presumption that the order should be set aside. No evidence of recidivist conduct by any respondent, including The New American Library of World Literature, Inc., having been presented to overcome the presumption,⁵ the order should be set aside in its entirety.

⁴ Separate Statement of Commissioner Mary L. Azcuenaga on Sunset Policy (July 22, 1994), at 7 (footnote omitted).

⁵ See Sunset Policy Statement at 8 n.19

IN THE MATTER OF

TALEIGH CORPORATION, ET AL.

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

Docket C-3587. Complaint, June 16, 1995--Decision, June 16, 1995

This consent order prohibits, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent order requires the respondents to have scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or smoking cessation product, or for any food, dietary supplement, drug, or device. In addition, the consent order requires the owner to post a \$300,000 performance bond before marketing any weight-loss product or smoking deterrent or cessation product in the future.

Appearances

For the Commission: *Richard L. Cleland* and *Joel Winston*.
For the respondents: *Sheldon Lustigman*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Taleigh Corporation and Choice Diet Products, Inc., corporations; and William J. Santamaria, individually and as an officer and director of said corporations ("respondents"), have violated 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 Taleigh Corporation ("Taleigh"), formerly known as Taleigh, Inc., is a Florida corporation doing business under the names "Choice Diet Products," "Choice Products," and other trade names. Its principal place of business is located at 4742 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent Choice Diet Products, Inc. ("Choice") is a New York

corporation. Its principal place of business is located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL.

Respondent William J. Santamaria is or was at relevant times herein the sole owner, director, and officer of the corporate respondents. Individually or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His address is 20640 Baybrooke Court, Boca Raton, FL.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed weight-loss pills and a smoking cessation product to the public. Respondents have marketed the weight-loss pills under various names, including "MegaLoss," "FormulaTrim," and "MiracleTrim." These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Respondents have marketed the smoking cessation product under the name "Nicotain Stop Smoking Patch."

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.

DIET PILLS
FormulaTrim 3000

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for FormulaTrim 3000, including, but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements and depictions:

A. Exhibit A:

"Debbie Hoya lost 25 pounds fast.

Tamara Cowens lost 35 pounds fast." [*Video*: 'before' and 'after' photographs of consumer endorsers displayed with amounts of weight lost.]

"Now you too can lose weight fast, with the help of this new powerful FormulaTrim 3000 diet pill." [*Video*: "LOSE WEIGHT FAST!" displayed with product and, in the next screen, the words "NEW," "FormulaTrim 3000," and "POWERFUL!" displayed in full screen with small print at the bottom of the screen stating, "Use only as directed with diet plan."]

"FormulaTrim's new fat-burning plan is so powerful, you can burn more body fat relaxing all day than running 10 miles nonstop." [*Video*: "Based on 180 pound person" displayed in small print below full screen display of two young persons in pool with caption in large print "BURN AWAY FAT!"]

"Laurette Morello burned away 17 pounds."

LAURETTE MORELLO: "I went from a size 13 to a size 5."

"Adam Locas lost 36 pounds carving 7 inches from his waist....lost 52 pounds trimming from a size 14 to a size 6."

"This powerful, doctor-approved diet pill formula is medically proven to work." [Video: "Use only as directed with diet plan" displayed in small print at bottom of full screen displaying "DOCTOR APPROVED FormulaTrim 3000."]

"The new FormulaTrim fat burning plan is so powerful you can burn more body fat relaxing all day than sweating through five exhausting hours of aerobics . . ." [Video: "BURN AWAY FAT!" superimposed over two young persons in a pool with "Based on 180 pound person" displayed in small white letters against light background at bottom of screen.]

"Terri Nigelson burned away 15 pounds; Joanne Benora lost 32 pounds and Annette Garton lost an incredible and amazing 59 pounds! Now you can burn away fat and lose weight fast by calling . . . for your powerful new FormulaTrim 3000"

"Your satisfaction is 100% guaranteed."

* * *

[Video: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use only as directed with diet plan," "Testimonials compensated," and "Following diet plan is essential for loss of weight (average 1½ - 2 pounds per week) for results cannot be achieved solely through the use of pill."]

B. Exhibit B:

"Debbie Hoya lost 25 pounds, fast. Tamara Koons lost 35 pounds, fast."

"Now you too can lose weight fast with the help of this new powerful medically-proven FormulaTrim 3000 No Hunger Diet Pill." [Video: "Use only as directed with diet plan" displayed in small print below depiction of pill with the words "NEW," "FormulaTrim 3000," and "POWERFUL!" presented in large full-screen display.]

"Following this new powerful FormulaTrim fat burning diet plan, you can burn more body fat relaxing all day than running 10 miles nonstop or even sweating through 5 exhausting hours of aerobics." [Video: "Based on 180 pound person" displayed in small print below full screen display of two young persons in pool with caption in large print "BURN AWAY FAT!"]

"Terry Nigelson burned away 15 pounds.

Lorette Morello burned away 17 pounds." [Video: 'before' and 'after' photographs with "BURN AWAY FAT!" displayed on screen.]

LORETTE MORELLO: "I went from a size 13 to a size 5."

"Adam Locas burned away 36 pounds."

"Claire Contobi burned away 52 pounds [Video: 'before' and 'after' photographs with "BURNED AWAY 52 LBS" displayed on screen] and Annette Barton burned away an incredible and amazing 59 pounds!"

"Now you can end biting hunger pain, burn away fat and lose weight fast by calling . . . for your powerful FormulaTrim 3000"

[*Video*: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use only as directed with diet plan," "Testimonials compensated," and "Following diet plan is essential for loss of weight (average 1½ - 2 pounds per week) for results cannot be achieved solely through the use of pill."]

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that:

- A. FormulaTrim 3000 causes substantial weight loss rapidly;
 - B. FormulaTrim 3000 causes substantial weight loss without the need to exercise or reduce caloric intake;
 - C. FormulaTrim 3000 causes the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to users, than five hours of aerobic exercise or running ten miles nonstop;
 - D. FormulaTrim 3000's active ingredient is new and/or unique;
- and
- E. Scientific studies prove that FormulaTrim 3000 causes substantial weight loss rapidly.

PAR. 6. In truth and in fact:

- A. FormulaTrim 3000 does not cause substantial weight loss rapidly;
- B. FormulaTrim 3000 does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. FormulaTrim 3000 does not cause the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to users, than five hours of aerobic exercise or running ten miles nonstop;
- D. FormulaTrim 3000's active ingredient is not new and/or unique; and
- E. Scientific studies do not prove that FormulaTrim 3000 causes substantial weight loss rapidly.

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

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that FormulaTrim 3000 burns body fat.

PAR. 8. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five A-C and seven, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraphs five A-C and seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for FormulaTrim 3000 reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 11. In truth and in fact, testimonials from consumers appearing in advertisements for FormulaTrim 3000 do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

MegaLoss 1000

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements for MegaLoss 1000, including but not necessarily limited to the attached Exhibits C and D. These advertisements contain the following statements and depictions:

A. Exhibit C:

"You can start losing up to 10, 20, 50 even 100 pounds with the powerful, doctor approved, MegaLoss 1000 Miracle Diet Pill Program for only \$9.95."

[*Video*: "Use Only As Directed With Diet/Exercise Plan" displayed in small print at bottom of screen below full screen depiction of pill on a finger and the words "MIRACLE DIET PILL" in large print, followed by the words "PROGRAM" and "Doctor Approved" in smaller print.]

"With this doctor-approved MegaLoss 1000 Program, you can burn more body fat relaxing in the sun than swimming 2½ miles or exercising 6 hours nonstop."

[*Video*: young slender woman lying by a pool with statement "Based On 180 Pound Person" in small print displayed at bottom of screen.]

"Ohio's Faye Diamond lost a dramatic 15 pounds, rapidly dropping from a size 8 to a size 4."

FAYE DIAMOND: "I'm not embarrassed to wear a bikini anymore."

"Toronto's Debbie Holloway lost 53 pounds trimming from a size 16 to a size 7."

Wisconsin's A.J. Jr. rapidly lost 75 pounds, carving 10 bulging inches from his waist.

Tennessee's Sherry Capick lost 38 pounds with her doctor-approved Miracle Diet Pill Program.

And New York's Jeff Waldo rapidly lost an awesome 92 pounds!" [*Video*: photos of each consumer endorser displayed with amounts of weight lost; two consumer endorsements contain small video displays in the same color as background stating "Results Vary."]

"While under her Doctor's care, Mrs. McKinson quickly lost 32 pounds.

Lorraine Liberatti rapidly lost 46 pounds.

Lynn Clarey lost an astonishing 65 pounds, and E.J. Elkar lost an incredible 100 pounds! Now you can shed excess fat by calling . . . for your doctor approved MegaLoss 1000 Miracle Diet Pill Program. . . ."

"Your satisfaction is 100% guaranteed." [*Video*: "30-day Money-back Guarantee" displayed with ordering information; during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Use Only As Directed With Diet/Exercise Plan," "Testimonials Compensated," and "Following diet/exercise plan is essential for loss of weight for results cannot be achieved solely through the use of pill."]

B. Exhibit D:

"MIRACLE DIET PILL" [headline that appears in approximately 1-inch bold letters]

"Megaloss 1000 Diet Plan GETS THE FAT OFF FAST!" [smaller headline followed by word "Program"]

"Your Ultimate Anti-Fat Weapon!" [headline in ½ inch bold letters]

"SHRINK MILLIONS OF FAT CELLS IN JUST 24 To 48 HOURS!" [smaller headline]

"MEGALOSS GETS THE FAT OFF FAST!

MegaLoss 1000 really works wonders ... FAST! Debbie Holloway lost an amazing 53 pounds. Harold Albright rapidly burned away 75 pounds and Erma Alkire lost 100 pounds so fast her friends could barely recognize her."

"RAPIDLY LOSE POUNDS & INCHES

Just imagine yourself beginning to burn away years of unsightly fat as the MegaLoss 1000 diet plan helps you rapidly shrink millions of fat cells almost

overnight. Now you, like Debbie, Erma and Faye have the opportunity to rapidly lose weight and regain your figure thanks to the MegaLoss 1000 fat-burning diet and its powerful, clinically tested, medically proven and doctor-recommended diet pill formula."

"MEDICALLY PROVEN - DOCTOR APPROVED!

The MegaLoss 1000 diet plan was designed to trigger super fast weight loss. Results are simply fantastic! Your self-confidence and self esteem will grow each day as you regain your youthful figure with the help of this doctor approved diet program's special diet pill ingredient. Formerly available only through doctors, this powerful ingredient is now available to help you lose weight with the doctor-approved MegaLoss 1000 diet since being recommended for its safety to the United States Government"

"Watch as you:

- LOSE up to 23 INCHES off your WAIST
- LOSE up to 20 INCHES off your HIPS
- LOSE up to 10 INCHES off your THIGHS"

"Naturally, individual weight may vary depending largely on how much you need to lose. But you'll simply be amazed as your calorie intake reduces and gnawing hunger pains are shut off as your high-speed fat burn-off turns on full flame to trim away years of built-up fat. The results are fantastic!"

"ULTIMATE ANTI-FAT WEAPON

You'll no longer be a slave to your appetite. MegaLoss 1000's medically proven formula has been praised by leading doctors, featured in thousands of studies, medical books and national magazines. You now have the ultimate anti-fat weapon you need to lose weight fast. As you quickly drop pounds and inches, experience the more vibrant, desirable and exciting new you emerge."

"NO DANGEROUS SIDE EFFECTS

You'll simply be amazed at how fast the weight comes off. And best of all - you don't have to worry about those nervous jitters, insomnia, laxative effects or dangerous side effects. But you can lose weight so fast your friends may not even recognize you.... As if by magic on the MegaLoss diet plan, down go the calories, down go the inches and down go the pounds!"

"NOW IT'S YOUR TURN

Now it's your turn to rapidly lose weight . . .

Now you can:

- Shrink Millions of Fat Cells The Very First Day
- Trigger Awesome Fat-burning in 24 to 48 Hours
- Slim Stubborn Bulges in Record Time
- Dramatically Reshape Your Body"

"SATISFACTION 100% GUARANTEED OR YOUR MONEY BACK

Now is the proper time... the turning point of your life. Now you can shed your excess fat and have a firm, youthful-looking body faster than you ever dreamed possible. No matter how many years you have been overweight, this amazing anti-fat weapon not only can... but must work wonders for you... or it doesn't cost a single cent! You risk absolutely nothing when you call in your order."

"ORDER NOW WITHOUT RISK

Complaint

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You must be 100 percent satisfied with your rapid weight loss and the results you see in you waist, hips and thighs. If you are not completely satisfied in any way, simply return the unused portion in 30 days and receive a full refund of your purchase price. No questions asked. So act now. Call in your order today."

[Ad contains the following footnote in fine print: "If you read nothing else, read this . . . Following the High Speed diet plan is an extremely fast and effective means to conquer obesity. It causes you to lower caloric intake, which is essential to the rapid reduction of fat and body weight. Naturally, the incredible results described above may not be achieved solely though the use of the diet pills. You must follow the entire Hi-Speed diet plan, which includes behavior modification and walking to achieve the fastest results. Results vary. Average weight loss is 1-2 pounds per week. . . . This product should not be used by the elderly or children. Pregnant women, nursing mothers, individuals being treated for high blood pressure or depression or who have heart disease, diabetes, or thyroid disease should only use as directed by their physician."]

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that:

- A. MegaLoss 1000 causes substantial weight loss rapidly;
- B. MegaLoss 1000 causes substantial weight loss without the need to exercise or reduce caloric intake;
- C. MegaLoss 1000 causes the burning of more body fat daily, thereby resulting in the same or greater weightloss benefit to users, than swimming two and a half miles or exercising six hours nonstop;
- D. Prior to the sale of MegaLoss 1000, the active ingredient in MegaLoss 1000 was available only through doctors; and
- E. Scientific studies prove that MegaLoss 1000 causes substantial weight loss rapidly.

PAR. 14. In truth and in fact:

- A. MegaLoss 1000 does not cause substantial weight loss rapidly;
- B. MegaLoss 1000 does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. MegaLoss 1000 does not cause the burning of more body fat daily, thereby resulting in the same or greater weight-loss benefit to

users, than swimming two and a half miles or exercising six hours nonstop;

D. The active ingredient in MegaLoss 1000 was available to the public without a doctor's prescription for a substantial period of time prior to the sale of MegaLoss 1000; and

E. Scientific studies do not prove that MegaLoss 1000 causes substantial weight loss rapidly.

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

PAR. 15. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that:

A. MegaLoss 1000 does not cause nervous jitters or insomnia or have any dangerous side effects;

B. MegaLoss 1000 burns body fat; and

C. MegaLoss 1000 significantly shrinks millions of fat cells within the first twenty-four to forty-eight hours of use.

PAR. 16. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs thirteen A-C and fifteen, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 17. In truth and in fact, at the time they made the representations set forth in paragraphs thirteen A-C and fifteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisements attached as Exhibits C and D, respondents have represented, directly or by implication, that testimonials from consumers appearing in

advertisements for MegaLoss 1000 reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 19. In truth and in fact, testimonials from consumers appearing in advertisements for MegaLoss 1000 do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph eighteen was, and is, false and misleading.

MiracleTrim

PAR. 20. Respondents have disseminated or have caused to be disseminated advertisements for MiracleTrim, including but not necessarily limited to the attached Exhibit E. This advertisement contains the following statements and depictions:

"Now you can start shrinking millions of fat cells and begin regaining your youthful figure in 24 to 48 hours." [*Video*: heavy woman depicted putting on a pair of jeans and becoming a slim woman within three frames of the ad.]

"The very first day your powerful new MiracleTrim Diet Pill System attacks years of built up fat. You can start losing up to 10, 20, 50, even an atypical 100 pounds for only \$9.95." [*Video*: "100 lbs." and "RECEIVE A FULL 21-DAY SUPPLY," and "NEW!" superimposed over a package containing two bottles of MiracleTrim pills.]

"This new MiracleTrim Diet Pill System is doctor approved to help you quickly shrink millions of fat cells so you can easily regain your youthful figure." [*Video*: "Use Only As Directed With Diet Plan" in small print at bottom of screen below full screen depiction of pill on a finger and the words "NEW!" "DOCTOR APPROVED," and "EASILY REGAIN YOUR FIGURE!" in large print.]

"You can rapidly shrink up to 10 inches off your thighs. You can easily shrink as much as 20 inches from your hips and you can quickly shrink up to an amazing 23 inches from your waist."

* * *

"Pam rapidly went from a large size 15 to a slim 7. After 15 years of diets, Treva finally found one that really worked." [*Video*: 'before' and 'after' photos displayed with amounts of weight lost.]

A man is pictured as he says: "I quickly lost 55 pounds."

"Jo's incredible 59 pound loss gave her a knockout shape. Carol lost an astonishing 40 pounds. And Edie lost a mind boggling 110 pounds." [*Video*: 'before' and 'after' photos of consumer endorsers displayed with amounts of weight lost.]

"Now it's your turn to dramatically reshape your figure by calling . . . for your new MiracleTrim Diet Pill System for only \$9.95." [*Video*: during ordering instructions, while telephone number and cost information is presented in audio and video, the following text is presented at the bottom of various screens in small print: "Following Diet Plan Is Essential For Weight Loss (Average 1½ - 2 Pounds Per

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Complaint

Week) For Results Cannot Be Achieved Solely Through Use Of Pill," "testimonials compensated," and "use only as directed with diet plan."]

* * *

DR. PESHKIN [*shown in video*]: "Order today, you'll receive your own personal weight loss consultation, absolutely free. . . ."

PAR. 21. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that:

- A. MiracleTrim causes substantial weight loss rapidly;
- B. MiracleTrim causes substantial weight loss without the need to exercise or reduce caloric intake;
- C. MiracleTrim's active ingredient is new and/or unique; and
- D. Consumers who order MiracleTrim will receive a personal weight-loss consultation from a doctor or medically trained, professional weight-loss counselor.

PAR. 22. In truth and in fact:

- A. MiracleTrim does not cause substantial weight loss rapidly;
- B. MiracleTrim does not cause substantial weight loss without the need to exercise or reduce caloric intake;
- C. MiracleTrim's active ingredient is not new and/or unique; and
- D. Consumers who order MiracleTrim will not receive a personal weight-loss consultation from a doctor or medically trained, professional weight-loss counselor.

Therefore, the representations set forth in paragraph twenty-one were, and are, false and misleading.

PAR. 23. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that MiracleTrim significantly shrinks millions of fat cells within the first twenty-four to forty-eight hours of use.

PAR. 24. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as

Exhibit E, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs twenty-one A-B and twenty-three, they possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 25. In truth and in fact, at the time they made the representations set forth in paragraphs twenty-one A-D and twenty-three, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twenty-four was, and is, false and misleading.

PAR. 26. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twenty, including but not necessarily limited to the advertisement attached as Exhibit E, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for MiracleTrim reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 27. In truth and in fact, testimonials from consumers appearing in advertisements for MiracleTrim do not reflect the typical or ordinary experience of members of the public who have used the product. Therefore, the representation set forth in paragraph twenty-six was, and is, false and misleading.

FAILURE TO ADEQUATELY DISCLOSE MATERIAL CONNECTION

PAR. 28. In their advertising and sale of weight-loss pills, including but not necessarily limited to MegaLoss 1000, FormulaTrim 3000, and MiracleTrim, respondents have represented that consumers appearing in respondents' advertisements are endorsers of the weight-loss pills. Respondents have failed to disclose adequately that certain consumers appearing in respondents' advertisements have a material connection with respondents in that such consumers have been compensated, or offered significant compensation, for endorsing the weight-loss pills. This fact would be material to consumers in their purchase or use decisions regarding the products. The failure to disclose adequately this fact, in light of the representation made, was, and is, a deceptive practice.

