

Complaint

121 F.T.C.

IN THE MATTER OF

N.W. AYER &amp; SON, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3660. Complaint, May 31, 1996--Decision, May 31, 1996*

This consent order prohibits, among other things, the New York-based advertising agency from misrepresenting the absolute or comparative amount of cholesterol, total fat, saturated fat, or any other fatty acid in eggs or in any meat, dairy, or poultry product, and from misrepresenting the existence or results of any test or study.

*Appearances*For the Commission: *Theodore H. Hoppock.*For the respondent: *Bertrand M. Lanchner*, in-house counsel,  
New York, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc. ("respondent"), a corporation, 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 1. Respondent is a Delaware corporation with its offices and principal place of business at 825 Eighth Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Egglan's Best, Inc., and prepared and disseminated advertisements to promote the sale of Egglan's Best eggs and other egg products to consumers. These products are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 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.

PAR. 4. Respondent has disseminated or has prepared for dissemination advertisements for Egglan's Best eggs, including but not necessarily limited to the attached Exhibits A-H. With the exception of Exhibit H, these advertisements were disseminated or prepared for dissemination by respondent following the Commission's issuance of the final consent order in Egglan's Best, Inc., Docket No. C-3520 (Aug. 15, 1994). These advertisements contain the following statements:

A. AUDIO: Imagine eating delicious, real, whole eggs without raising your serum cholesterol. People did. In clinical tests of Egglan's Best Eggs, they ate a dozen a week while keeping within the limits of the Surgeon General's low-fat diet. And though each egg contained 213 milligrams of cholesterol, 71% of the FDA's maximum daily value, their serum cholesterol didn't go up. Surprised? Try it yourself. Egglan's Best. You can eat real eggs again.

VIDEO SUPERSCRIPTS (running simultaneously with audio portion):

REAL WHOLE EGGS

WITHOUT RAISING CHOLESTEROL

CLINICAL TESTS

LOW-FAT DIET

213 MG. CHOLESTEROL

(71% MAXIMUM DAILY VALUE)

CHOLESTEROL DIDN'T GO UP

YOU CAN EAT REAL EGGS AGAIN.

Depictions of eggs being cooked in different ways, and of Egglan's Best carton.

[Exhibit A: "Supers" 30-Second Television]

B. AUDIO: Imagine eating delicious, real, whole eggs . . . and not raising your serum cholesterol. People did. In two clinical tests for Egglan's Best eggs. They ate a dozen a week while keeping within the limits of the Surgeon General's low-fat diet. Each egg contained the usual 213 milligrams of cholesterol, 71% of the FDA's maximum Daily Value, yet their serum cholesterol didn't go up. (Surprised?) Try it yourself. Egglan's Best. Limit your fat and enjoy real eggs again.

VIDEO SUPERSCRIPTS (similar to Exhibit A).

Depictions (similar to Exhibit A).

[Exhibit B: "Supers" Revised 30-Second Television]

C. If you love eggs but are concerned about cholesterol, you'll be interested in clinical tests done here at the Medical College of Pennsylvania. In these tests, people ate a dozen eggs a week for six weeks, and showed no increase in their serum cholesterol. The eggs tested here were Egglan's Best. Fresh, real, whole eggs, each with the usual 213 mg. of cholesterol, or 71% of the FDA's maximum daily value. Yet the people's cholesterol didn't go up. How? They ate these eggs as part of the Surgeon General's low-fat diet. Keeping within the limits of this diet,

they were able to enjoy what some of them hadn't in a long time. Fresh, delicious, real eggs. And since the eggs were Egglard's Best, they also enjoyed the benefit of over six times more Vitamin E. Egglard's Best come from hens fed a special all-vegetarian diet so unique it's patented. So limit your fat and enjoy your eggs. Egglard's Best. You can eat real eggs again.

[Exhibit C: "MCP/Tests" 60-Second Radio]

D. You'd love a thick, juicy steak . . . but you eat fish. You'd love two eggs over easy. . . and guess what? You can have them. Even if you're concerned about cholesterol. Just do what people did in clinical tests of Egglard's Best eggs. One . . . follow the low-fat diet recommended by the Surgeon General. And two . . . keeping within the fat limits of this diet, eat as many as 12 Egglard's Best eggs a week. The people tested did. And after six weeks of enjoying real, whole eggs with the usual 213 mg. of cholesterol each, or 71% of the FDA's maximum daily value, guess what? They showed no increase in their serum cholesterol! And since the eggs were Egglard's Best, they also enjoyed the benefit of over six times more Vitamin E. Egglard's Best eggs come from hens fed a special all-vegetarian diet so unique its patented. So limit your fat and enjoy your eggs. Egglard's Best. You can eat real eggs again.

[Exhibit D: "Juicy Steak" 60-Second Radio]

E. Tests show how you can eat real eggs again. (Even if you're concerned about cholesterol.) [Large, Bold Headline]

In clinical tests, people ate a dozen Egglard's Best eggs a week and showed no increase in their serum cholesterol.

How? Simply by enjoying these fresh, delicious eggs while staying within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

What makes the test results such astonishing news is that the eggs they ate were real, whole eggs. With the usual 213 mg. of cholesterol per egg, or 71% of the FDA's maximum Daily Value.

Imagine! A way to enjoy real, whole eggs again. And not increase your serum cholesterol!

To be sure you're getting the same fresh, delicious eggs used in the clinical tests, insist on Egglard's Best.

Then just limit you fat and enjoy your eggs. [Text]

Egglard's Best. You can eat real eggs again. [Large, Bold Tagline]

[Exhibit E: "Tests Show" Print FSI]

F. Tests now show how you can eat real eggs again. (Even if you're concerned about cholesterol.) [Large, Bold Headline]

In two clinical tests, people ate a dozen Egglard's Best a week and showed no increase in their serum cholesterol.

How? Simply by enjoying these fresh, delicious eggs while staying within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

And what may surprise you is that the eggs they ate were real, whole eggs. With the usual 213 mg. of cholesterol per egg, or 71% of the FDA's maximum Daily Value.

Imagine! A way to enjoy real, whole eggs again and not increase your serum cholesterol.

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What are you waiting for? Use the coupon below and save 50¢. [Text]  
 EGGLAND'S BEST. Limit Your Fat And Enjoy Real Eggs Again. [Large, Bold Tagline]

[Exhibit F: "Tests Now Show" Revised Print FSI]

G. Tests show how you can eat real eggs again. (Even if you're concerned about cholesterol.) [Large, Bold Headline]

In clinical tests, people ate a dozen Egglan's Best eggs a week, and showed no increase in their serum cholesterol.

How? By including the eggs within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

And we're talking about fresh, delicious, real whole eggs! With the usual 213 mg. of cholesterol, or 71% of the FDA's maximum Daily Value.

Imagine a way to enjoy real whole eggs and not increase you serum cholesterol.

Egglan's Best. Limit your fat and enjoy real eggs again. [Large, Bold Tagline]

[Exhibit G: "Tests show how" half page Print FSI]

H. It's simple. When the hens eat better, you eat better, too. [Large, Bold Headline]

Introducing Egglan's Best. Premium eggs from hens fed a premium diet.

Unlike ordinary eggs, Egglan's Best are laid by hens that eat no animal fat. Just lots of healthy grains, extra Vitamin E and a little canola oil -- the oil lowest in saturated fat. [Text]

[Exhibit H: "It's Simple" Print FSI]

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-G, respondent has represented, directly or by implication, that:

A. Eating Egglan's Best eggs will not increase serum cholesterol.

B. Eating Egglan's Best eggs will not increase serum cholesterol as much as eating ordinary eggs.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-G, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time it made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such

representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-G, respondent has represented, directly or by implication, that clinical studies have proven that adding twelve Egglan's Best eggs per week to a low-fat diet does not increase serum cholesterol.

PAR. 9. In truth and in fact, clinical studies have not proven that adding twelve Egglan's Best eggs per week to a low-fat diet does not increase serum cholesterol. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit H, respondent has represented, directly or by implication, that:

- A. Egglan's Best eggs are low in saturated fat.
- B. Egglan's Best eggs are lower in saturated fat than ordinary eggs.

PAR. 11. In truth and in fact:

- A. Egglan's Best eggs are not low in saturated fat.
- B. Egglan's Best eggs are not lower in saturated fat than ordinary eggs.

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

PAR. 12. Respondent knew or should have known that the representations set forth in paragraphs six, eight and ten were, and are, false and misleading.

PAR. 13. 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.

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EXHIBIT A



NW Ayer Incorporated  
 825 Eighth Avenue  
 New York, NY 10019-7498  
 212-474-5000  
 Fax: 212-474-5400

EXHIBIT A

CLIENT	Egg•Land's Best	FACILITIES	TV
PRODUCT	Egg•Land's Best Eggs	DATE	October 11, 1994
TITLE	"Supers - Foam Split"	LENGTH	:30
NUMBER	ZAYA 4169 ** AS PRODUCED **		

VIDEO

AUDIO

(Music up and under throughout.)

CU HAND CRACKING AN EGG.

Annrc: Imagine eating delicious,

CU RAW EGG FALLING INTO FRYING PAN.  
 TITLE: REAL WHOLE EGGS

real, whole eggs

CU WHOLE EGGS IN BOILING WATER.  
 TITLE: WITHOUT RAISING CHOLESTEROL

without raising your serum  
 cholesterol.

CU HARD BOILED EGG BEING SLICED.

People did.

CU PAN ACROSS EGG•LAND'S BEST EGGS PACKAGE.  
 TITLE: CLINICAL TESTS

In clinical tests of Egg•Land's  
 Best eggs,

PAN UP BASKET OF EGGS; HAND LIFTS ONE UP.

they ate a dozen a week

CU WHISK STIRRING EGGS.

while keeping within the limits

CU SLIDING SCRAMBLED EGG ONTO MUFFIN.  
 TITLE: LOW-FAT DIET

of the Surgeon General's low-fat  
 diet.

CU PAN OF OPEN PACKAGE OF EGGS.

And though each egg contained

CU POACHED EGG BEING LIFTED OUT OF WATER.  
 TITLE: 213 MG. CHOLESTEROL

213 milligrams of cholesterol,

CU TOPPINGS BEING ADDED TO OMELET.  
 TITLE: 213 MG. CHOLESTEROL  
 (71% MAXIMUM DAILY VALUE)

71% of the FDA's

CU BAKED EGGS AND CROUTONS.  
 TITLE: (SAME AS ABOVE)

maximum daily value,

CU FRIED EGGS IN PAN.  
 TITLE: CHOLESTEROL DIDN'T GO UP

their serum cholesterol didn't  
 go up.

CU EGGS AND TOAST ON PLATE.

Surprised? Try it yourself.

MS EGG•LAND'S BEST PACKAGE.  
 TITLE: YOU CAN EAT REAL EGGS AGAIN.

Egg•Land's Best. You can eat  
 real eggs again.

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## EXHIBIT B

DEC-28-1994 11:21

EGGLAND'S BEST N.Y.

EXHIBIT B

Revise 12/94  
On Air 01/95EGG.LAND'S BEST  
CHOLESTEROL STRATEGY  
:30 TV  
"SUPERS"

## VIDEO

EGG SHOTS. WITH SUPERS UNDERSCORING VO. COPY.

## AUDIO

SFX: EGG CRACKING, PER VIDEO.  
 MUSIC: UNDER THROUGHOUT  
 VO: Imagine eating delicious, real, whole eggs...and not raising your serum cholesterol. People did. In two clinical tests for Egg.land's Best eggs. They ate a dozen a week while keeping within the limits of the Surgeon General's low-fat diet. Each egg contained the usual 213 milligrams of cholesterol, 71% of the FDA's maximum Daily Value, yet their serum cholesterol didn't go up. (Surprised?) Try it yourself. Egglend's Best. Limit your fat and enjoy real eggs again.

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EXHIBIT C



1877 Ayer Incorporated  
 825 Eighth Avenue  
 New York, NY 10019-7498  
 212-474-5000  
 Fax: 212-474-5400

EXHIBIT C

CLIENT	Egg•Land's Best	FACILITIES	Radio
PRODUCT	Egg•Land's Best Eggs	DATE	October 11, 1994
TITLE	"MCP/Tests"	LENGTH	:60
NUMBER	ZAYA 4165 ** AS PRODUCED **		

**SFX:** *FOOTSTEPS ECHOING ON A HARD FLOOR.*  
**Announcer:** If you love eggs but are concerned about cholesterol, you'll be interested in clinical tests done here at the Medical College of Pennsylvania. In these tests, people ate a dozen eggs a week for six weeks, and showed no increase in their serum cholesterol.

**SFX:** *DOOR OPENING. FOOTSTEPS ON WOOD FLOOR.*  
**Announcer:** The eggs tested here were Egg•Land's Best. Fresh, real, whole eggs, each with the usual 213 mg. of cholesterol, or 71% of the FDA's maximum daily value.

**SFX:** *FILE DRAWER OPENING.*  
**Announcer:** Yet the people's cholesterol didn't go up. How?

**SFX:** *PAPERS RUSTLING.*  
**Announcer:** They ate these eggs as part of the Surgeon General's low-fat diet. Keeping within the limits of this diet, they were able to enjoy what some of them hadn't in a long time. Fresh, delicious, real eggs. And since the eggs were Egg•Land's Best, they also enjoyed the benefit of over six times more Vitamin E. Egg•Land's Best come from hens fed a special all-vegetarian diet so unique it's patented. So limit your fat and enjoy your eggs.

Egg•Land's Best. You can eat real eggs again.



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## EXHIBIT D

**Ayer**

NY Ayer Incorporated  
 Worldwide Plaza  
 825 Eighth Avenue  
 New York, NY 10019-7498  
 212-474-5000  
 Fax: 212-474-5400

EXHIBIT D

CLIENT	Egg•Land's Best	FACILITIES	Radio
PRODUCT	Egg•Land's Best Eggs	DATE	October 11, 1994
TITLE	"Juicy Steak"	LENGTH	:60
NUMBER	ZAYA 4164 ** AS PRODUCED **		

**Announcer:** You'd love a thick, juicy steak...  
**SFX:** *SIZZLE, SIZZLE*  
**Announcer:** ... but you eat fish.  
**SFX:** *UTENSILS AGAINST PLATE*  
**Announcer:** You'd love two eggs over easy...  
**SFX:** *EGGS CRACKING*  
**Announcer:** ... and guess what?  
**SFX:** *SIZZLE, SIZZLE*  
**Announcer:** You can have them. Even if you're concerned about cholesterol. Just do what people did in clinical tests of Egg•Land's Best eggs. One... follow the low-fat diet recommended by the Surgeon General. And two... keeping within the fat limits of this diet, eat as many as 12 Egg•Land's Best eggs a week. The people tested did. And after six weeks of enjoying real, whole eggs with the usual 213 mg. of cholesterol each, or 71% of the FDA's maximum daily value, guess what? They showed no increase in their serum cholesterol! And since the eggs were Egg•Land's Best, they also enjoyed the benefit of over six times more Vitamin E. Egg•Land's Best eggs come from hens fed a special all-vegetarian diet so unique it's patented. So limit your fat and enjoy your eggs.

Egg•Land's Best. You can eat real eggs again.

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EXHIBIT E

# Tests show how you can eat real eggs again.

EXHIBIT E

(Even if you're concerned about cholesterol.)



In clinical tests, people ate a dozen Egg-land's Best® eggs a week and showed no increase in their serum cholesterol.

How? Simply by enjoying these fresh, delicious eggs while staying within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

What makes the test results such astonishing news is that the eggs they ate were real, whole eggs. With the usual 213 mg. of cholesterol per egg, or 71% of the FDA's maximum Daily Value.

Imagine! A way to enjoy real, whole eggs again. And not increase your serum cholesterol! To get the same fresh, delicious eggs used in the clinical tests, insist on Egg-land's Best®.

Limit your fat and enjoy your eggs.

**Egg-land's Best.**  
You can eat real eggs again.

50¢

CONSUMER COUPON

Save 50¢ on one dozen Egg-land's Best® Eggs

50¢

MANUFACTURER'S COUPON      EXPIRATION DATE 3-31-88

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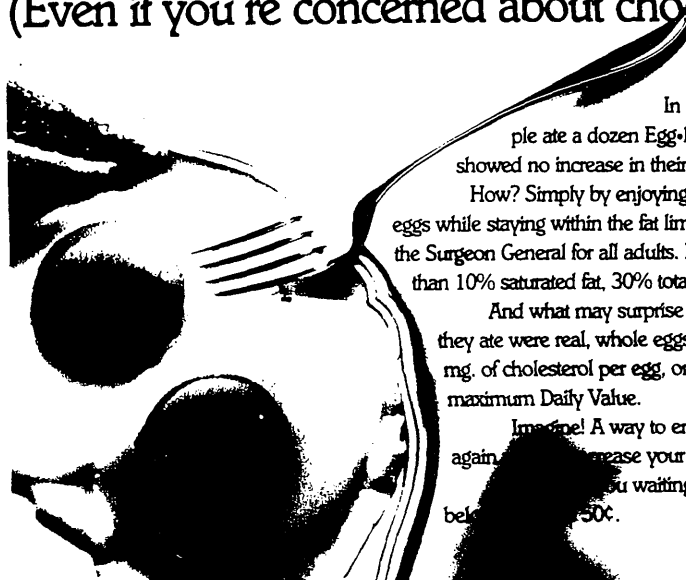
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EXHIBIT F

# Tests now show how you can eat real eggs again.

(Even if you're concerned about cholesterol.)

EXHIBIT



In two clinical tests, people ate a dozen Egg-land's Best® a week and showed no increase in their serum cholesterol.

How? Simply by enjoying these fresh, delicious eggs while staying within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

And what may surprise you is that the eggs they ate were real, whole eggs. With the usual 213 mg. of cholesterol per egg, or 71% of the FDA's maximum Daily Value.

Imagine! A way to enjoy real, whole eggs again, and increase your serum cholesterol. Are you waiting for? Use the coupon below. Save 50¢.

**EGG•LAND'S BEST.**  
Limit Your Fat  
And Enjoy Real Eggs Again.

**50¢**

CONSUMER

GROCEER

00221

MANUFACTURER'S COUPON



**Save 50¢ on one dozen Egg-land's Best® Eggs**

50¢

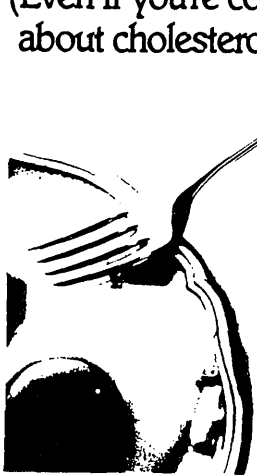
Save 50¢ on one dozen Egg-land's Best® Eggs. Redeemable only in the U.S. and possessions. Excludes product purchased in quantities of 12 or more. See store for details. ©1995 Egg-land's Best, Inc.

©1995 Egg-land's Best, Inc.

Complaint

EXHIBIT G

**Tests show how you can eat real eggs again  
(Even if you're concerned  
about cholesterol.)**



In clinical tests, people ate a dozen Egg-land's Best eggs a week, and showed no increase in their serum cholesterol.

How? By including the eggs within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

And we're talking about fresh, delicious, real, whole eggs! With the usual 213 mg. of cholesterol, or 71% of the FDA's maximum Daily Value. Imagine a way to enjoy real whole eggs and not increase your serum cholesterol.

**Egg-land's Best. Limit your fat and enjoy real eggs again**

**1,200,000** coupons for  
**Egg-land's Best Eggs**  
will appear in **VALASSIS INSERTS**  
on Sunday, **February 26, 1995.**

Don't be caught short...  
Order, stock and display extra cases of  
**Egg-land's Best Eggs**  
during this promotion.

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EXHIBIT H

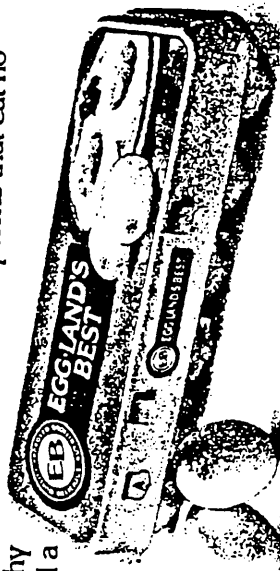
Exhibit H

# It's simple. When the hens eat better, you eat better, too.

Introducing Egg-land's Best® Premium eggs from hens fed a premium diet.

Unlike ordinary eggs, Egg-land's Best are laid by hens that eat no animal fat. Just lots of healthy grains, extra Vitamin E and a little canola oil—the oil lowest in saturated fat.

Ask for them at one of the fine restaurants listed in this book. And find out just how good an egg can be.



## Introducing Egg-land's Best.

©1992 C.F.E.B.S., Inc.

UTAH MENU GUIDE AD -- RAN JULY 1992

CR-NAT-P20005  
8" x 5"  
Utah Menu Directory—July 1992

## DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days 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 N.W. Ayer & Son, Inc., d/b/a/ NW Ayer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Eighth Avenue, in the City of New York, State of New York.

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

Decision and Order

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## ORDER

## DEFINITION

For purposes of this order, the phrase "covered food product" shall mean only eggs and any meat, dairy, or poultry product. For purposes of this definition, "meat product" shall include any food product for human consumption that is made in whole or in substantial part of the meat of cattle, sheep, swine, or goats; "dairy product" shall include any food product for human consumption that is made in whole or in substantial part from milk; and "poultry product" shall include any food product for human consumption that is made in whole or in substantial part of the meat of any fowl.

## I.

*It is ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, 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 covered food 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, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other fatty acid in such covered food product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, or, if applicable, the United States Department of Agriculture, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in such regulation.

## II.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, 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 covered food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such covered food product on serum cholesterol, whether or not such covered food product is consumed as part of an unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation. For purposes of this order, "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.

### III.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, 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 covered food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such covered food product, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation.

### IV.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., its successors and assigns, and its officers, agents, representatives and employees, 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 covered food 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, the existence, contents, validity, results, conclusions or interpretations of any test or study.

V.

Nothing in this order shall prohibit respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

VI.

*It is further ordered,* That for five (5) years after the last date of dissemination of any representation covered by this order, respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission 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.

VII.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within thirty (30) days after service upon it of this order, distribute a copy of the order to each of its operating divisions, each of its managerial employees, and each of its officers,

agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

### VIII.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

### IX.

*It is further ordered,* That respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

### X.

This order will terminate on May 31, 2016, 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.

## IN THE MATTER OF

## JOHNSON &amp; COLLINS RESEARCH, INC., ET AL.

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

*Docket C-3661. Complaint, May 31, 1996--Decision, May 31, 1996*

This consent order prohibits, among other things, a Minnesota-based company and its officer from misrepresenting the efficacy and results of their weight-loss products, and requires the respondents to disclose that such product consists primarily of a booklet or pamphlet containing information and advice on weight loss, and to possess competent and reliable scientific evidence to substantiate any future advertisements for weight-loss booklets or for other weight-loss products or programs.

*Appearances*

For the Commission: *Richard L. Cleland* and *C. Lee Peeler*.  
For the respondents: *Peter Rosden*, Charlottesville, VA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson & Collins Research, Inc., a corporation, and Gregor A. von Ehrenfels, individually and as an officer of said corporation ("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 Johnson & Collins Research, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota. Its principal place of business is located at 5115 Excelsior Blvd., Minneapolis, MN.

Respondent Gregor A. von Ehrenfels is an officer of the corporate respondent. Individually, or in concert with others, he participates in and/or formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed weight-loss and body-shaping products, consisting primarily of booklets containing advice on dieting and exercise, to the public. Respondents have marketed these products under various names, including "TOTAL BODY RESHAPING SYSTEM" and "SUPER TOTAL BODY RESHAPING SYSTEM" (collectively, "TBRS").

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 have caused to be disseminated advertisements for TBRS including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements:

A. NOW - IN ONLY 2 WEEKS you can start to have . . .  
THINNER, FIRMER, LEGS & HIPS. . .  
Slimmer Arms & Shoulders, a Smaller,  
Tighter Waistline, and a Prettier Bust!

YES! IN AS LITTLE AS 14 DAYS, your entire body could suddenly start to take on a whole new shape! Plus you could be thinner and firmer than ever before. In fact, the all new TOTAL BODY RESHAPING SYSTEM (SUPER TBRS for short) is 100% Guaranteed to help give you a sleeker, sexier body . . . no matter what you look like right now! (And no matter what you've tried before!)

Too Fat - or Too Thin?

SUPER TBRS is NOT just another diet program. It's a total body improver designed to "reshape" you from head to toe. So if you're overweight, SUPER TBRS will help you melt and float away ugly fat leaving you with a firmer, more beautiful body.

\* \* \* \*

Stubborn Spots???

The SUPER TOTAL BODY RESHAPING SYSTEM shows you how to attack your own unique problem areas -- shaping and molding them -- tightening, firming, helping dissolve layer after layer of fat with each new day!

That means you can zero-in on your thighs, calves, hips, waist, arms, neck or another area that needs extra strong, extra fast treatment.

\* \* \* \*

Here's How it Works ...

The moment you put SUPER TBRS methods into action, you begin to burn-off excess calories and fatty deposits. So more of the food you eat is automatically converted into energy instead of fat. That's because SUPER TBRS helps you modify your caloric intake. At the same time, SUPER TBRS's 4 Special Shaping Actions™ let you stimulate muscle tone exactly where you need it ... WITH NO AEROBIC EXERCISE!

Plus, like many other girls, you'll know it's working because you'll feel it from the very first day and see results in the mirror as quickly as fourteen days!...

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Complaint

But the best part is, SUPER TBRS tells you how to keep those improvements so your beautiful new body can stay that way -- and even continue to improve!...

Yet with SUPER TBRS there are ...

- NO dangerous diet pills to take
- NO chalky-tasting chemical powders
- NO silly heat suits or belts
- NO unhealthy crash diets
- NO long exhausting exercise

TBRS contains absolutely NOTHING chemical, internal, topical, or artificial like other products.

\* \* \* \*

Plus - YOU GET ALL THIS! The TBRS Master Manual, TBRS Food Tables & Personal Meal Planner, TBRS One-Year Progress Tracker, TBRS Motivational Audio Cassette, TBRS Ultra Weight Loss Formula, TBRS Ideal proportion chart & Tape Measure . . . The TOTAL BODY RESHAPING SYSTEM is arguably the most result-producing program of it's kind in the world today!.....

\* \* \* \*

When your package arrives, we want you to use it ... go ahead, let SUPER TBRS show you how to reshape, firm and beautify your body. Use it as much as you like to help solve your figure problems!  
(Exhibit A; Sassy Magazine, August 1995)

B. "They Laughed When I Bought My Bikini,  
But When I Walked On the Beach ... !"

I promised myself to finally do something about the way I looked. But I didn't want to go on some diet like my mom would use. Besides, I tried dieting before and nothing happened. I wanted something made for girls my age, something that really worked . . . fast!

\* \* \* \*

After being fat for so long, the Total Body Reshaping System finally gave me the body I always wanted!

How to Get the Body You Always Wanted ...

Now it's your turn! Because in as little as 14 days, your entire body could suddenly start to take on a whole new shape! Plus you could be thinner and firmer than ever before. In fact, the all new TOTAL BODY RESHAPING SYSTEM (TBRS™ for short) manual is 100% Guaranteed to give you a sleeker, sexier body that makes you stand out from other girls and gets you noticed -- no matter what you look like right now!

So if you're overweight, the TBR SYSTEM will help you melt and float away ugly fat . . .

Stubborn Spots???

The TOTAL BODY RESHAPING SYSTEM shows you how to attack your own unique problem spots -- shaping and molding them -- tightening, firming, helping dissolve layer after layer of fat with each new day!

\* \* \* \*

The moment you put the TBR System into action, it helps you burn off excess calories and fatty deposits. That means more of the food you eat is automatically converted into energy -- instead of fat. (It's sort of like *tricking* your body into