IN THE MATTER OF

COOPER INDUSTRIES, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3469. Consent Order, Oct. 26, 1993--Modifying Order, Dec. 15, 1997

This order reopens a 1993 consent order -- that required the respondent to divest certain assets and to license certain technology for manufacturing industrial fuses -- and this order modifies the consent order by setting aside provisions of the consent order which required Cooper to license and divest low-voltage industrial fuse technology that it gained in its acquisition of Brush Fuses, Inc.; and by substituting a provision requiring prior Commission approval of certain acquisitions with a provision requiring prior notification.

ORDER REOPENING AND MODIFYING ORDER

I. THE COMPLAINT AND ORDER

On August 15, 1997, Cooper Industries, Inc. ("Cooper"), the respondent named in the above-referenced consent order ("order") issued by the Commission on October 26, 1993, filed its Petition to Reopen and Vacate Consent Order ("Petition"). Cooper asks that the Commission reopen and vacate the order pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC" Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, based on changed facts and the public interest and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").[1] The thirty-day public comment period on Cooper's Petition ended on September 15, 1997. No comments were received.

The Commission has determined to grant, in part, Cooper's Petition by reopening the order and modifying it to set aside the requirements of paragraph II through VII, but to deny the request to vacate the order. Rather, the Commission has determined to substitute for the prior approval requirement of paragraph VIII the prior notification and waiting period requirements of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, for all non-HSR reportable

[1] 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

acquisitions otherwise meeting the specifications of paragraphs VIII and IX. This modification therefore eliminates the need for the separate prior notification requirement of paragraph IX, and the Commission has determined to set aside that paragraph.

The complaint in this matter alleges that Cooper's agreement to acquire the Fusegear Group, including Brush Fuses, Inc. ("Brush"), from BTR plc violated Section 5 of the FTC Act, and that the acquisition of the Fusegear Group, including Brush, would violate Section 5 of the FTC Act and Section 7 of the Clayton Act, 15 U.S.C. 18, by lessening competition and tending to create a monopoly in the market for low voltage industrial fuses ("LVI Fuses") in the United States.

The resulting order became final on October 29, 1993.[2] Paragraph III of the order requires Cooper to grant a license within twelve months to a licensee, who has received prior approval by the Commission, to obtain and use the LVI Fuse Technology and Know-how to manufacture any and all types of LVI Fuses that had been manufactured by or for Brush and sold within the United States within the last three years prior to the acquisition of Brush by Cooper ("License"). Paragraph II orders Cooper to divest the Brush Assets to the licensee, but only to the extent the licensee chooses to acquire those assets. Paragraphs IV and V contain additional requirements related to maintaining the Brush Assets pending divestiture and to an interim supply agreement. Paragraph VI provides for the appointment of a trustee should Cooper fail to grant the License and divest within the requisite period, and paragraph VII specifies Cooper's notification and reporting obligations. The purpose of the License and divestiture is to remedy the lessening of competition in the LVI Fuse market and to assist the licensee to manufacture, distribute, and sell a full line of LVI Fuses.[3] Cooper failed to grant the License within the time required, and the Commission approved the appointment of a trustee, on February 12, 1996. The trustee also failed to grant the License before his term expired on February 15, 1997.

II. THE PETITION

In its Petition, Cooper describes its and the trustee's efforts to license and asserts, with supporting affidavits,[4] that despite these efforts, a licensee for the LVI Fuse Technology and Know-how has

[2] 116 FTC 1243 (1993).

[3] Order ¶¶ II and III.A.

[4] Affidavits of James R. Deen, Associate General Counsel, and Homer Blalock, Trustee.

not been found. Cooper believes that the value of the License and related assets now is reduced to such an extent that "no willing buyer is likely to come forward."[5] It also asserts that the prior approval and prior notice requirements of the order are "unique" and that "there is no 'credible risk' that Cooper will undertake an anticompetitive and unreportable transaction." Cooper further argues that the *de minimis* nature of less that $3.5 million sales specified in paragraph IX is *prima facie* evidence of the Commission's lack of concern about such acquisitions and that, therefore, such prior notification is unnecessary.

III. STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986) at 4. (unpublished) ("Hart Letter").[6]

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5.; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order.[7] For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order. *Damon Corp.*, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also

---

[5] Petition at 11.

[6] *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

[7] Letter to Joel E. Hoffman, Damon Corp., C-2916 [1979-1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207 at 22,585 (March 29, 1983)("Damon Letter").

will consider whether the particular modification sought is appropriate to remedy the identified harm. *Id.* at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in repose and the finality of Commission orders.[8]

IV. REOPENING AND MODIFYING THE ORDER IS IN THE PUBLIC INTEREST

As Cooper described in its Petition, supported by the required affidavits, it and the trustee seemingly have done all that is possible to grant the License. Immediately after the order became final, Cooper notified all those companies thought to be likely potential acquirers of the License that the License was available. The availability of the License also was widely advertised, first by Cooper and then by the trustee. Although both Cooper and the trustee received serious inquiries, each of the initially interested parties declined to pursue the License after performing a more detailed evaluation. Cooper asserts that now, more than four years since the order became final, the value of the License and related assets is reduced to such an extent that "no willing buyer is likely to come forward."[9]

Although the fact that the passage of time has reduced the value of the assets was foreseeable and thus does not constitute the change

[8] *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981)(strong public interest considerations support repose and finality).

[9] Petition at 11.

in fact necessary to justify reopening the order, it would be futile to continue to require Cooper to grant a License and inequitable to require it to keep paying a trustee to attempt the same. Accordingly, Cooper has demonstrated an affirmative need to reopen the order.

In balancing whether Cooper has demonstrated that the reasons to set aside the licensing, divestiture, and related requirements outweigh the need to continue to impose these obligations on Cooper, the Commission notes that the purpose of the order was to increase competition by granting a License to a licensee to manufacture, distribute, and sell a full line of LVI Fuses. Such a licensee could not be found, and the evidence indicates that the value of the License is now so reduced that such a licensee will not be found, regardless of the additional effort. The diligent attempts of the trustee to market the License demonstrate that further attempts to license, even at no minimum price, are likely to be fruitless.[10] Because there is no need to continue to require Cooper either to attempt to grant a License or to maintain the Brush Assets (as it has since those assets were acquired), the divestiture obligations of the order should be set aside.

V. PRIOR APPROVAL POLICY STATEMENT

In its Petition, Cooper also asks the Commission to vacate the prior approval and prior notification provisions of paragraphs VIII and IX. Paragraph VIII and paragraph IX together prohibit Cooper, for ten years, from making any acquisition of interests in or assets of specified entities without either the prior approval of the Commission or HSR-type prior notification. The value of the acquired entity's sales of LVI Fuses in each of the three years preceding such acquisition determines whether prior approval or prior notification is required. Cooper contends that these prior approval and prior notice requirements are unique and asserts that prior approval is unwarranted because "there is no 'credible risk' that Cooper will undertake an anticompetitive and unreportable transaction."[11] It adds that the *de minimis* level of sales that triggers paragraph IX's prior notification provision is *prima facie* evidence that the Commission was particularly unconcerned about such acquisitions, and, therefore, that prior notification also is unwarranted.[12]

---

[10] The respondent made the same showing in Promodes, S.A., Docket No. 9228, in which the trustee accomplished divestiture of only some of the supermarkets to be divested. Order Granting Request to Reopen and Modify, 117 FTC 37 (1994).

[11] Petition at 14.

[12] *Id.*

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of the HSR Act to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . .[the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement of paragraph VIII is in the public interest. The record contains no evidence suggesting that this matter presents the limited circumstances identified in the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, *i.e.*, a credible risk that, but for the prior approval provision, the respondent would attempt the same or approximately the same merger.

Prior notification, however, is appropriate for acquisitions that fall below the HSR threshold for the relevant market because the acquisition in this matter was just such a non-reportable acquisition, acquisitions of LVI Fuses from other producers are still possible, and, thus, a credible risk exists that Cooper could engage in future anticompetitive acquisitions that would not be subject to the premerger notification and waiting period requirements of the HSR Act. Cooper argues that the *de minimis* level of acquisitions requiring paragraph IX prior notification shows that the Commission has no concern for such acquisitions, but Cooper has presented no facts to support that assertion. Although such small acquisitions may not have required prior approval, they raise potential antitrust concerns sufficient to require prior notification. Accordingly, prior notification should be required for all acquisitions and may now be incorporated in one paragraph.

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

It is further ordered, That the order be, and it hereby is, modified to set aside paragraphs II through VII and paragraph IX, as of the effective date of this order; and

It is further ordered, that paragraph VIII of the order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

It is further ordered, That for ten (10) years from the date this order becomes final, respondent shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, which manufactures (either directly or indirectly), and sells the Relevant Product (other than sales to subsidiaries or divisions of the concern) in or into the United States; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the manufacture and sale in or into the United States of the Relevant Product from any concern, corporate or non-corporate, except in the ordinary course of business.

On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, Cooper shall file with the Commission a verified written report of its compliance with paragraph VIII of the order.

The prior notifications required by this paragraph VIII shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

Commissioner Starek concurring in the result only.

IN THE MATTER OF

WEIGHT WATCHERS INTERNATIONAL, INC.

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

Docket 9261. Complaint, Sept 24, 1993--Decision, Dec. 24, 1997

This consent order requires, among other things, the New York-based corporation to provide certain types of evidence to substantiate future weight loss and weight loss maintenance claims; requires disclosure statements regarding the actual maintenance experience of the customers; and requires in some instances that testimonials concerning weight loss or maintenance success contain a statement reflecting the generally expected success for program participants or indicate that dieters should not expect to experience similar results.

Appearances

For the Commission: *Ronald Waldman* and *Michael Bloom.*

For the respondent: *Keith Pugh* and *Edward Henneberry, Howrey & Simon*, Washington, D.C. and *Robert Hollweg*, Woodbury, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Weight Watchers International, Inc., a corporation (hereinafter "Weight Watchers" or "respondent"), 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 Weight Watchers International, Inc. is a Virginia corporation, with its principal office or place of business at 500 N. Broadway, Jericho, New York.

PAR. 2. Respondent has advertised, offered for sale, and sold weight loss and weight maintenance services and products, including 1000 to 1500 calorie-a-day weight loss programs which it makes available to consumers at numerous company-owned and franchised "Weight Watchers" centers nationwide.

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 caused to be disseminated advertisements for the Weight Watchers weight loss program, including but not necessarily limited to the attached Exhibits 1 through 21.

SUCCESS CLAIMS

PAR. 5. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits 1 through 17, contain the following statements:

(a) Quick, successful weight loss. [Exhibit 1]

(b) The feelings of success cultivated during the early weeks of the Program foster the self-efficacy needed to see weight-loss goals to fruition. Therefore, Weight Watchers members not only lose weight successfully, they learn the necessary skills to keep it off for a lifetime. Through the cultivation of healthy eating and exercise habits, and the implementation of strategies for dealing with challenging weightless situations, our members learn to make proper weight management a lifelong habit. [Exhibit 2]

(c) Our program not only helps you slim down, it helps you stay that way. You'll learn how to eliminate the habits that have contributed to unwanted weight gain and replace them with constructive ones . . . .

Weight Watchers has already helped more than 30 million people around the world lose weight. In our At Work program you, too, will shed pounds with our medically approved program . . . . Explores food-related behavior patterns and helps you establish healthy eating and exercise habits so that you not only lose weight but also maintain the loss . . . .

At each At Work Program meeting you will receive additional weight-loss tools that make it easier to reach and maintain your goal weight. . . . Most importantly, you'll be setting the foundation for a lifetime of successful weight management, joining the tens of thousands of people who have reached and maintained their goal weights through our program. [Exhibit 3]

(d) As a Weight Watchers member, you'll discover an infinite number of choices. Best of all, you'll find that you control your diet; your diet does not control you. And when you've reached the weight you want, we'll show you how to stay there for the rest of your life. . . .

At Weight Watchers, you will lose weight at the pace that is best for you on a diet of foods you'll be able to eat for the rest of your life. [Exhibit 4]

(e) We pride ourselves on providing a state-of-the-art Program that works.... That's why the Weight Watchers program is a safe and healthy route to permanent weight loss. . . .

We're sure you'll agree that the Weight Watchers program is an investment in the future. The new knowledge, attitudes, and values you develop will last a lifetime for a slimmer, happier, healthier you. [Exhibit 5]

(f) Lose fast with results that last. [Exhibit 6]

(g) Its [sic] our most livable, effective way to lose weight ever. So hurry and join Weight Watchers. That way you'll learn how to lose weight and maintain it for a lifetime. [Exhibit 7]

(h) HUNGRY FOR A WEIGHT LOSS PROGRAM THAT REALLY WORKS? WEIGHT WATCHERS WORKS FOR A LIFETIME [Exhibit 8]

(i) Trusting a weight loss program.

Weight Watchers has been in business for 27 years. We don't rely on fads or gimmicks--just a safe, sensible approach to weight loss, based on sound nutrition, that works. And with our new 1991 Personal Choice Program, you decide the plan that's best for your lifestyle. You eat real food . . . and set your own pace. With the support you need to lose the weight and keep it off--all for just $10 a week. [Exhibit 9]

(j) Our Unique Four-Way Approach to Weight Loss

The new Quick Success program--it's not a diet, it's a total weight-loss package. Using our proven four-way approach, you'll progress toward one ultimate goal-permanent weight loss. Here's how it works . . . . [Exhibit 10]

(k) If you're having a hard time losing weight, chances are the problem isn't lack of willpower. It's what you're forced to eat.

That's why our Personal Choice Program works so well: You get a wide variety of delicious real foods, including treats like pizza and chocolate cake. What's more, you can choose the foods you like. We'll show you how.

With a Program this flexible, we know you'll find the power within you to lose weight. And there's a Weight Watcher's meeting near you to help.[Exhibit 11]

(l) Mary Mach, Lost 91 lbs./maintained for 16 years.
IT WORKS! [Exhibit 12]

(m) Jeanie Darnell Lost 77 lbs./maintained for 2 years.
IT WORKS! [Exhibit 13]

(n) I can't believe it. I ate pizza with my kids, the same meals I cooked for my family, and even had a snack with my coffee. And you know what? I lost every single pound I wanted to. . . .
What's more, because I can live with this program, I stuck to it and reached my goal. [Exhibit 14]

(o) Tracy Burgess, before. Tracy Burgess, after. . . .
Want proven results? Join Weight Watchers today. [Exhibit 15]

(p) [W]e've helped millions and millions of people lose weight. And learn how to keep it off, year after year after year. [Exhibit 16]

(q) If it's a smaller figure you're after, we've got one. With this terrific offer, it's a great time for you to join Weight Watchers and get one of your own.

You'll learn how to eat real foods right away. Handle real-life challenges. And develop permanent habits that won't just help you reach your goal weight. They'll help keep you there.

So take advantage of our great offer today. While your smaller figure may last forever, ours won't. So hurry and join Weight Watchers today. [Exhibit 17]

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements and depictions in the advertisements attached as Exhibits 1 through 17, respondent has represented, directly or by implication, that:

(a) Weight Watchers customers typically are successful in reaching their weight loss goals;

(b) Weight Watchers customers typically are successful in maintaining their weight loss achieved under the Weight Watchers diet program; and

(c) Overweight or obese Weight Watchers customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the statements and depictions in the advertisements attached as Exhibits 1 through 15, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph six, respondent possessed and relied upon a reasonable basis that substantiated those representations.

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

20% FASTER WEIGHT LOSS CLAIMS

PAR. 9. The advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits 18 through 21, contain the following statements:

(a) GREAT SAVINGS ON FASTER WEIGHT LOSS.
PROVEN-EFFECTIVE, TOO!

Research proved it! Last year's Quick Success Program melted pounds 20% faster than before. And this year's New 1989 Quick Success Program is even better, thanks to an easier-to-use food plan, an expanded and simplified optional exercise plan and that wonderful meeting experience . . . . Come prove to yourself what we already know -- this is the program you can count on [Exhibit 18]

(b) Last year alone, this proven effective program [the "Quick Success Program"] helped millions of members take off weight over 20% faster than ever. This year, it's even easier. [Exhibit 19]

(c) THE PROVEN-EFFECTIVE WAY TO LOSE WEIGHT FASTER.
Research proved last year's Quick Success Program melted pounds 20% faster than before. And now it's even easier to lose weight that fast! [Exhibit 20]

(d) Learn about our fastest-ever weight loss program!

Research proves our Quick Success Program works 20% faster than before. And this year, it's new and even better, with a revised, easier-to-follow food plan and an expanded optional exercise plan. [Exhibit 21]

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements and depictions in the advertisements attached as Exhibits 18 through 21, respondent has represented, directly or by implication, that:

(a) Participants in Weight Watchers' 1988 "Quick Success" weight loss program lost weight 20% faster than participants in weight Watchers' prior weight loss program;

(b) Participants in Weight Watchers' 1989 "Quick Success" weight loss program lost weight as fast or faster than participants in Weight Watchers' 1988 "Quick Success" weight loss program; and

(c) Participants in Weight Watchers' 1989 "Quick Success" weight loss program lost weight 20%, or more than 20%, faster than participants in Weight Watchers' 1987 weight loss program.

PAR. 11. In truth and in fact:

(a) Participants in Weight Watchers' 1988 "Quick Success" weight loss program did not lose weight 20% faster than participants in Weight Watchers' prior weight loss program;

(b) Participants in Weight Watchers' 1989 "Quick Success" weight loss program did not lose weight as fast or faster than participants in Weight Watchers' 1988 "Quick Success" weight loss program; and

(c) Participants in Weight Watchers' 1989 "Quick Success" weight loss program did not lose weight 20%, or more than 20%, faster than participants in Weight Watchers' 1987 weight loss program.

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

PAR. 12. Through the use of the statements and depictions contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the statements and depictions in the advertisements attached as Exhibits 18 through 21, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph ten, respondent possessed and