

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

DIGITAL EQUIPMENT CORPORATION

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

Docket C-3818. Complaint, July 14, 1998--Decision, July 14, 1998

This consent order, in conjunction with Digital's sale of certain semiconductor business assets to Intel Corporation, requires, among other things, Digital to enter into or extend certain licensing agreements with Advanced Micro Devices, Inc., and Samsung Electronics Co., Ltd., or other Commission-approved licensees, and to begin the process of certifying International Business Machines, Inc. or other Commission-approved companies to manufacture Digital's Alpha microprocessor devices.

Participants

For the Commission: *Robert Cook, John Horsley, Joseph Krauss, William Baer, David Meyer, Jay Creswell, and Jonathan Baker.*

For the respondent: *Benjamin Crisman, Jr., Skadden, Arps, Slate, Meagher & Flom, Washington, D.C. and Michael Weiner, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that an agreement between Intel Corporation and Digital Equipment Corporation whereby Intel will acquire certain assets of Digital Equipment Corporation violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENT

1. Respondent Digital Equipment Corporation ("Digital") is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal executive offices located at 111 Powdermill Road, Maynard, Massachusetts.

2. Digital is an international corporation with worldwide sales of approximately \$13 billion in 1997. Digital designs, develops, manufactures, markets, and sells computer hardware and software systems, including personal computers, workstations, and servers. Digital also designs, develops, manufactures, markets, and sells a variety of semiconductor products, including certain microprocessor products that are generally known, marketed, and sold under the trade name Alpha.

3. At all times relevant herein, Digital has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Digital has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

B. THE PROPOSED TRANSACTION

4. Intel Corporation ("Intel") 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 2200 Mission College Boulevard, Santa Clara, California. Intel has annual worldwide sales of approximately \$20.8 billion.

5. Intel designs, develops, manufactures, markets, and sells a variety of semiconductor products, including a line of microprocessor products that are generally known, marketed, and sold under the trade names Pentium, Pentium with MMX, Pentium Pro, and Pentium II (the "Pentium microprocessors").

6. Digital and Intel are currently litigating three pending lawsuits involving intellectual property and technology rights relating to microprocessors. Digital initiated that litigation on May 12, 1997, by filing a lawsuit in Massachusetts alleging that Intel has willfully infringed ten Digital patents by making and selling Pentium microprocessors. On May 27, 1997, Intel filed a related lawsuit in California alleging that Digital breached certain contractual duties

and violated Intel's trade secret rights by refusing to return certain technical information about Intel microprocessors. In August and September 1997, Intel filed counterclaims in Digital's Massachusetts lawsuit and a lawsuit in Oregon alleging that Digital willfully infringed fifteen Intel patents by, among other things, making and selling Alpha microprocessors.

7. On October 26, 1997, Digital and Intel executed a proposed Settlement Agreement, which provides for, among other things, the settlement of all pending litigation between Digital and Intel, the cross licensing of Intel and Digital patents for a period of ten (10) years, the sale of Digital's semiconductor business and operations to Intel, the establishment of contractual relationships pursuant to which Intel will serve as an Alpha microprocessor foundry for Digital and supply Alpha microprocessors to Digital, the retention by Digital of all intellectual property rights relating to Alpha microprocessor architecture and technology, and the retention by Digital of those Digital employees supporting the design and development of Alpha products. Since the execution of the Settlement Agreement, Digital and Intel have negotiated all of the subsidiary agreements that are contemplated by, and intended to implement the terms of, the Settlement Agreement (the "Implementing Agreements").

8. The proposed Settlement Agreement and Implementing Agreements provide, among other things, that Digital shall sell, and Intel shall acquire, Digital's semiconductor business and operations, including the facilities and manufacturing assets now used by Digital to produce Digital semiconductor products, including Alpha microprocessors. The proposed Settlement Agreement and Implementing Agreements require Intel to produce and supply exclusively to Digital Alpha microprocessor products for a period of seven (7) years from the closing date of the transactions contemplated by those Agreements, but do not restrict Digital's rights to establish or further develop any relationship or relationships with other semiconductor manufacturers to produce Alpha microprocessor devices, as a foundry for Digital or otherwise. In connection with the proposed Settlement Agreement, Digital also agreed to announce that it would support Intel's forthcoming IA-64 microprocessor devices by building computer systems designed around such devices.

9. The proposed Settlement Agreement and Implementing Agreements further provide, among other things, that Intel shall hire,

and Digital shall facilitate and encourage Intel's efforts to hire, all current employees of the Digital semiconductor business, with the exception of those Digital employees who currently support the design and development of Alpha microprocessor products. Among the Digital personnel to be hired by Intel under the Settlement Agreement are those Digital employees who currently conduct or support Digital's efforts to market and sell the Digital semiconductor product line, including Alpha microprocessor products, to the merchant market for semiconductor devices.

10. The proposed Settlement Agreement and Implementing Agreements further provide that Digital shall retain ownership of all intellectual property and technology rights relating to Alpha microprocessor architecture and devices, and contemplate that Digital will continue to develop the Alpha architecture and future generations of Alpha microprocessor products. Those Agreements also expressly give Digital the right to license Alpha intellectual property or technology rights to third parties, and do not prevent Digital from augmenting or establishing strategic alliances with third parties for the development of Alpha microprocessor technology.

C. THE RELEVANT MARKETS

11. One relevant line of commerce in which to analyze the likely competitive effects of the proposed Settlement Agreement is the manufacture and sale of high-performance, general-purpose microprocessors that are capable of running the computer operating system software in native mode that is currently being developed and sold by Microsoft Corporation ("Microsoft") under the trade name Windows NT.

12. A second relevant line of commerce in which to analyze the likely competitive effects of the proposed Settlement Agreement is the manufacture and sale of all general-purpose microprocessors.

13. A third relevant line of commerce in which to analyze the likely competitive effects of the proposed Settlement Agreement is innovation in the design and development of high-performance, general-purpose microprocessors.

14. The relevant geographic market in which to analyze the likely competitive effects of the proposed Settlement Agreement is the world.

D. CONCENTRATION

15. Intel has market power in the market for the supply of high-performance, general-purpose microprocessors that are capable of running the Windows NT operating system. Intel accounts for nearly 90 percent of dollar sales and nearly 85 percent of unit sales of such microprocessors. Digital accounts for approximately one percent of the dollar sales and unit sales of such devices. Moreover, Alpha microprocessors and Intel Pentium products are today the two closest substitutes -- and perhaps the only two viable devices -- available for computer system manufacturers and computer users who require a microprocessors capable of running in native mode the Windows NT operating systems.

16. Intel also has market power in the market for all general-purpose microprocessors. Intel accounts for nearly 90 percent of dollar sales and 80 percent of unit sales of general-purpose microprocessors. Digital accounts for approximately one percent of dollar sales and unit sales of such devices. No firm other than Intel accounts for more than four percent of dollar sales of microprocessors, and no firm other than Intel accounts for more than 10 percent of unit sales of microprocessors.

17. Digital and Intel are two of the most significant innovation competitors in the design and development of high-performance microprocessors. Even with its comparatively small share of the relevant markets, Digital's Alpha microprocessor represents the greatest technological challenge to Intel, and stands as the most significant threat to Intel's continued market dominance. For the last several years Digital's Alpha devices have consistently demonstrated industry-leading performance as measured by processing speed and related performance criteria generally recognized in the industry. Intel recognizes that the Alpha microprocessor has superior performance characteristics, poses a competitive threat to Intel's products, and establishes performance benchmarks that serve as goals to which Intel aspires in the development of its own future microprocessor products. Indeed, a current major goal for Intel is the development of a new 64-bit Intel microprocessor architecture (known as IA-64) to compete with Digital's current 64-bit Alpha architecture, and the development of new IA-64-based microprocessors (currently known by project names such as Merced and McKinley) to compete with Digital's Alpha devices.

E. ENTRY CONDITIONS

18. Entry into the relevant markets would not be sufficiently timely or likely to deter or otherwise correct the anticompetitive effects of the proposed Settlement Agreement.

19. A new entrant would need to develop a relevant microprocessor product, which development requires substantial capital expenditures and several years of engineering work. The entry cost required for developing a new high-performance microprocessor would likely exceed \$250 million. The development of such a product would require a minimum of two years, and a high-performance microprocessor comparable to Digital's Alpha microprocessors and Intel's Pentium products would likely require at least four years. For example, although Intel began development of its new IA-64 microprocessors in 1994, the first generation IA-64 device known as Merced is not expected to be commercially available before the second half of 1999.

20. New entry into the relevant markets is also deterred by the minimum viable scale requirements for a modern semiconductor fabrication facility. The cost of developing, building and equipping such a facility is approximately \$1.6 billion. An entrant could not expect to begin shipping revenue microprocessor products for at least four to five years after starting the construction of such a facility. A new entrant could avoid significant fixed costs in buildings or equipment by contracting with an existing microprocessor producer to provide manufacturing and development services, but even such "fabless" entry would require approximately six months and a commitment of approximately 30 staff to the manufacturing area at a cost of \$200,000 per person per year, in addition to significant costs for foundry services.

21. A new entrant would also have to establish both product reputation and technical compatibility with a computer operating system and the applications software desired by a significant number of computer users. Buyers of computer systems and microprocessor components demand highly reliable products, and regard product reputation to be an essential purchasing criterion. Consumers also demand computer systems and microprocessor components that are capable of running the computer operating systems and applications software programs that are desired by computer end-users. Accordingly, a new entrant must attract support from software

developers, who are generally reluctant to devote development resources to an unproven microprocessor product for which there is no demonstrated demand. The need simultaneously to secure a large number of users in order to make the product attractive to software developers and to secure the efforts of software developers in order to make the product attractive to users is often referred to as "network effects." The importance of these network effects is illustrated by Intel's recent success in obtaining commitments from many computer manufacturers and software vendors to build computers and write software for Intel's new 64-bit Merced microprocessor, even though the product will not be available for more than a year.

22. In order to enter the market for Windows NT-compatible microprocessors or the market for general-purpose microprocessors, any viable new microprocessor product must be compatible with the Windows NT operating system. Two other microprocessor architectures once enjoyed Windows NT support, but Windows NT support for those rival architectures was recently discontinued because of low system volumes. Any new entrant would likely need a very large volume of system sales in order to succeed in obtaining Windows NT support for the new microprocessor architecture.

F. EFFECTS OF THE PROPOSED TRANSACTION ON COMPETITION

23. Unless remedied, the proposed acquisition by Intel of Digital's semiconductor business and operations, including the facilities and assets used for microprocessor manufacturing, and of Digital's semiconductor sales and marketing organization, is likely to create uncertainty regarding the future competitive viability of Alpha and thereby maintain and enhance Intel's market power and thereby increase price and reduce quality and innovation in each of the relevant markets described above in paragraphs 11-14, for reasons that include, but are not limited to, the following:

a. By making it less likely that Digital would maintain the sales force to continue "merchant market" sales of Alpha microprocessors and other products to other OEMs, it would reduce competition between Intel and Digital for such sales; and

b. Putting Digital's supply of Alpha solely in the hands of Intel would give Intel the opportunity to delay production of Alpha microprocessors, impede the development of new generations of

Alpha microprocessors, and otherwise undermine the competitiveness of Alpha.

G. VIOLATIONS CHARGED

24. The agreement between Digital and Intel, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed transaction through which Intel Corporation ("Intel") is to acquire certain assets of Digital Equipment Corporation ("Digital"), including the semiconductor fabrication facility at which Digital manufactures its Alpha family of microprocessors; and Digital having represented to the Commission its plans to continue developing and promoting Alpha microprocessors despite the sale of the microprocessor facility; and Digital having licensed Samsung Electronics Co., Ltd. to develop, manufacture and sell Alpha microprocessors and having entered into a Memorandum of Understanding with Advanced Micro Devices, Inc., that contemplates a comparable license; and it now appearing that Digital, sometimes referred to as the "respondent," is willing to enter into an agreement containing an order in order to confirm its future plans for Alpha and to provide for other relief, and respondent having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Clayton Act and Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of 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, 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 Acts, and that a 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, makes the following jurisdictional findings and enters the following order:

1. Respondent Digital is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 111 Powdermill Road, Maynard, Massachusetts.

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.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Digital*" means Digital Equipment Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Digital Equipment Corporation and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Intel*" means Intel Corporation, 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 2200 Mission College Boulevard, Santa Clara, California.

C. "*AMD*" means Advanced Micro Devices, Inc., 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 One AMD Place, P.O. Box 3453, Sunnyvale, California.

D. "*IBM*" means International Business Machines, Inc., 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 1 New Orchard Road, Armonk, New York.

E. "*Samsung*" means Samsung Electronics Co., Ltd., a Korean corporation with offices located at San #24, Nongaeo-Lee, Kiheung-Eup, Yonginn-Si, Kyungki-Do, Korea.

F. "*Digital's Alpha RISC Architecture*" means the architecture as defined by the current edition, or previous edition, of Digital's Alpha AXP Architecture Reference Manual, published by or on behalf of Digital.

G. "*Digital Alpha Implementation*" means a microprocessor implementation of Digital's Alpha RISC Architecture designed by or for Digital. For purposes of illustration only and without limiting the foregoing, each of the following implementations constitutes a distinct and separate Digital Alpha Implementation: EV4, EV5, EV6, EV67, EV68, EV7.

H. "*Alpha Device*" means a 64-bit microprocessor that implements the same design and circuitry as, and is equivalent in form, fit and function to, a Digital Alpha Implementation, and that 1) conforms to Digital's Alpha RISC Architecture, 2) executes Digital's Alpha instruction set and 3) meets appropriate Digital quality and branding criteria.

I. "*Device Specifications*" means the product specifications for a Digital Alpha RISC Architecture implementation from and after EV56 (e.g., EV56, EV6, EV67, EV68, EV7, etc.), as set forth in the Device Data Sheet and the Device Quality and Reliability Data Sheet to be provided by Digital as amended from time to time, which define the specific functional, performance, electrical, timing, mechanical, environmental, reliability, and other requirements of the Digital Device and which may refer to, and thereby incorporate, other specifications, including without limitation, logic or other design and/or layout specifications.

J. "*Digital Device*" means a semiconductor integrated circuit device meeting the applicable Device Specification and embodying the applicable specific logic design of Digital's Alpha RISC Architecture implementation for EV56, EV6 and for any Future Alpha Implementation as designed and manufactured by or on behalf of Digital.

K. "*Future Alpha Implementation*" means a semiconductor integrated circuit device meeting the applicable Device Specification

and embodying the applicable specific logic design of a Digital Alpha RISC Architecture implementation beyond EV56 and EV6 (e.g., EV67, EV68, EV7, etc.) as designed and manufactured by or on behalf of Digital.

L. "*AMD Device*" means a 64-bit microprocessor designed by or for AMD that 1) conforms to Digital's Alpha RISC Architecture, 2) executes Digital's Alpha instruction set and 3) meets appropriate Digital quality and branding criteria.

M. "*AMD Derivative*" means a 64-bit microprocessor derived from an Alpha Device or AMD Device, that incorporates a modification or improvement designed by or for AMD and 1) conforms to Digital's Alpha RISC Architecture, 2) executes Digital's Alpha instruction set and 3) meets appropriate Digital quality and branding criteria.

N. "*AMD Licensed Products*" means integrated circuits designed by or for AMD including, but not limited to Alpha Devices, AMD Devices and AMD Derivatives. AMD Licensed Products shall exclude SPARC, PA RISC, POWER PC and MIPS families of microprocessors.

O. "*AMD 64-bit Microprocessor*" means an AMD Licensed Product that is a 64-bit microprocessor.

P. "*Samsung Device*" means a fully qualified, packaged and tested semiconductor integrated circuit, that 1) is based upon and conforms to and incorporates Digital's Alpha RISC Architecture, 2) embodies a specific logic design provided to Samsung by Digital corresponding to the Digital Device, including updates by Digital thereto, and 3) conforms to the Device Specification, Branding Standard and Product Qualification Procedures.

Q. "*Samsung Alpha Architecture Device*" means a microprocessor manufactured and designed by or on behalf of Samsung and that 1) conforms to Digital's Alpha RISC Architecture, as specified in Digital's Alpha Architecture Reference Manual, as revised from time to time by Digital, 2) executes Digital's Alpha instruction set, and 3) conforms to the Branding Standard and Product Qualification Procedures.

R. "*Samsung Derivative*" means a semiconductor integrated circuit device embodying the design of Digital's EV56 or EV6 Alpha RISC Architecture implementation (or any Future Alpha Implementation licensed to Samsung) as the case may be, including

updates made thereto by Digital and updates made thereto by Samsung to a Samsung Device, and with such additions, deletions, modifications, improvements and redesigns made by Samsung to a Samsung Device including, but not limited to, design package, testing or die size changes, as result in a final device having any of the following changes (but no other changes) to a Samsung Device:

(i) Change in die size due to mask size change and/or due to employing any CMOS process technology;

(ii) Modification, reduction, addition, or replacement of SRAM cell;

(iii) Change or redesign of cache memory architecture, including necessary implementation to change I/O interfaces;

(iv) Change to form, fit or function of the EV56 or the EV6 Device Specification other than changes or modifications to the EV6 or EV56 "core," which, for purposes of this subsection shall be defined to mean the Samsung Device, excluding the I/O pad ring and caches; and/or

(v) Any change to the Alpha RISC Architecture, or any change not included in (i), (ii), (iii) or (iv) above, to the Device Specification, Product Qualification Procedures or the form, fit or function of the EV56 or EV6 Device Specification, in either case, which has been specifically approved by Digital in its sole discretion, in accordance with the provisions of Section 3.3 (b)(ii) of the Samsung License Agreement referred to in paragraph III.A. of this order.

S. "*Alpha Microprocessor Technology*" means the information, materials, and technology relating to any Digital Alpha Implementation and associated Alpha architectural specification including, but not limited to, layout database and schematics, test programs and vectors, models, design data simulation results, all HAL, PAL, and BIOS codes, design documentation and customer product documentation, and including all updates.

T. "*Software Products*" means Digital commercial software products necessary to generate or optimize binary code for Digital Alpha Implementations.

U. "*CAD Tools*" means Digital CAD Tools, including all updates, applicable to the design, development and manufacture of Digital Alpha Implementations.

V. "*Software Tools*" means Digital software tools as to which Digital has the right to grant a license, including all updates, used to generate or optimize binary code for Digital Alpha Implementations.

W. "*Digital Technology*" means Alpha Microprocessor Technology, Software Products (in both source and object code form), Software Tools (in both source and object code form), FX!32 Software (in both source and object code form) and CAD Tools (in both source and object code form).

X. "*Digital Intellectual Property Rights*" with regard to paragraph II of this order means all patents, patent applications, copyrights, mask works, know-how and trade secrets owned by Digital covering 1) Digital Alpha Implementation, 2) Digital's Alpha RISC Architecture or 3) Digital Technology; and, with regard to paragraph III of this order, "Digital Intellectual Property Rights" has the same meaning as set forth in Section 1.16 of the Samsung License Agreement referred to in paragraph III.A. of this order, covering 1) Digital Alpha Implementation, 2) Digital's Alpha RISC Architecture or 3) Digital Technology.

Y. "*Commission*" means the Federal Trade Commission.

Z. "*Intel/Digital Settlement*" means all transactions and agreements contemplated by, or necessary to implement, the Settlement Agreement Between Digital Equipment Corporation and Intel Corporation, dated October 26, 1997.

AA. "*FX!32 Software*" shall mean the Digital software known as FX!32 for runtime emulation and background binary translation of x86 binaries to native Alpha code and associated documentation, including updates, meaning all corrections, bug fixes, modifications, and enhancements to the FX!32 Software, in both object or source code form, made by or for Digital.

II.

It is further ordered, That:

A. Respondent shall grant a license, by the date this order becomes final, to Advanced Micro Devices, Inc. ("AMD"), or to a licensee that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission and is consistent with the framework of the Memorandum of Understanding entered into between Digital and AMD, dated March 30, 1998 (the "MOU"), which provides, *inter alia*:

1. Under Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license, without the right to sublicense (except as otherwise provided herein) to design, develop, manufacture and have manufactured, and to market, distribute and sell worldwide AMD Licensed Products
2. Under Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license, without the right to sublicense (except as otherwise provided herein), to use, modify, copy, and create derivative works of the Alpha Microprocessor Technology for the purpose of and to the extent required to enable AMD's exercise of the licenses to be granted pursuant to paragraph II.A.1. of this order;
3. The right to grant sublicenses (without the right to grant further sublicenses) to no more than two third parties (as agreed to by Digital and AMD in the MOU) under rights granted to AMD in paragraph II.A.1. above, to manufacture, use and sell AMD 64-bit Microprocessors;
4. The right to provide Infrastructure Partners technology designed or developed by AMD, even if such technology incorporates certain Digital trade secrets or know-how contained in the Alpha Microprocessor Technology, and to grant sublicenses (without the right to grant further sublicenses) such third parties under such technology to make, have made, use or sell products (other than AMD 64-bit Microprocessors) based upon or incorporating such technology. "Infrastructure Partners" shall mean (subject to the terms of the MOU) chipset vendors, BIOS vendors, independent software vendors and other companies in the business of designing and selling products designed to operate with AMD Licensed Products;
5. Under Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license (without the right to sublicense) to use the CAD Tools, in object code form, and CAD Tool Documentation, for the sole purpose of assisting AMD internally in the design, development and manufacture of AMD Licensed Products and to make copies of the CAD Tool Documentation solely to the extent necessary to enable AMD to implement the terms of internal use licenses. Digital shall also grant AMD a non-exclusive, non-transferable license (without the right to sublicense) to one copy of the source code for each licensed CAD Tool for evaluation purposes only;
6. Under Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license (without the right to sublicense)

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to use internally the Software Products, in object code form, for the sole purpose of assisting AMD in the design, development and manufacture of Alpha Devices, AMD Devices and AMD Derivatives and in the generation and optimization of binary code for Alpha Devices, AMD Devices and AMD Derivatives;

7. Under Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license (without the right to sublicense) to modify, copy and create derivative works of the Software Tools, in object code and source code form, for internal use only, for the sole purpose of the generation and optimization of software code for Alpha Devices, AMD Devices and AMD Derivatives. AMD shall have the further right to provide and sublicense the Software Tools and modified versions thereof, in object code form, to independent software vendors ("ISVs") for internal use only, for the sole purpose of generating and optimizing the ISVs' own binary code for operation on a computer system having an Alpha Device, AMD Device or AMD Derivative as a central processing unit. AMD and such ISVs will not have the right to market, distribute or sell any Software Tools, and shall not use the Software Tools to develop, market, distribute or sell a product similar to the Software Tools. Digital will also grant AMD a non-exclusive, non-transferable, perpetual license (without the right to sublicense) to one copy of the source code for each licensed Software Tool for evaluation purposes only;

8. Under Digital Intellectual Property Rights, (i) a non-exclusive, non-transferable, perpetual license (without the right to sublicense) to modify, copy and create derivative works of FX!32 Software, in object code and source code form, for internal use only, and (ii) a non-exclusive, non-transferable, perpetual license to reproduce and distribute FX!32 Software, in object code form, either directly or through AMD's authorized distribution channels in conjunction with sales to third parties of Alpha branded products. Digital FX!32 Software Updates shall be furnished by Digital to AMD on a royalty-free basis. Any modification, enhancements or adaptations to FX!32 Software developed by AMD shall be furnished by AMD to Digital under a non-exclusive, perpetual, transferable, royalty-free license, with the right to sublicense in object code or source code form; and

9. Under Digital Intellectual Property Rights, the right to modify or extend Digital's Alpha RISC Architecture, without approval from

Digital, and to produce AMD Devices and AMD Derivatives implemented in accordance with such modified or extended architecture, if Digital fails to establish and implement a roadmap that advances the performance, as measured by speed, of then-current SPECint and/or then-current SPECfp, as appropriate, of the highest Alpha microprocessor by at least 25 percent every three years.

B. Digital shall agree, if requested by the licensee, to submit all disputes of any license agreement described in paragraph II.A. of this order to binding arbitration. Respondent agrees to provide the Commission with ten (10) days notice of an intention to terminate any license agreement described in paragraph II.A. of this order. Other than the above limitations, nothing in this paragraph shall limit Digital's rights to seek redress for any breach of the license agreement described in paragraph II.A. of this order.

C. A purpose of paragraph II of this order is to establish the Commission approved licensee as an independent provider of Alpha Devices in order to promote the Alpha Architecture and Alpha Devices as a viable and competitive microprocessor and to remedy the lessening of competition resulting from the effects of the Intel/Digital Settlement, as alleged in the Commission's complaint. Another purpose of paragraph II of this order is to establish the licensee as an independent provider of innovation in Alpha Device design while maintaining the ability of computer systems based on Alpha Devices supplied by Digital and computer systems based on Alpha Devices supplied by the licensee to run the same software and use the same non-microprocessor components.

D. A condition of approval by the Commission of the licensee shall be the submission by the proposed licensee to the Commission of an acceptable business plan demonstrating that the licensee will use the Alpha Microprocessor Technology to develop, manufacture, market and sell a viable and competitive Alpha Device free of all direct or indirect continuing relationships with Intel in the manufacture or sale of Alpha Devices.

E. A condition of approval by the Commission of the license shall be the submission by Digital to the Commission of an acceptable business plan demonstrating the manner in which Digital shall support the licensee's efforts as required by paragraph II of this order.

F. On reasonable notice to Digital from the licensee, Digital shall provide technical assistance and know-how related to such assistance

to the licensee with respect to the manufacture of, and the provision of technical and engineering support for, all Alpha Devices to be manufactured or sold by the licensee. Such technical assistance shall include, without limitation, consultation with knowledgeable employees of Digital and training at the facilities of Digital. Digital may charge the reasonable costs incurred in providing such technical assistance, including reimbursement (commensurate with the salary and benefits of Digital personnel involved) for the time plus expenses of Digital personnel providing the technical assistance. Digital shall continue to provide such technical assistance until AMD is satisfied that it is capable of producing, and of developing for production, commercially saleable Alpha Devices; provided, however, Digital shall not be required to continue providing such technical assistance and training for more than two (2) years after the date on which the license required by paragraph II.A. of this order is approved by the Commission.

G. Until expiration of the technical assistance obligations of paragraph II.F. of this order, respondent shall take such actions as are necessary to maintain the viability and marketability of the Alpha Microprocessor Technology and Digital's Alpha RISC Architecture and to prevent the destruction, removal, wasting, deterioration, or impairment of any of these intellectual property assets.

III.

It is further ordered, That:

A. Respondent shall grant a license, by the date this order becomes final, to Samsung Electronics Co., Ltd. ("Samsung"), or a licensee that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission and is consistent with the framework of the License Agreement Between Digital and Samsung, dated June 5, 1996, the Supplemental License Agreement entered into between Digital and Samsung, dated April 4, 1998 (the "License Agreement") and the Alpha Marketing and Technology License Agreement entered into between Digital and Samsung, dated April 4, 1998 (the "Marketing Agreement"), which provide, *inter alia*:

1. Under applicable Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license, without the right

to sublicense, to design, develop, and manufacture, and market, distribute and sell worldwide Samsung Devices and Samsung Alpha Architecture Devices;

2. The right to receive from Digital the product technology package as set forth in the License Agreement and Digital know-how (specified in the License Agreement) necessary for the design of Samsung Devices; such technology package may be used by Samsung to design, develop and manufacture Samsung Alpha Architecture Devices and Samsung Derivatives under the terms of the License Agreement;

3. The right to have a third party design a portion of the Samsung Alpha Architecture Device, provided that the third party design is undertaken for and on behalf of Samsung in accordance with the terms and conditions set forth in Section 4 of the License Agreement;

4. Under applicable Digital Intellectual Property Rights, a non-exclusive, non-transferable, perpetual license (without the right to sublicense) to use the CAD Tools, in object code form, and related documentation, for the sole purpose of assisting Samsung internally in the design, development and manufacture of Samsung Devices, Samsung Alpha Architecture Devices, Samsung Derivatives and Other Integrated Circuits in accordance with the terms and conditions set forth in Section 5 of the License Agreement, and to make copies of such documentation solely to the extent necessary to enable Samsung to implement the terms of such internal use licenses; and

5. Under applicable Digital Intellectual Property Rights, the right to reproduce and distribute FX!32 Software, in object code form (including any improvements and derivatives thereto made by Digital) for use with Alpha branded products.

B. Digital shall agree, if requested by the licensee, to submit all disputes of any license agreement described in paragraph III.A. of this order to binding arbitration. Respondent agrees to provide the Commission with ten (10) days notice of an intention to terminate any license agreement described in paragraph III.A. of this order. Other than the above limitations, nothing in this paragraph shall limit Digital's rights to seek redress for any breach of the license agreement described in paragraph III.A. of this order.

C. Digital shall enter into an agreement whereby it shall grant the licensee the non-exclusive right to market and sell the licensee's Alpha Devices under Digital's "AlphaPowered" trademark.

D. Digital shall procure Alpha Devices from the licensee in accordance with Section 8 of the Marketing Agreement.

E. A purpose of paragraph III of this order is to establish the licensee as an independent provider of Alpha Devices in order to promote the Alpha Architecture and Alpha Devices as a viable and competitive microprocessor and to remedy the lessening of competition resulting from the effects of the Intel/Digital Settlement, as alleged in the Commission's complaint. Another purpose of paragraph III of this order is to establish the licensee as an independent provider of innovation in Alpha Device design while maintaining the ability of computer systems based on Alpha Devices supplied by Digital and computer systems based on Alpha Devices supplied by the licensee to run the same software and use the same non-microprocessor components.

F. A condition of approval by the Commission of the licensee shall be the submission by the proposed licensee to the Commission of an acceptable business plan demonstrating that the licensee will use the Alpha Microprocessor Technology to develop, manufacture, market and sell as a viable and competitive Alpha Device free of all direct or indirect continuing relationships with Intel in the manufacture or sale of Alpha Devices.

G. A condition of approval by the Commission of the license shall be the submission by Digital to the Commission of an acceptable business plan demonstrating the manner in which Digital shall support the licensee's efforts as required by paragraph III of this order.

H. Digital shall provide the licensee consulting services and training as described in Section 2.1(c) of the License Agreement.

I. Until expiration of the technical assistance obligations of paragraph III.H. of this order, respondent shall take such actions as are necessary to maintain the viability and marketability of the Alpha Microprocessor Technology and Digital's Alpha RISC Architecture and to prevent the destruction, removal, wasting, deterioration, or impairment of any of these intellectual property assets.

IV.

It is further ordered, That within six months after the date this order becomes final, Digital shall, subject to the prior approval of the Commission, enter into an agreement with IBM or some other company, whereby Digital will work with IBM or such other

company to evaluate it as a foundry and provide IBM or such other company a report setting forth the steps necessary to become a qualified supplier of Digital Devices, Alpha Devices, and Digital Alpha Implementations to Digital under Digital's quality, performance and production criteria within six (6) months after the date the Commission approves such agreement; provided, however, if Digital demonstrates to the Commission that the agreement is not necessary to achieve this purpose, then Digital need not submit any agreement pursuant to this paragraph IV.

V.

It is further ordered, That respondent shall comply with all requirements of any licenses or agreements entered pursuant to this order, and such licenses or agreements are incorporated by reference into this order and made a part hereof. Any failure by respondent to comply with the requirements of such licenses or agreements shall constitute a failure to comply with this order.

VI.

It is further ordered, That:

At any time after respondent has signed the agreement containing consent order in this matter, the Commission may appoint an Interim Trustee to monitor respondent's performance of its responsibilities as required by this order and by any license or agreement implementing this order, including, but not limited to, any license agreement between Digital and any licensee, as provided in paragraphs II and III of this order. Within ten (10) days after acceptance by the Commission for public comment of the agreement containing consent order, respondent shall submit the name and qualifications of and contract with a person to serve as Interim Trustee.

1. The Interim Trustee shall have the power and authority to monitor respondent's compliance with the terms of this order and with the terms and compliance with any other agreement implementing this order, including, but not limited to, any license agreement provided in paragraphs II and III. The Interim Trustee may be the same trustee appointed pursuant to paragraph VII.A. of this order.

2. Respondent's agreement with the Interim Trustee shall confer on the Interim Trustee all the rights and powers necessary to permit

the Interim Trustee to monitor respondent's compliance with the terms of this order and any other agreement implementing this order, including, but not limited to, any license agreement as provided in paragraphs II and III.

3. The Interim Trustee shall serve until the licensees approved pursuant to paragraphs II and III of this order have received all the technology and assistance provided for in those paragraphs. In no event, however, shall the Interim Trustee serve for more than two (2) years from the date this order becomes final.

4. The Interim Trustee shall have full and complete access to respondent's personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of any product or technology covered by this order, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of any product covered by this order. Respondent shall take no action to interfere with or impede the Interim Trustee's ability to monitor respondent's compliance with paragraphs II and III of this order or any other agreement implementing this order, including, but not limited to, any license agreement as provided in paragraphs II and III in this order.

5. The Interim Trustee shall serve, without bond or other security, at the expense of respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the expense of respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

6. Respondent shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages,

claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.

7. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee.

8. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and any other agreement implementing this order, including, but not limited to, any license agreement as provided in paragraphs II and III of this order.

9. The Interim Trustee shall evaluate reports submitted to it or the Commission by Digital. The Interim Trustee shall report in writing concerning compliance by respondent with the provisions of paragraphs II and III of this order to the Commission every three (3) months from the date respondent signs the agreement containing consent order until the term of the Interim Trustee expires, as provided above. Such reports shall include at least the following:

a. Whether respondent has executed the licenses and agreements required under paragraphs II and III of this order;

b. Whether respondent has given the Interim Trustee access to records as required by paragraph VI.4. of this order;

c. Whether licensees have issued any sublicenses under paragraphs II and III of this order; the names, addresses, and phone numbers of any such sublicensee; and the purpose and terms under which these persons have been given sublicenses;

d. Whether and the degree to which Digital has provided the technical assistance and know-how to licensees as required under paragraphs II.F. and III.H. of this order;

e. Whether Digital has refused to allow any licensee to sublicense any person;

f. Whether licensees are making any good faith efforts to develop or sell any of the products covered by licenses under paragraphs II and III of this order, and, to the extent such sales have been made, the gross sales levels; and

g. The progress of Digital and any licensee in implementing their Commission-approved business plans and the extent to which the agreement is satisfying paragraphs II.D. and E. and III.F. and G. of this order.

VII.

It is further ordered, That:

A. If Digital has not executed the licenses and agreements, and received the Commission's approval for such licenses and agreements, required by paragraphs II and III of this order, then the Commission may appoint a trustee to grant the licenses or enter into agreements consistent with the terms set forth in paragraphs II and III of this order. The trustee shall have all rights and powers necessary to permit the trustee to enter into the licenses and agreements so as to expeditiously accomplish the remedial purposes of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Digital shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by any of the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph VII.A. of this order, Digital shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, who shall be a person with experience and expertise in acquisitions and licenses.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to enter into the licenses and agreements required by paragraphs II and III of this order in order to accomplish the remedial purposes of this order.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to enter into the licenses and agreements required by paragraphs II and III of this order so as to expeditiously accomplish the remedial purposes of this order.

4. The trustee shall have twelve (12) months from the date the trust agreement is approved by the Commission to accomplish the license required by this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of license or believes that license can be achieved within a reasonable time, the license period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Alpha Devices or Digital, or to any other relevant information, as the trustee may request. Digital shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the license. Any delays in licensing caused by the respondent shall extend the time for licensing under this paragraph VII in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the absolute and unconditional obligation of Digital to license at no minimum price; provided, however, that the trustee shall not negotiate any price or terms with AMD less favorable to respondent than those set forth in the MOU referred to in paragraph II of this order. The license shall be made in the manner, and to the licensee or licensees, as set out in paragraphs II and III of this order; provided, however, if the trustee receives bona fide offers from more than one licensee, and if the Commission approves more than one such licensee, then the trustee shall license to the entity or entities selected by Digital from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Digital, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Digital, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The

trustee shall account for all monies derived from the license and all expenses incurred. After approval by the Commission (and, in the case of a court-appointed trustee, by the court) of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Digital and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's accomplishing the license required by this order.

8. Digital shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VII.A. of this order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the license required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Alpha Microprocessor Technology.

12. The trustee shall report in writing to Digital and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the license.

VIII.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every thirty (30) days thereafter until respondent has granted the licenses and agreements required by the provisions of paragraphs II, III and IV of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which respondent intends to comply, is complying, and has complied with paragraphs II, III and IV of this

order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III and IV of the order, including a description of all substantive contacts or negotiations for the license and the identity of all parties that have contacted respondent or that have been contacted by respondent.

IX.

It is further ordered, That one (1) year from the date this order becomes final, annually for the next six (6) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the licenses and agreements required by paragraphs II, III, and IV of this order.

X.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent that may affect compliance obligations arising out of the order.

XI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representatives of the Commission:

A. During office hours and in the presence of counsel, access to facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to respondent, and without restraint or interference, to interview officers, employees, or agents of respondent.

XII.

It is further ordered, That this order shall terminate on June 16, 2005.

IN THE MATTER OF

FASTLINE PUBLICATIONS, INC., ET AL.

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

Docket C-3819. Complaint, July 28, 1998--Decision, July 28, 1998

This consent order prohibits, among other things, the two corporations from restricting, regulating, or interfering with the advertising of prices or other terms or conditions of the sale for farm equipment or parts; from encouraging or assisting in any boycott or refusal to deal with the media regarding the advertising of prices, terms or conditions of sale for farm equipment or parts; and from agreeing or combining with any other person to prohibit, restrict or interfere with the advertising of prices, terms or conditions of sale for farm equipment or parts.

Participants

For the Commission: *Nicholas Franczyk, Evan Siegel, C. Steven Baker, William Baer, David Meyer, and Jonathan Baker.*

For the respondents: *John S. Reed, Reed, Weitkamp, Shell, Cox & Vice, Buckner, KY. and Ronald C. Smith, Stewart & Irwin, Indianapolis, IN.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Fastline Publications, Inc. ("Fastline"), and Mid-America Equipment Retailers Association ("Mid-America"), hereinafter sometimes referred to as respondents, have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

A. "*Fastline*" means Fastline Publications, Inc., its directors, officers, employees, agents and representatives, predecessors,

successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Fastline, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Kentucky Retailers Association*" means the Kentucky Farm and Power Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by the Kentucky Retailers Association, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Mid-America*" means the Mid-America Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mid-America, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, government entity, trust, or other entity.

PAR. 2.A. Fastline is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 4900 Fox Run Road, Buckner, Kentucky.

B. Fastline is engaged in the business of publishing and publishes, among other things, picture buying guides for new and used farm equipment under the name "Fastline." Farm equipment advertised in Fastline ranges from lawn mowers to heavy duty farm equipment such as tractors, plows, planters, cotton pickers, and combines. Fastline currently publishes 20 monthly editions of its farm equipment buying guides, serving 41 states. Thirteen editions are state-specific editions (e.g., "Fastline Kentucky Farm Edition"); and seven are regional editions (e.g., "Fastline Southeast Farm Edition" (covering Georgia, Florida, and Alabama)). Approximately 20,000 copies of each edition are distributed free of charge each month. Farm equipment dealers view the "Fastline Kentucky Farm Edition" as a key vehicle for advertising to farmers in Kentucky. Fastline's principal source of revenue is its advertisers who pay from a few hundred dollars per month per edition for a half page, black and white

advertisement, to more than a thousand dollars per month per edition for a two-page, full color advertisement.

PAR. 3.A. Mid-America is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana. Its principal office and place of business are located at 9800 Association Court, Indianapolis, Indiana. Mid-America was formed in 1992 through the merger of the Indiana Implement Dealers Association, Inc., and the Kentucky Retailers Association. At the time of the merger, the members of the Indiana Implement Dealers Association and the Kentucky Retailers Association became members of Mid-America.

B. Mid-America is a trade association organized in substantial part to represent the interests of its members. Mid-America has approximately 500 members, constituting approximately 90% of the farm equipment dealers in Indiana and Kentucky. Mid-America engages in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, Mid-America is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

C. Most of Mid-America's members are farm equipment dealers engaged in the advertising, offering for sale, and sale of agri-business, outdoor power, farm, industrial and construction equipment and products or services in Indiana and Kentucky. Except to the extent that competition has been restrained as alleged herein, Mid-America's members have been and are now in competition among themselves and with other farm equipment dealers.

PAR. 4. The acts and practices of the respondents, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5.A. The Kentucky Retailers Association and members of the Kentucky Retailers Association have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing to cancel or agreeing to threaten to cancel advertising in the "Fastline Kentucky Farm Edition" in retaliation for Fastline publishing prices for new farm equipment.

B. The Kentucky Retailers Association, Fastline, and members of the Kentucky Retailers Association have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

C. Mid-America, Fastline, and members of Mid-America have combined or conspired between and among themselves to restrain trade in the advertising, offering for sale, and sale of new farm equipment, by agreeing not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

PAR. 6. The Kentucky Retailers Association, members of the Kentucky Retailers Association, Mid-America, members of Mid-America, and Fastline have engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

A. In or about February 1991, the Kentucky Retailers Association and at least some of the Kentucky Retailers Association's members withdrew or otherwise canceled, or urged other members to withdraw or otherwise cancel, advertisements in the "Fastline Kentucky Farm Edition" in retaliation for Fastline publishing advertisements that included prices for new equipment;

B. In or about February 1992: (1) the Kentucky Retailers Association and at least some member of the Kentucky Retailers Association threatened to withdraw or otherwise cancel advertisements in the "Fastline Kentucky Farm Edition" if Fastline continued to publish advertisements that included prices for new equipment; and (2) as a result, Fastline, the Kentucky Retailers Association, and the members of the Kentucky Retailers Association agreed not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition"; and

C. In or about June 1993: (1) Mid-America and members of Mid-America urged Fastline to abstain from publishing prices for new equipment and parts in all Fastline farm equipment buying guides; and (2) as a result, Fastline, Mid-America, and the members of Mid-America agreed not to advertise prices for new farm equipment in the "Fastline Kentucky Farm Edition."

PAR. 7. The acts and practices of the respondents, as described in paragraphs five and six, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to deprive consumers of the benefits of competition in one or more of the following ways, among others:

A. By reducing and restraining price competition among farm equipment dealers for new farm equipment;

B. By depriving consumers of truthful and nondeceptive price information concerning farm equipment dealers' products; and

C. By depriving consumers of the benefits of competition among farm equipment dealers in the advertising, offering for sale, and sale of new farm equipment.

PAR. 8. The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts and practices of the respondents, as herein alleged, are continuing and will continue or recur in the absence of the relief requested.

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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 respondents

have violated the said Act, and that a 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, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Fastline Publications, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 4900 Fox Run Road, Buckner, Kentucky.

2. Respondent Mid-America Equipment Retailers Association is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 9800 Association Court, Indianapolis, Indiana.

3. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "*Fastline*" means Fastline Publications, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Fastline, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Mid-America*" means Mid-America Equipment Retailers Association, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mid-America, and the respective

directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Person*" means any natural person, corporation, partnership, unincorporated association, or other entity.

D. "*Fastline Farm*" means the Fastline buying guide for new and used farm equipment and parts. "Fastline Farm Edition" means each separate edition (*e.g.*, "Fastline Kentucky Farm Edition") of Fastline Farm.

E. "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That Mid-America, directly or indirectly, or through any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, or interfering with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person.

B. Carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting in any boycott or threatened boycott of, or concerted refusal to deal with, any newspaper, periodical, publication, television station, radio station or other medium (including, but not limited to, the internet) regarding the advertising of prices or other terms or conditions of sale for farm equipment or parts.

III.

It is further ordered, That Fastline, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall forthwith cease and desist from agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination with any other person to prohibit, restrict, regulate, impede, or interfere with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person.

Provided, however, that nothing contained in this order shall prohibit Fastline from formulating, adopting, disseminating to its

advertisers, and enforcing reasonable guidelines with respect to representations that Fastline reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

IV.

It is further ordered, That Mid-America:

A. Within sixty (60) days after the date this order becomes final, amend its by-laws to incorporate by reference paragraph II of this order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

B. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order in this matter to each of its current officers and directors, and to each other agent, representative, or employee of Mid-America whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

C. Within thirty (30) days after the date this order becomes final, distribute by-first class mail a copy of the complaint and order in this matter to each of its members;

D. For a period of five (5) years after the date this order becomes final, and within thirty (30) days of the date the person assumes such position, distribute a copy of the complaint and order in this matter to each new officer and director of Mid-America, and to each other agent, representative, or employee of Mid-America whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order; and

E. For a period of five (5) years after the date this order becomes final, provide each new member with a copy of the complaint and order in this matter, and the amended by-laws, within thirty (30) days of the new member's admission to Mid-America.

V.

It is further ordered, That Fastline shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order in this matter to each of its current officers and directors, and to each other agent, representative, or employee of Fastline whose activities are affected

by this order, or who have responsibilities with respect to the subject matter of this order;

B. For a period of five (5) years after the date this order becomes final, and within thirty (30) days of the date the person assumes such position, distribute a copy of the complaint and order in this matter to each new officer and director of Fastline, and to each other agent, representative, or employee of Fastline whose activities are affected by this order, or who have responsibilities with respect to the subject matter of this order;

C. Within thirty (30) days after the date this order becomes final publish, in a clear and conspicuous manner, a copy of the NOTICE in the Attachment to this order in the next scheduled issue of each Fastline Farm Edition; and

D. For a period of five (5) years after the date this order becomes final publish, in a clear and conspicuous manner, a copy of the NOTICE in the Attachment to this order in the February issue of each Fastline Farm Edition, or in the next issue of each Fastline Farm Edition in the event no Fastline Farm Edition is published in February.

VI.

It is further ordered, That each respondent shall file a verified written report with the Commission within sixty (60) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent has complied with and is complying with this order.

VII.

It is further ordered, That the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment, sale or reorganization resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising under this order.

VIII.

It is further ordered, That each respondent shall, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, permit duly authorized Commission representatives:

A. Access during respondent's office hours, in the presence of counsel, to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in respondent's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to respondent's reasonable convenience, to interview respondent, and officers, directors, employees, agents, or other representatives of respondent, who may have counsel present, regarding such matters.

IX.

It is further ordered, That this order will terminate on July 28, 2018.

**ATTACHMENT TO CONSENT ORDER TO CEASE AND DESIST
IMPORTANT NOTICE REGARDING PRICE ADVERTISING IN FASTLINE**

As a result of discussions with the Federal Trade Commission, Fastline Publications, Inc., has entered into an order prohibiting it from agreeing, attempting to agree, or taking any action in furtherance of any agreement with any other person, including, but not limited to, any other person who advertises in Fastline, to prohibit, restrict, regulate, impede, or interfere with the advertising of prices or other terms or conditions of sale for farm equipment or parts by any person. The order is for settlement purposes only and does not constitute an admission of a violation by Fastline. Copies of the order can be obtained by contacting Fastline.

IN THE MATTER OF

BOGDANA CORPORATION, ET AL.

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

Docket C-3820. Complaint, July 28, 1998--Decision, July 28, 1998

This consent order prohibits, among other things, the California-based company and its officers from making efficacy, performance, or safety claims for any food, drug or dietary supplement, unless they possess competent and reliable scientific evidence that substantiates the claims. In addition, the consent order prohibits the respondents from producing or disseminating any advertisement that misrepresents that it is not a paid advertisement, or that misrepresents that the testimonials and endorsements in their advertisements reflect the typical experiences of consumers who use their products.

Participants

For the Commission: *Lisa Kopchik* and *Jeff Bloom*.

For the respondents: *Karen Weaver* and *Rakesh M. Amin*, *Weaver & Amin*, Chicago, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Bogdana Corporation, a corporation, and Joseph L. Gruber and Bogda Gruber, individually and as officers of Bogdana Corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Bogdana Corporation is a California corporation with its principal office or place of business at 8929 Wilshire Boulevard, Third Floor, Beverly Hills, California.

2. Respondent Joseph L. Gruber is an officer of Bogdana Corporation. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Bogdana Corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Bogdana Corporation.

3. Respondent Bogda Gruber is an officer of Bogdana Corporation. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of Bogdana Corporation, including the acts or practices alleged in this complaint. Her principal office or place of business is the same as that of Bogdana Corporation.

4. Respondents Bogdana Corporation, Joseph L. Gruber and Bogda Gruber have advertised, labeled, offered for sale, sold and distributed products to the public, including Cholestaway wafers and capsules, and Flora Source. Cholestaway is a "food" and/or "drug," and Flora Source is a "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

5. 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.

CHOLESTAWAY

6. Respondents have disseminated or have caused to be disseminated advertisements and labeling for Cholestaway, including but not necessarily limited to the attached Exhibits A through E. These advertisements and labeling contain the following statements:

A. Consumer One: "My cholesterol level was 230 and now it's 179. That's great."

Consumer Two: "My cholesterol at this point is down more than a hundred points."

Consumer Three: "My cholesterol was 220. After three months, my cholesterol went down to 190."

Host One: "Just what is it that lowered these people's cholesterol levels so dramatically? This is it. (He puts two Cholestaway tablets in his hand) A new, completely safe scientifically proven method that is as simple as chewing two flavorful wafers with every meal. It is called Cholestaway. (Graphic: 'Guarantees to Lower Your Blood Cholesterol Level') It is not a prescription drug, not a chemical, but a simple all natural dietary supplement that guarantees to lower your blood cholesterol level or your money back. That is right. It guarantees to lower your cholesterol." (Exhibit A, Cholestaway Television Infomercial 2, p. 1).

....

Host One: "This is a cross-section of an artery. When there is too much cholesterol present in the bloodstream, it begins building up fatty deposits on the artery wall narrowing the opening, sort of like rust builds up on an old water pipe. When this opening becomes clogged, the blood flow to the heart is interrupted, causing a heart attack." (Exhibit A, p. 3).

....

Host One: "With all natural Cholestaway, you get proven results without drugs, and without side effects. Studies were done at several prestigious research institutes on the effects of adding dietary calcium and magnesium, the ingredients found in Cholestaway, to the diet. Although not every study was created to determine the effect on blood serum cholesterol, it was noted that cholesterol levels were reduced, and in one study, by as much as 25%. One study even measured a weight loss, while another reported no loss at all.

(Graphic: "PROVEN TO LOWER BLOOD CHOLESTEROL BY SCIENTIFIC RESEARCH STUDIES.")

It was concluded, however, that, taken in sufficient dosages, these dietary supplements will lower cholesterol levels. The results by users, while anecdotal, is [sic] proof positive." (Exhibit A, p. 4).

....

(A bottle of Cholestaway is shown on a table next to the "Physician's Desk Reference." Host Two picks up the bottle and holds it.)

Host Two: "And that is the beauty of Cholestaway. It lets you eat like you normally would. Of course, when I say normal, I don't mean pizza every night, or ice cream and cake with every meal. What you normally eat." (Exhibit A, pp. 4, 5).

....

Host One: "Now, I would like to introduce you to the man who discovered Cholestaway, Dr. DeLamar Gibbons, former Director of Clinical Research for the Saturday Evening Post, and author of several books on cholesterol and diets."

....

Gibbons: "This is what I did. I ate a pound, I weighed it out, I had little scales, and I weighed out a pound of Kentucky Fried Chicken. I didn't peel the skin off or anything -- as fat as I could. And I took the same amount of Cholestaway that this inmate was taking. And for 60 days in a row, I ate a pound of Kentucky Fried Chicken."

Host Two: "You ate a pound of Kentucky Fried Chicken for sixty days?"

Gibbons: "Every day."

Host Two: "Every day?"

Gibbons: "Every day. And at the end of the sixty days, I checked, and my cholesterol had dropped remarkably. And my blood fat had gone down. And to my surprise, I had lost 25 pounds." (Exhibit A, p. 8).

....

Consumer Five: "I've been on Cholestaway for about two months now. And in the process of getting my cholesterol tested, my cholesterol has come down. At this point, my cholesterol is down over a hundred points. The pluses to this have been that I can eat almost whatever I want, within reason, eggs, corned beef sandwich for lunch occasionally, and I'm still showing improvement, plus I've lost weight." (Graphic: "The results of using Cholestaway will vary from individual to individual.")

(Graphic: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.") (Exhibit A, p. 10).

....

Dr. Dalton: "Dr. Gibbons and I were working together in the state correctional system in Virginia. And I was under the care of some physicians who were taking care of my health. I had a diabetic condition, which seemed to get out of hand. And my triglycerides as well as my cholesterol went so high, that it was very threatening. As a matter of fact, the triglycerides should only be around 200 as the cholesterol should. And my triglycerides were over 1600, and the cholesterol was over 500.

....
Dr. Dalton: So we started on Cholestaway. And within several weeks, my chemistry concerning the triglycerides and cholesterol had dropped to near normal. By one month, they were both within normal range. And it was one of the best things that had ever happened to me."

(Graphic: "The results of using Cholestaway will vary from individual to individual.") (Exhibit A, p. 13).

....
Consumer Three: "Yes, I had a side effect, an unusual side effect and a happy one. I lost 30 pounds."

Host Two: "You lost 30 pounds."

Dr. Dalton: "That's interesting Barbara, because I had the same experience. I lost 50 pounds over the past five years."

(Graphic: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

Host Two: "Fifty pounds?"

Consumer Three: "That's wonderful."

Dr. Dalton: "Exactly."

Host Two: "Just what in Cholestaway causes one to lose the weight?"

Dr. Dalton: "Again, as Dr. Gibbons explains, it's the calcium combining with the fat in food and it simply never goes into the system. It's a very simple, but very effective mechanism." (Exhibit A, pp. 14, 15).

....
Gibbons: "Cholestaway is perfectly safe for high blood pressure. In fact, there have been studies in the last year or two employing the ingredients of Cholestaway to treat high blood pressure. Some people with high blood pressure are found to be low on their calcium. And Cholestaway is an excellent source of calcium. And it would probably be very favorable to people with high blood pressure." (Exhibit A, p. 18).

....
Gibbons: "They put cholesterol in a machine that's like a cream separator. And it's the high density that stays in the milk part, and the low density that comes out of the cream part. The low density is thought to be the bad one and the high density is felt to be the good one. The ratio of one to the other is currently regarded as important. The Cholestaway seems to be getting rid of primarily the low density cholesterol and improving the ratio."

....
Host Two: "Yes, there is one major side effect while on Cholestaway. You will probably lose weight." (Exhibit A, p. 19).

B. Anderson: "Hello ladies and gentlemen. This is your host Robert Anderson and we're on 'Let's Talk About Health.' We have a very interesting guest today...[A] lot of you would probably picture a body where you were trim and in shape and then you might say to yourself: "Well, but in order to achieve that I'd really have to starve myself and I enjoy eating food so much, I enjoy eating a pizza and sitting down to Kentucky Fried Chicken, and I just couldn't give up that entirely. These are foods that really help me to get through tough experiences and a tough work week looking forward to this now."

But, I got news for you. That's possible now. It's possible to sit down and have your pizza and eat it, too. And have your cake and eat it too. Because Dr. Gibbons has come up with a product that really is a combination of nutrients. They're in the form of very tasty wafers and when you take these wafers during your meal, very little fat gets into the body. And we call that product Cholestaway. Dr. Gibbons has given it that name, because really when you take that product, you don't have to be a prophet to predict that if you're not getting very much fat into your body, what would result would be a lower, a much lower level of cholesterol." (Exhibit B, Cholestaway Radio Infomercial #24, pp. 1, 2).

....
Gibbons: "And so for two months I took the 12 Cholestaway tablets that this inmate was taking and I ate a pound of Kentucky Fried Chicken every day. The skin, the bones, the grease -- all of it."

Anderson: "How much weight did you gain?"

Gibbons: "I lost 25 pounds."

Anderson: "...[H]ere we have a product that's a combination of nutrients that, when taken in the form of these tasty wafers, and I've tried it, then very little fat gets into the body. Some fat does get into the body, though, isn't that true?"

Gibbons: "Small amounts, sure."

Anderson: "Very small amounts, and of course we need small amounts of fat so that's important to have some fat in our body."

Gibbons: "Of course. But you don't have to go on a Spartan diet to achieve weight loss and reduction of the fat in your blood and your body."

Anderson: "So it's conceivable with these Cholestaway wafers that are taken during each meal, people can eat pretty much what they like in the way of fattening foods and they could still lose weight."

Gibbons: "Right. I'm kind of a pig. I like pizza, I like lasagna."

Anderson: "Well, let's take pizza for example. My wife and I, every Friday night, we like to sit down and have a pizza. Let's take the most caloric type of pizza, let's say pizza smothered with pepperoni and sausage and you have, now, how much Cholestaway would you take with something like that?"

Gibbons: "I would ordinarily take maybe four tablets."

....
Anderson: "O.K. But what kind of, back to that pizza because I think we've got everybody listening to what would happen to that pizza, or ice cream, or anything like that. What would happen to the fat in that pizza as it came into the stomach when, as Cholestaway was taken? What would happen to it?"

Gibbons: "It would go right through you."

Anderson: "It would actually become part of the stools and it would be eliminated then."

Gibbons: "That's correct." (Exhibit B, pp. 3-5).

....
Gibbons: "... it will combine with the fat in your diet and it will make it so it will not dissolve in water and can't be absorbed. It does the same thing with Cholesterol. It combines with it. One molecule of Cholestaway will bind two molecules of fat or two molecules of cholesterol."

Anderson: "So basically as a result of taking the wafers, it's conceivable that not only weight loss will occur, but also cholesterol levels within the body will go down which is extremely important when one considers heart problems and hardening of the arteries and all of those negative health problems that so many people have. Am I correct in that?"

Gibbons: "I've used it on a great number of patients."

Anderson: "Now, what has been the result as far as using Cholestaway on them? Giving them Cholestaway, what has happened to their cholesterol levels?"

Gibbons: "Cholesterol falls, and also the blood fat or triglycerides fall...." (Exhibit B, pp. 5, 6).

....
Anderson: "...[Y]ou take two of these tasty wafers which are a combination of nutrients and what they do is they prevent fat from getting into the body, so... you can enjoy a tasty meal that has a lot of fat in it, not get very much fat, if any, into your body and then also in addition to losing weight, not getting fat into the body, cholesterol levels go down as well." (Exhibit B, p. 7).

....
Anderson: "If we take Cholestaway on a steady basis, we may actually, not may, we will lose weight. I've been taking it more or less experimentally on myself and I've lost weight and I haven't really been trying. In fact, I've been making an effort to offset the product by eating more fat than I'd usually eat and ironically I've actually lost weight." (Exhibit B, p. 9).

....
Gibbons: "My experience has been that it has a great deal more effect on those with a very high cholesterol than the ones borderline. And those with very high cholesterol are people who are re-absorbing their cholesterol excessively. So the higher the cholesterol initially, the better it appears to be working." (Exhibit B, p. 11).

C. "Simple and safe, just two small vanilla flavored wafers with each meal reduce the amount of fat absorbed from the diet."

"CHOLESTAWAY is both safe and effective. Because it greatly lowers the amount of fat absorbed from the diet, many individuals may lose 4 - 9 pounds a month."

....
"...CHOLESTAWAY reduces the body's cholesterol pool." (Exhibit C, Bogdana Catalog).

D. "... reduces the amount of fat absorbed from the diet."

....

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Complaint

"Because it greatly lowers the amount of fat absorbed from the diet, many individuals may lose four-to-nine pounds a month."

....
 "...**CHOLESTAWAY** reduces the body's cholesterol pool." (Exhibit D, Bogdana Internet Advertisement, August 22, 1996, p. 2).

E. **Bogdana CHOLESTAWAY** ♥

Dr. DeLamar Gibbons, M.D.

....
 Safe and effective

May help lower levels of cholesterol and triglycerides

Many individuals may lose 4 to 9 pounds a month

(Exhibit E, Cholestaway Label).

7. Through the use of the trade name "Cholestaway," and through the means described in paragraph six, respondents have represented, expressly or by implication, that:

- A. Cholestaway significantly lowers serum cholesterol levels.
- B. Cholestaway significantly lowers serum cholesterol levels without changes in diet.
- C. Cholestaway significantly lowers serum cholesterol levels and causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza.
- D. Cholestaway substantially reduces or eliminates the body's absorption of dietary fat.
- E. Cholestaway lowers low density lipoprotein cholesterol and improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio.
- F. Cholestaway is effective in the treatment of hardening of the arteries and heart disease.
- G. Cholestaway causes significant weight loss.
- H. Cholestaway causes significant weight loss without changes in diet.
- I. Cholestaway significantly reduces blood triglyceride levels.
- J. Cholestaway significantly reduces elevated blood pressure.
- K. Testimonials from consumers appearing in the advertisements for Cholestaway reflect the typical or ordinary experience of members of the public who use the product.

8. Through the use of the trade name "Cholestaway," and through the means described in paragraph six, respondents have represented,

expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph seven, at the time the representations were made.

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

10. Through the means described in paragraph six, respondents have represented, expressly or by implication, that:

- A. Scientific studies prove that Cholestaway significantly lowers serum cholesterol levels.
- B. Scientific studies prove that Cholestaway significantly reduces elevated blood pressure.

11. In truth and in fact:

- A. Scientific studies do not prove that Cholestaway significantly lowers serum cholesterol levels.
- B. Scientific studies do not prove that Cholestaway significantly reduces elevated blood pressure.

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

FLORA SOURCE

12. Respondents have disseminated or have caused to be disseminated advertisements for Flora Source, including but not necessarily limited to the attached Exhibits F and G. These advertisements contain the following statements:

A. [Announcer's Voice]: "The Bogdana Corporation is proud to present 'Let's Talk About Health' with your host, Robert Anderson. He'll talk about all aspects of health -- physical, mental, emotional and spiritual. Now here's your host, Robert Anderson."

Robert W. Anderson: "This is host Robert Anderson.... We have an interesting show today. We have Dr. Scott, Scott Gregory with us and we, he's been on our show before. And he's an expert in diseases that affect the immune system where people have a weak immune system, they may have HIV-positive or full-blown AIDS or diseases, for example, like multiple sclerosis or chronic fatigue, that is the Epstein-Barr Syndrome, which is often accompanied by candida, that is yeast infection." (Exhibit F, Flora Source Radio Infomercial #23, p. 1).

....
Anderson: "Now, of course, what really impresses me about Dr. Scott is that, uh, Dr. Scott Gregory is that he has really had a lot, a high degree of success rate with HIV-positive and some cases full-blown AIDS. Actually turning them around and making them HIV, causing them to become HIV-negative through his protocol. And he's had a remarkable, almost lightning-speed effect on people with chronic fatigue and I wish I had met him several years ago and fortunately I got well by using Bogdana. (Exhibit F, p. 5).

....
Anderson: "But I wish that I had Flora Source at a time, because I think my achieving wellness and getting rid of chronic fatigue perhaps would have accelerated. Could you tell us something about Flora Source doctor?"

Dr. Gregory: "Yes, yes, it's a culture, it's many cultures actually. It's bio-active. It replaces the natural intestinal flora. In approximately, oh I'd say at least 90 to 98 percent of all individuals that are immunosuppressed, they have definitely digestive dysfunction of some kind, malabsorption. So in other words, it's bad enough to be sick, but the worst end of the scenario is that you're suffering also from malnutrition, because the body is not manufacturing what it needs to heal. So the Flora Source in its process of adding to it these special nutrients that allow the flora in the digestive tract to function normally actually assist in the healing process by, for example, increasing more B vitamins, actually helping the body to manufacture more B vitamins, 'cause that's one thing the digestive flora does [sic].

Another thing the Flora Source does is it helps rid the body of different microorganisms that would in fact endanger, in the sense that they're pathogenic. So it has the principle of detoxification. I believe that the Flora Source in terms of my protocol would probably fit in all four categories. Kill whatever it is that's in the digestive tract. Detoxify the digestive tract.

And then it has, of course, the Flora Source has the ability to help the immune system work better also. It's been known that specific types of cultures do enhance the immune response. So it's a very good product. I've gotten very good results with it, with immunosuppressive disorders and I do add it as an adjunct. I [inaudible] most of my patients who are immunosuppressed need this product to get their digestive tract in proper function so that they can process these different microorganisms naturally and allow the body to detoxify them."

....
Anderson: "Of course, so many doctors don't tell us that when they give us prescription drugs that those prescription drugs are antibiotics, that they kill off the good bacteria as well as the bad bacteria. And although we may feel relief from symptoms we're suffering from at the moment, down the line three, four, five years later we develop, we could develop illnesses such as chronic fatigue or other immunosuppressed diseases. So it's important to reestablish the positive bacteria colonies within the body.

And I've also found out that one of the, of course the bacteria in that particular item, the product called Flora Source that is very interesting is the B. Laterosporus bacteria that should be in people's intestine but often is not because of prescription drugs. And from the way I understand it is that that kills candida or yeast within the body and of course that's how a lot of our problems with immunosuppressed or

weak immune systems start is the good bacteria is no longer there as a result of being killed off by the prescription drugs. And candida or "yeast infection" which is -- yeast is a living organism -- it's allowed to run rampant through our body and cause a lot of problems. And also another interesting bacteria is in there, and that is a bacteria that is responsible for the metabolism and assisting in the metabolism of carbohydrates, sugar starches and without it could mean that people might gain weight."

....

B. [Large Print Heading in Catalog] "FLORA SOURCE"
[Large and Bold Print Sub-Heading, slightly smaller than the Heading] "**Scientific Health Enhancement Effects Of: Bacillus Laterosporus - Bacillus Subtilis - Lactobacillus Sporogenes**"

[Smaller print in main body of text] "The classic use of antibiotics and chemotherapeutics seems to have reached limitations, in light of the chronic and persistent infections that plague mankind.

Flora Source is a pro-biotic or special class of bacteria, consisting of Bacillus Laterosporus, Bacillus Subtilis and Lactobacillus Sporogenes.

Bacillus Laterosporus is a friendly, non-lactic-acid producing bacteria, and is found in the human intestines in very small quantities, but will aid in creating an intestinal environment that is conducive to rapid colonization of any beneficial flora.

Bacillus Laterosporus has been clinically tested and found to be safe and effective, both topically and as intestinal flora. Taken internally, this product has shown positive results in relieving many of the gastrointestinal symptoms related to candida. Improvements in symptoms, such as food sensitivities, constipation, diarrhea, abdominal pain, bloating and gas."

....

Lactobacillus Sporogenes: The rapid colonization enables it to control the growth of infectious organisms in the intestines much more rapidly than do the non-spore-producing Lactobacilli by reducing the amount of bile salt in the gut. Also an intestinal aid for: putrefication, auto-intoxication, dyspepsia, anorexia, vomiting, flatulence, green stools, white diarrhea (Pseudocholera infantum)." (Exhibit G, Bogdana Catalog).

13. Through the means described in paragraph twelve, respondents have represented, expressly or by implication, that:

- A. Flora Source replaces the natural intestinal flora that are lost due to illness, prescription drugs or antibiotics, thereby reducing the risk of developing illnesses such as chronic fatigue syndrome (Epstein-Barr syndrome) and other immunosuppression diseases, including AIDS.
- B. Flora Source improves the body's absorption of nutrients, including B vitamins.

- C. Flora Source enhances the body's immune response and is effective in the treatment of immunosuppression diseases, including AIDS.
- D. Flora Source prevents weight gain.
- E. Flora Source is effective in the prevention or treatment of anorexia.
- F. Flora Source is effective in the prevention or treatment of gastrointestinal disorders and symptoms including food sensitivities, constipation, diarrhea, dyspepsia, abdominal pain, bloating and gas.

14. Through the means described in paragraph twelve, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made.

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

DECEPTIVE FORMAT

16. Through the means described in paragraphs six and twelve, respondents have represented, expressly or by implication, that certain of their advertisements for Cholestaway and Flora Source, including but not necessarily limited to Cholestaway Radio Infomercial #24 (Exhibit B) and Flora Source Radio Infomercial #23 (Exhibit F), are independent radio programs and are not paid commercial advertisements.

17. In truth and in fact, the advertisements for Cholestaway and Flora Source referred to in paragraph sixteen are paid commercial advertisements and not independent radio programs. Therefore, the representation set forth in paragraph sixteen was, and is, false or misleading.

18. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

126 F.T.C.

EXHIBIT A

EXHIBIT A

"Transcript of Cholestaway Television Infomercial #2"

Graphic (with voiceover):

The following is a paid program brought to you by Television Marketing Group and contains testimonials from consumers relating their personal experiences using Cholestaway to reduce their cholesterol levels. These testimonials are personal accounts and have not been scientifically recorded. Although some users have also experienced a weight loss using Cholestaway, it is not intended as a weight loss product. Remember the results of taking Cholestaway will vary from individual to individual.

UNIDENTIFIED WOMAN #1: My cholesterol level was 230 and now its 179. That's great.

UNIDENTIFIED MAN: My cholesterol at this point is down more than a hundred points.

UNIDENTIFIED WOMAN #2: My cholesterol was 220. After three months, my cholesterol went down to 190.

MR. MACHADO: *(Holding bottle of Cholestaway)*

Just what is it that lowered these people's cholesterol levels so dramatically? This is it.

(Puts two Cholestaway tablets in his hand)

A new, completely safe scientifically proven method that is as simple as chewing two flavorful wafers with every meal. It is called Cholestaway.

(Graphics reading "NOT A DRUG," "NOT A CHEMICAL," "ALL NATURAL DIETARY SUPPLEMENT" and "GUARANTEES TO LOWER YOUR BLOOD CHOLESTEROL LEVEL" are shown to correspond with script.)

It is not a prescription drug, not a chemical, but a simple all natural dietary supplement that guarantees to lower your blood cholesterol level or your money back. That is right. It guarantees to lower your cholesterol.

(Mario Machado/Television & Radio Commentator" shown at bottom of screen as he introduces himself.)

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Complaint

EXHIBIT A

Hello. I am Mario Machado. And welcome to our show. Here to help me tell you more about this revolutionary new breakthrough in controlling your cholesterol is a good friend of mine. Roni Margolis-Liddy.

(Roni Margolis-Liddy is shown and bottom of screen reads "Roni Margolis-Liddy.")

Hi, Roni.

MS. LIDDY:

Hi, Mario.

The three people you saw at the beginning of our program had, like more than 65 million Americans, a higher than normal blood cholesterol. In fact, there is a good chance that you have a high cholesterol level yourself.

Now I said that they had high cholesterol. But thanks to Cholestaway, their cholesterol levels have returned to an acceptable level. And just what is acceptable? Let's take a look.

A chart labeled "Cholesterol Levels" across the top is shown with subheadings: "Acceptable under 200," "Borderline 200 to 259" and High Above 260." A graph line rises as she continues to speak.

The National Cholesterol Education Program regards cholesterol levels under 200 as acceptable. Readings of 200 to 239 are considered borderline. And those of 240 and above are considered high.

Mario Machado writes the words "CHOLESTEROL" on a green board.

MR. MACHADO:

Now, first of all, let me explain that cholesterol has been getting a bad rap. You see, cholesterol, a wax-like substance processed in the liver, is essential to life. The human body needs cholesterol to manufacture cells, membranes, nerve tissues, hormones, and bile acids to digest food.

It is when there is too much cholesterol in our system that the trouble begins.

Complaint

126 F.T.C.

EXHIBIT A

Mario Machado writes "240" on the board.

If you have a blood cholesterol level of over 240, you are probably a good candidate for a heart attack. Here is why:

(Mario Machado draws a circle to represent an artery. He then colors in the circle to represent fatty deposits building-up.)

This is a cross-section of an artery. When there is too much cholesterol present in the bloodstream, it begins building up fatty deposits on the artery wall narrowing the opening, sort of like rust builds up on an old water pipe. When this opening becomes clogged, the blood flow to the heart is interrupted, causing a heart attack.

MS. LIDDY:

But heart disease isn't the only symptom linked to high cholesterol. It can cause visual problems, forgetfulness, leg cramps, and difficulty in hearing, just to name a few.

MR. MACHADO:

Now the real trick is to get rid of all of this excess cholesterol. To do this, most doctors prescribe drugs. But these can cause a variety of side effects that sometimes can be just as dangerous as having high cholesterol.

MS. LIDDY:

(Opens up a copy of the Physician's Desk Reference as she speaks)

Here is what the Physician's Desk Reference, a well-respected journal within the medical profession, says about the side effects of one of the more popular drugs prescribed for controlling high blood cholesterol:

"Caution: Can cause liver dysfunction, hypertension, ulcers, skin diseases, insomnia, thyroid abnormalities, vomiting, anorexia, cataracts, seizures," and on and on and on and on.

(Studies from the Laboratory of Biochemical Genetics and Metabolism, Rockefeller University, New York; the Arteriosclerosis Research Group, St. Vincent's Hospital, Montclair, New Jersey; the Department of Internal Medicine, University of Texas; and the Digestive Disease

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Complaint

EXHIBIT A

Center. Veterans Administration Medical Center. Houston. Texas are shown as Mr. Machado speaks.)

MR. MACHADO:

With all natural Cholestaway, you get proven results without drugs, and without side effects. Studies were done at several prestigious research institutes on the effects of adding dietary calcium and magnesium, the ingredients found in Cholestaway, to the diet. Although not every study was created to determine the effect on blood serum cholesterol, it was noted that cholesterol levels were reduced, and in one study, by as much as 25%. One study even measured a weight loss, while another reported no loss at all.

(The words "PROVEN TO LOWER BLOOD CHOLESTEROL BY SCIENTIFIC RESEARCH STUDIES are shown on the screen.)

It was concluded, however, that, taken in sufficient dosages, these dietary supplements will lower cholesterol levels. The results by users, while anecdotal, is proof positive.

MS. LIDDY:

Let's be honest. There is a simple, easy way to help lower your cholesterol. And that is by eating a proper diet. But just how many of us have the will power to stay on a fat-free diet? I know I don't. We all have good intentions. But because of our job, lack of time, too much work, whatever, we just cannot always eat correctly.

And just what is considered a high-cholesterol diet? Well, fats, of course, like butter, oils, cheese, pork, rich gravies, shell fish, whole milk, cream – all of the good stuff.

(The words "BUTTER," "OILS," "CHEESE," "PORK," "GRAVY," "SHELLFISH," and "WHOLE MILK" are shown on the screen as she mentions them.)

(A bottle of Cholestaway is shown on a table next to the PDR. She picks up the bottle and holds it.)

And that is the beauty of Cholestaway. It lets you eat like you normally would. Of course, when I say normal, I don't

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mean pizza every night, or ice cream and cake with every meal. What you normally eat. You simply take two Cholestaway wafers with each meal. They are vanilla flavored, and they actually taste good. And your blood cholesterol is lowered, guaranteed. It is that simple.

("Calcium carbonate and magnesium are generally recommended as safe by the FDA" is shown in small letters at the bottom of the screen.)

It is not only effective, it is all natural. That is what I especially like about it. It is not a drug. In fact, Cholestaway is actually good for you. It contains calcium and magnesium, both important to your health.

("This is a paid commercial" is shown at the bottom of the screen when she says the word "magnesium.")

JIM CHAPEL:
(Testimonial)

I've had a problem with my cholesterol for the past 10 years. It was up to 278 two months ago. I tried everything. I tried niacin. I tried getting my diet down to five percent fat -- nothing seemed to work. I saw Cholestaway on television, and I tried it and in two months it went from 278 to 258. I was very happy about it.

(As he speaks the words "The results of using Cholestaway will vary from individual to individual" appears at the bottom of the screen.)

FEMALE ANNOUNCER:

If you are one of the over 65 million Americans who suffer from high blood cholesterol, you will be happy to know that there is a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It is called Cholestaway.

(Scene fades and the woman appears in a garden holding a bottle of Cholestaway.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back. That is right. It's guaranteed.

But don't just take our word for it.

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(She holds up a study. At the bottom of the screen, in small letters, the words "All products have possible, but remote side effects. See product literature.")

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(She picks up the bottle, opens it and takes out two wafers.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It is that simple. And it is completely safe.

(The words "Calcium carbonate and magnesium are generally recognized as safe by the FDA" appear at the bottom of screen in small letters.)

So if you are concerned about cholesterol, call the number on the screen, and order Cholestaway now.

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax]. Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway, P.O. Box 803377, Dallas, TX, 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

ROSLYN GERNSTADT:
(Testimonial)

I went for an annual check-up and had a blood test done, and found that my cholesterol was at 274. And they suggested that I start medication, if I don't do something about changing it. And I refused that. So in hearing about

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Cholestaway. I started taking it, and found that I dropped down to 208, which I think is fantastic.

(At bottom of picture you can read: "The Results of Using Cholestaway may vary from individual to individual.")

- FEMALE ANNOUNCER: Now, if you don't know if you have a high cholesterol level or not, have a pencil and paper handy, because later in the program we will give you a little quiz to see if you are at risk.
- MR. MACHADO: Now, I would like to introduce you to the man who discovered Cholestaway, Dr. DeLamar Gibbons, former Director of Clinical Research for the Saturday Evening Post, and author of several books on cholesterol and diets. Thank you for joining us, sir. Tell us about the genesis of the product. How did it come about? And I hear that it had something to do with prisons.
- DR. GIBBONS: At the time that I discovered Cholestaway, I was the medical director for a state prison in Virginia. And I had under my care an individual that I thought, the vessels under his skin all stood out. And I could even trace some of the nerves in his skin. I had never seen an individual look like this. He had good muscles, and he was obviously quite healthy.
- I thought maybe he is on one of those special diets that many of the prisoners put themselves on. I went to the mess hall to watch him eat. And gosh, he gobbled up his tray, and half of his neighbor's. It wasn't the diet.
- So I said pull his medical record for me. And interestingly enough, he had had thyroid cancer. And in taking his thyroid out, they took his parathyroid glands out.
- MR. MACHADO: And that causes what?
- DR. GIBBONS: It upsets --
- MR. MACHADO: A voracious appetite?
- DR. GIBBONS: No. It has to do with calcium metabolism. And to correct

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this problem, he was taking a crude form of Cholestaway. And my first love was chemistry. I thought, ah, I know why he looks so peculiar. He isn't able to absorb any of the fat in his diet. He is fat starved. This is interesting. As I thought about it, I decided that I would try it on myself.

MR. MACHADO:

You were going to be your own guinea pig?

DR. GIBBONS:

This is what I did. I ate a pound, I weighed it out, I had little scales, and I weighed out a pound of Kentucky Fried Chicken. I didn't peel the skin off or anything -- as fat as I could. And I took the same amount of Cholestaway that this inmate was taking. And for sixty days in a row, I ate a pound of Kentucky Fried Chicken.

MS. LIDDY:

You ate a pound of Kentucky Fried Chicken for sixty days?

DR. GIBBONS:

Every day.

MS. LIDDY:

Every day?

DR. GIBBONS:

Every day. And at the end of the sixty days, I checked, and my cholesterol had dropped remarkably. And my blood fat had gone down. And to my surprise, I had lost 25 pounds.

MS. LIDDY:

You lost weight?

DR. GIBBONS:

I lost 25 pounds. The beautiful thing about Cholestaway is it's all natural and it's even good for you. It isn't a drug. It isn't a medicine. What it is is the natural minerals from hard water.

MR. MACHADO:

And what does that do to the system?

DR. GIBBONS:

(A chart with the stomach, liver and intestines is shown. Cholic acid is labeled in the liver and little arrows show the process that Dr. Gibbons describes. When he mentioned Cholestaway by name, the word "Cholestaway" appears on the chart.)

Our livers process cholesterol, which is then excreted in the bile in the form of cholic acid. As the bile enters the intestine, the soluble cholic acid looks like food to the

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intestines and it's absorbed into the bloodstream. The absorbed cholic acid is carried back to the liver and is excreted in the bile and then reabsorbed again from the intestine. Cholestaway interrupts this cycle by combining with the cholic acid to form an insoluble residue that can't be reabsorbed.

MR. MACHADO:

That's incredible.

DR. GIBBONS:

It robs you of fat calories and with it takes excess cholesterol.

MR. MACHADO:

Two a day per meal?

DR. GIBBONS:

With each meal. And you know, I like pizza. And if I'm going to have pizza I maybe take two or three extras.

(A pizza is shown and someone with a bottle of Cholestaway putting three wafers in the palm of the hand.)

MR. MACHADO:

But the general regimen that you are stating is that you take two tablets per meal for how long a period of time?

DR. GIBBONS:

Well, as long as you need it. It isn't going to hurt you. It's good for you.

MR. MACHADO:

I want to thank you for being with us Dr. Gibbons, and for sharing your knowledge and also sharing Cholestaway with us. Thank you. We'll see you again later in the program. Stay tuned. We'll be right back with some satisfied users who each have an incredible success story to tell us.

(“This is a paid commercial” at bottom of screen.)

MS. LIDDY:

Thank you.

DR. GIBBONS:

Thank you.

FEMALE ANNOUNCER:

O.K. Do you have a paper and pencil handy? Here are five questions, the answers to which will tell you if you're at risk of having a high cholesterol level. Number 1: Does anyone in your family have high cholesterol? Number 2: Do you smoke? Number 3: Do you have a stressful job or

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do you often find yourself under a lot of pressure? Number 4: Do you eat a lot of foods high in fat? And Number 5: Do you seldom exercise?

(A chart, with the same five questions is shown on the screen. As the announcer reads each question, a check is put in the box before each question.)

(Announcer is shown holding a bottle of Cholestaway)

Now, if you answered 'yes' to any three of these questions, you're at risk of having a high cholesterol level and it would be a good idea to have it checked. Remember, high levels can lead to all kinds of health problems. But as you've seen, all natural Cholestaway is a safe and easy way to keep it under control.

STEVEN BRODY:
(Testimonial)

I've been on Cholestaway for about two months now. And in the process of getting my cholesterol tested, my cholesterol has come down. At this point, my cholesterol is down over a hundred points. The pluses to this have been that I can eat almost whatever I want, within reason, eggs, corned beef sandwich for lunch occasionally, and I'm still showing improvement, plus I've lost weight.

(As he talks "The results of using Cholestaway will vary from individual to individual" appears. As he says "I'm still showing improvement" the following statement appears at the bottom of the screen: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

FEMALE ANNOUNCER
#1:

If you're one of the over 65 million Americans who suffer high blood cholesterol, you'll be happy to know there's a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It's called Cholestaway.

(A bottle of Cholestaway is shown. She picks up the bottle.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

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That's right. It's guaranteed. But don't just take our word for it.

(She holds up a study. "All products have possible but remote side effects. See product literature." appears in small letters at the bottom of the screen.)

Studies have proven Cholestaway's effectiveness in lowering cholesterol. And just how does Cholestaway work? Let's take a look.

(A chart with the stomach, liver and intestines is shown. Cholic acid is labeled in the liver and little arrows show the process that announcer describes. When she mentions Cholestaway by name, the word "Cholestaway" appears on the chart.)

Our liver processes cholesterol, which is excreted in the bile in the form of cholic acid. As the cholic acid enters the intestines, it looks like food to your body and it's absorbed into the bloodstream. The absorbed cholic acid is carried back to the liver and is excreted in the bile and reabsorbed through the intestines again and again. Cholestaway interrupts this cycle by combining with the cholic acid to form an insoluble residue that can't be reabsorbed.

(Announcer is seated on a table in a room. She picks up the bottle and pours them into her hand.)

Just two flavorful wafers with every meal can lower you cholesterol count almost immediately. It's that simple. And it's completely safe. So if you're concerned about cholesterol call the number on the screen and order Cholesterol now.

("Calcium carbonate and magnesium are generally recognized as safe by the FDA" appears at the bottom of the screen when she says "completely safe.")

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA +

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tax.] Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway. P.O. 803377 Dallas, TX. 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

CAMILLA ROSENDE-
LOPEZ:
(Testimonial)

My cholesterol, it was very, very high. I diet! Everything that they say that is bad, I do not eat it. I exercise every day and even then, my cholesterol does not went down. Now one day, I was changing channels when I saw [the advertisement] on Cholestaway and I decided to try it. I did and from 286 to 235, very slowly, very surely, it works on me.

(As she speaks "The results of using Cholestaway will vary from individual to individual" appears at the bottom of the picture.)

FEMALE ANNOUNCER
#2:

If you order Cholestaway right now, you'll have the opportunity to purchase CholesTrak.

(Holds up box of CholesTrak and removes device from box. At bottom of screen "Manufactured by ChemTrak, the leader in home test medical products.")

CholesTrak is a unique home testing device that allows you to check your cholesterol level, quickly, easily and accurately right in the comfort of your own home. This same device is often used by doctors on their patients.

("97% ACCURATE" appears on the screen when she says "97% accurate.")

And it's 97% accurate when used as directed.

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(Picture of the CholesTrak box appears. To the left "\$19 Value Only \$12.95. Under the box to the left "One time use only.")

A \$19.00 value -- we're offering it to you for only \$12.95. Now with CholesTrak you can see exactly how much your cholesterol level has dropped using Cholestaway.

MS. LIDDY:

This is Dr. Fred Dalton. Dr. Dalton is a recognized forensic psychiatrist, and has had several papers published on the subject. Welcome, Doctor.

DR. DALTON:

Thank you.

MS. LIDDY:

I understand that your story has something to do with Dr. Gibbons, something about him saving your life.

DR. DALTON:

Dr. Gibbons and I were working together in the state correctional system in Virginia. And I was under the care of some physicians who were taking care of my health. I had a diabetic condition, which seemed to get out of hand. And my triglycerides as well as my cholesterol went so high, that it was very threatening. As a matter of fact, the triglycerides should only be around 200 as the cholesterol should. And my triglycerides were over 1600, and the cholesterol was over 500. My doctors had warned me, and they had put me on different types of medications. I had side effects to them, and it was a very unhappy situation.

And in talking with my friend, Dr. Gibbons, he suggested let's give it a try. So we started on Cholestaway. And within several weeks, my chemistry concerning the triglycerides and cholesterol had dropped to near normal. By one month, they were both within normal range. And it was one of the best things that had ever happened to me.

(As he speaks the words "The results of using Cholestaway will vary from individual to individual" appear at the bottom of the screen in small letters.)

MR. MACHADO:

I am sure your doctor was just as surprised if not more than you.

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- DR. DALTON: Interestingly enough, several of the physicians who were caring for me at that time, and I still have those physicians, are taking Cholestaway themselves.
- MR. MACHADO: How about side effects, did you experience any?
- DR. DALTON: None whatsoever. However, as I mentioned, from the medications which were prescription only and which doctors frequently prescribe for hypercholesterolemia, there were numerous side effects. And unfortunately, I was a victim of that.
- MR. MACHADO: Thank you for sharing your story with us, Doctor.
- MS. LIDDY: This is Barbara Egyude. Hello, Barbara.
- MS. EGYUDE: Hello.
- MS. LIDDY: I heard that you have an unusual story to tell us concerning Cholestaway.
- MS. EGYUDE: Yes, I had a side effect, an unusual side effect and a happy one. I lost 30 pounds.
- MS. LIDDY: You lost 30 pounds.
- DR. DALTON: That's interesting Barbara, because I had the same experience. I lost 50 pounds over the past five years.
- ("If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur" appears at the bottom of the screen in small letters.)*
- MS. LIDDY: Fifty pounds?
- MS. EGYUDE: That's wonderful.
- DR. DALTON: Exactly.
- MS. LIDDY: Just what in Cholestaway causes one to lose the weight?

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DR. DALTON: Again, as Dr. Gibbons explains, it's the calcium combining with the fat in food and it simply never goes into the system. It's a very simple, but very effective mechanism.

MS. LIDDY: It sounds very effective.

DR. DALTON: It is.

MS. LIDDY: Remember, Cholestaway is not a weight-loss program. Any weight loss you experience is merely a side effect.

MS. EGYUDE: And may I say a very nice side effect.

MS. LIDDY: Yes, I agree.

("This is a paid commercial" appears at the bottom of the screen in small letters.)

MS. LIDDY: Thank you all for joining us, and sharing your experiences with our viewers. Thank you.

REGINE JOHNSON:
(Testimonial) I had a very high cholesterol count. And my physician had recommended -- she was going to put me on medication. And someone told me about Cholestaway. And I have been taking it, and my cholesterol level is down to its normal level, and I have lost quite a bit of weight as a bonus to that.

("The results of using Cholestaway will vary from individual to individual" appears at the bottom of the screen in small letters.)

FEMALE ANNOUNCER
#1: If you're one of the over 65 million Americans who suffer from high blood cholesterol, you'll be happy to know there's a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It's called Cholestaway.

(A bottle of Cholestaway is shown. She picks up the bottle.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

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That's right. It's guaranteed. But don't just take our word for it.

(She holds up a study. "All products have possible but remote side effects. See product literature." appears at the bottom of the screen.)

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(Announcer is seated on a table in a room. She picks up the bottle and pours them into her hand.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It's that simply. And it's completely safe. So if you're concerned about cholesterol call the number on the screen and order Cholestaway now.

("Calcium carbonate and magnesium are generally recognized as safe by the FDA" appears at the bottom of the screen when she says "completely safe.")

(On the screen, as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax.] Under this "Not Available in Stores." In the middle of the screen "Send Check to: TMG/Cholestaway, P.O. 803377 Dallas, TX. 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Pick up the phone and call the number on the screen now.

EARDIE ANDERSON:

I was told that I had high cholesterol. And I was told about Cholestaway. And I started to take it. And after I guess

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about four months or so. I went to my doctor, and I was told that my cholesterol had gone really down. Because at first it was 286, and it went -- she didn't tell me how much it went down. But she told me it was good, that it went all the way down. That is what I was told. And I was very glad.

FEMALE ANNOUNCER
#2:

If you order Cholestaway right now, you'll have the opportunity to purchase CholesTrak.

(Holds up box of CholesTrak and removes device from box. At bottom of screen "Manufactured by ChemTrak, the leader in home test medical products.")

CholesTrak is a unique home testing device that allows you to check your cholesterol level, quickly, easily and accurately right in the comfort of your own home. This same device is often used by doctors on their patients.

("97% ACCURATE" appears on the screen when she says "97% accurate.")

And it's 97% accurate when used as directed.

(Picture of the CholesTrak box appears. To the left "\$19 Value Only \$12.95. Under the box to the left "One time use only.")

A \$19.00 value -- we're offering it to you for only \$12.95. Now with CholesTrak you can see exactly how much your cholesterol level has dropped using Cholestaway.

MR. MACHADO:

Rejoining us is Dr. Gibbons to help with this question and answer segment of our show. We recently went out onto the streets to get some of the most often-asked questions pertaining to cholesterol and Cholestaway, and let's listen in.

QUESTION:

How can I find out what my cholesterol level is?

DR. GIBBONS:

The simplest way is to go to your doctor, and have a physical check-up, and have your blood tested. A very quick and accurate way is to use the CholesTrak kit. It

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allows you to check your cholesterol level right in the comfort of your own home. Simply and easily.

MR. MACHADO:

Let's go see who this person is.

QUESTION:

I have a teenage daughter that has high cholesterol. Can she take Cholestaway?

DR. GIBBONS:

Cholestaway is safe for all ages. It is a perfectly natural preparation. And there is no problem giving it to children, if they have high cholesterol. There has been a lot of interest lately on children I would say in families that have a history of high cholesterol. It is important to check the children. Because some teenagers and some in their early twenties are dying of heart attacks.

QUESTION:

My father has high blood pressure and high cholesterol. Can he take Cholestaway?

MR. MACHADO:

That is a good question. In fact, I do have high blood pressure. A lot of people do. A lot of my friends do.

DR. GIBBONS:

Cholestaway is perfectly safe for high blood pressure. In fact, there have been studies in the last year or two employing the ingredients of Cholestaway to treat high blood pressure. Some people with high blood pressure are found to be low on their calcium. And Cholestaway is an excellent source of calcium. And it would probably be very favorable to people with high blood pressure.

QUESTION:

How long can you stay on Cholestaway?

DR. GIBBONS:

Indefinitely. It isn't a medicine. It is a food supplement. It is natural. You don't get too much of it. As I mentioned, it has calcium in it. Women should be taking Cholestaway anyway to keep their bones hard. So you can take it indefinitely.

MS. LIDDY:

So it would help in osteoporosis, perhaps?

DR. GIBBONS:

Definitely.

MS. LIDDY:

I'm curious, Doctor. What are these margarine companies

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talking about when they refer to, good cholesterol?

DR. GIBBONS:

They put cholesterol in a machine that's like a cream separator. And it's the high density that stays in the milk part, and the low density that comes out of the cream part. The low density is thought to be the bad one and the high density is felt to be the good one. The ratio of the one to the other is currently regarded as important. The Cholestaway seems to be getting rid of primarily the low density cholesterol and improving the ratio.

QUESTION:

What if you have an ulcer, or if you had an ulcer, could you still take Cholestaway?

DR. GIBBONS:

It is actually a good idea to take Cholestaway. It is an excellent antacid among other things. And ulcer patients will get considerable relief when they take the Cholestaway. Some people have told me that they took it as an antacid. But it is definitely safe for people with ulcers.

MR. MACHADO:

We have time for one more question. So let's listen here.

QUESTION:

Are there any side effects from Cholestaway?

MS. LIDDY:

I'll answer that one. Yes, there is one major side effect while on Cholestaway. You will probably lose weight.

(The following statement appears at the bottom of the screen in small letters: "If you maintain your present level of food consumption while taking Cholestaway, our experience and knowledge of body chemistry indicates that there is a possibility that weight loss will occur.")

MR. MACHADO:

Now, the results of using Cholestaway varies with every individual. Your experience with Cholestaway might differ from what we've heard here today. I'd like to thank our incredible guest Dr. DeLamar Gibbons, the discoverer of this extraordinary cholesterol-reducing product, Cholestaway, for being on our program today. Remember, you can order Cholestaway right now by calling the 800-number no the screen.

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("This is a paid commercial" appears on the screen.)

MADLINE WALSH:
(Testimonial)

I originally had a cholesterol problem of 278 and now it has dropped down to 238.

("The results of using Cholestaway will vary from individual to individual" appears at bottom of screen in small letters.)

FEMALE ANNOUNCER
#1:

If you are one of the over 65 million Americans who suffer from high blood cholesterol, you will be happy to know that there is a remarkable breakthrough discovery that can lower your cholesterol level without drugs. It is called Cholestaway.

(Scene fades and the woman appears in a garden holding a bottle of Cholestaway.)

Cholestaway is an all-natural dietary supplement that guarantees to lower your cholesterol or your money back. That is right. It's guaranteed.

But don't just take our word for it.

(She holds up a study. At bottom of screen, the words "All products have remote side effects. See product literature.")

Studies have proven Cholestaway's effectiveness in lowering cholesterol.

(She picks up the bottle, opens it and takes out two wafers.)

Just two flavorful wafers with every meal can lower your cholesterol count almost immediately. It is that simple. And it is completely safe.

(The words "Calcium carbonate and magnesium are generally recognized as safe by the FDA.")

So if you are concerned about cholesterol, call the number on the screen, and order Cholestaway now.

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(On the screen as the woman continues to talk, in the upper left-hand corner are two bottles of Cholestaway. In the upper right-hand corner there are three credit cards and under that it reads "Only \$29.95 [plus S&H] [CA + tax]. Under this "Not Available in Stores." In the middle of the screen "Send Check to: "TMG/Cholestaway, P.O. Box 803377, Dallas, TX, 75380." Under this "30-Day Money Back Guarantee [less S&H]" At the bottom of the screen "TMG/8544 Sunset Blvd., L.A., CA 90069.")

You will get a month's supply of all-natural Cholestaway for only \$29.95. That is right, \$29.95, enough for a full thirty days. And remember, Cholestaway is not a drug, but a completely safe, all-natural dietary supplement that guarantees to lower your cholesterol or your money back.

Start your way on the road to a longer, healthier life. Pick up the phone and call the number on the screen now.

TOM CAMP:
(Testimonial)

Cholestaway has made a big difference in my life. Nowadays, there's a tremendous consciousness about fat intake. All the doctors speak about it, all the commercials, your labels, and many people are concerned about fat intake. And I find it's a very practical and convenient way to keep your fat intake down by using the Cholestaway product.

("The results of using Cholestaway will vary from individual to individual.")

Graphic (with voiceover):

The preceding program contained testimonials from consumers relating their personal experiences using Cholestaway to reduce their cholesterol levels. These testimonials are personal accounts and have not been scientifically recorded. Although some users have also experienced a weight loss using Cholestaway, it is not intended as a weight loss product. Remember, the results of taking Cholestaway will vary from individual to individual.

(TMG appears on the screen with music. Under TMG is a line and under the line the words "Television Marketing Group, Inc. A Division of Western International Media.")

(The preceding was a paid program brought to you by Television Marketing Group.)

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EXHIBIT B

Transcript of Cholestaway Radio Informercial #24

The Bogdana Corporation is proud to present "Let's Talk about Health" with your host, Robert Anderson. He'll talk about all aspects of health -- physical, mental, emotional and spiritual. Now here's your host, Robert Anderson.

Robert Anderson:

Hello ladies and gentlemen. This is your Host Robert Anderson and we're on "Let's Talk about Health." We have a very interesting guest today and I hope everybody out there today is taping this recording because I think this is going to be the answer to a lot of people's prayers. I know it is for me and we're going to be interviewing today Dr. Gibbons. And Dr. Gibbons has invented a new product and I think it's going to be a product that everybody out there is going to want to get their hands on and going to want to try because it's a revolutionary product. There's never been anything like it before. And before we start with Dr. Gibbons, I like to begin each show with a quote, and the quote is as follows, and that is "What the mind of man can conceive, the mind of man can achieve." And it might sound a little bit arrogant and maybe we might like to soften that quote a little bit and recommend that everybody out there develop good mental images and good pictures within their own mind's eyes as to what goals they want to achieve in life because before you accomplish anything in life you really have to have a picture of what it is that you want and the clearer it is, the clearer the picture is, the more able that we are to really achieve our goals. So it's very important that we maintain a very clear definition, a very clear picture of what goals we want to achieve in life. And furthermore, getting back to our interview today, just imagine thinking of your mind's eye and pictures within your mind, imagine what you would like to appear like. What kind of body would you like to have? If you could just sit back and think for a moment and see if you can imagine, see if you can visualize what type of body you would like to have. And then I think a lot of you would probably picture a body where you were trim and in shape and then you might say to yourself: "Well, but in order to achieve that I'd really have to starve myself and I enjoy eating food so much, I enjoy eating a pizza and sitting down to Kentucky Fried Chicken, and I just couldn't give up that entirely. These are foods that really help me to get through tough experiences and a tough work week looking forward to this now. But I got news for you. That's possible now. It's possible to sit down and have your pizza and eat it, too. And have your cake and eat it too. Because Dr. Gibbons has come up with a product that really is a combination of nutrients. They're in the form of very tasty wafers and when you take these wafers during your meal, very little fat gets into the body. And we call that product Cholestaway. Dr. Gibbons has given it that name, because really when you take that product, you don't have to be a prophet to

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predict that if you're not getting very much fat into your body, what would result would be a lower, a much lower level of cholesterol. But, you know, why should I talk on because I'd like to let Dr. Gibbons explain his product, Cholestaway, that the Bogdana Corporation has adopted and so with that said, let me introduce Dr. Gibbons. Dr. Gibbons, welcome to the show. Dr. Gibbons, how are you today?

Dr. Gibbons:

Thank you. I think I would like to start by giving a little story on how I came to discover Cholestaway.

Robert Anderson:

Well, that's what we'd like to do too. Tell us something about the history of Cholestaway because I think it has an interesting history. Tell us how you came across that product and invented it.

Dr. Gibbons:

A few years ago I was research director for the Saturday Evening Post magazine and I also, at that time, I also was working part time in the state prison as a prison doctor. And one of the inmates had a very peculiar appearance. He was muscular and healthy, but had an almost eerie appearance, the veins on his arms stood out in a manner that I had never seen. And his skin was very thin. I could even see some of the nerves in it. And I wondered, "Why is this individual so different?" Uh, perhaps, he's on a special diet. Many of the inmates proclaim themselves to be followers of Islam and get a special diet of seeds and nuts and fruits. Well, maybe this fellow was on some kind of special diet. So I went to the mess hall to watch him eat and he ate taters and gravy and bread and muffins. Everything else everyone else ate. In fact, he ate half his neighbor's tray as well as his own. Diet was not the answer.

Robert Anderson:

(Laughing) . . . quite an appetite for someone that thin.

Dr. Gibbons:

Diet was not the answer. You know, he was eating what everyone else ate. So, I asked the aids to pull his medical jacket and I went through it and this individual had had thyroid cancer. And in the surgery to take out his cancerous thyroid, they had taken out his parathyroid gland as well. And to compensate for this, he was given a crude form of

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Cholestaway in very large doses. And my background, my first love was chemistry before I went into medicine. I knew immediately what was happening. The Cholestaway was binding the fat in his diet so he couldn't absorb it. And I could see through his transparent skin because he didn't have the little layer of fat that people normally have under the skin.

Robert Anderson:

A lot of bodybuilders would like that type of vascularity.

Dr. Gibbons:

(Laughing). Uh, this prompted me to think, well, if it does that for him, why don't I try it? And so for two months I took the 12 Cholestaway tablets that this inmate was taking and I ate a pound of Kentucky Fried Chicken every day. The skin, the bones, the grease - all of it.

Robert Anderson:

How much weight did you gain?

Dr. Gibbons:

I lost 25 pounds. (Laughing)

Robert Anderson:

Good Lord. And you know, Doctor, you're so calm about it, but to me I want to scream this from the roof tops. I mean here we have a product that's a combination of nutrients that, when taken in the form of these tasty wafers, and I've tried it, then very little fat gets into the body. Some fat does get into the body, though, isn't that true?

Dr. Gibbons:

Small amounts, sure.

Robert Anderson:

Very small amounts, and of course we need small amounts of fat so that's important to have some fat in our body.

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Dr. Gibbons:

Of course. But you don't have to go on a Spartan diet to achieve weight loss and reduction of the fat in your blood and your body.

Robert Anderson:

So it's conceivable with these Cholestaway wafers that are taken during each meal, people can eat pretty much what they like in the way of fattening foods and they could still lose weight.

Dr. Gibbons:

Right. I'm kind of a pig. I like pizza, I like lasagna.

Robert Anderson:

Well, let's take pizza for example. My wife and I, every Friday night, we like to sit down and have a pizza. Let's take the most caloric type of pizza, let's say pizza smothered with pepperoni and sausage and you have, now, how much Cholestaway would you take with something like that?

Dr. Gibbons:

I would ordinarily take maybe four tablets.

Robert Anderson:

O.K.

Dr. Gibbons:

But you know if I were having a breakfast of cereal and fruit I wouldn't take any. You know, if there's no fat in the meal then I don't take any.

Robert Anderson:

O.K. But what kind of, back to that pizza because it think we've got everybody listening to what would happen to that pizza, or ice cream, or anything like that. What would happen to the fat in that pizza as it came into the stomach when, as Cholestaway was taken. What would happen to it?

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Dr. Gibbons:

It would go right through you.

Dr. Anderson:

It would actually become part of the stools and it would be eliminated then.

Dr. Gibbons:

That's correct. Let me tell you a little bit about how Cholestaway works. If you've ever taken a bath in hard water, . . .

Robert Anderson:

Okay.

Dr. Gibbons:

Okay? The mineral in the water combines with the oils with your skin and are pastes around the bath tub -- a bath tub ring. What Cholestaway is, is the same minerals that's in the water and it will combine with the fat in your diet and it will make it so it will not dissolve in water and can't be absorbed. It does the same thing with cholesterol. It combines with it. One molecule of Cholestaway will bind two molecules of fat or two molecules of cholesterol.

Robert Anderson:

So basically as a result of taking the wafers, it's conceivable that not only weight loss will occur, but also cholesterol levels within the body will go down which is extremely important when one considers heart problems and hardening of the arteries and all of those negative health problems that so many people have. Am I correct in that?

Dr. Gibbons:

I've used it on a great number of patients.

Robert Anderson:

Now, what has been the result as far as using Cholestaway on them? Giving them Cholestaway, what has happened to their cholesterol levels?

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Dr. Gibbons:

Cholesterol falls, and also the blood fat or triglycerides fall, uh, about the time I was taking the Cholestaway for eating the Kentucky Fried Chicken, the state forensic psychiatrist, the doctor who decides whether someone's crazy enough to avoid the electric chair, etc. uh, was a close friend. And he come in one day just perspiring and anxious and he says, "Dee, I've just come from the University. My cholesterol is 450 my triglycerides are 1600. Normal in them's both below 200 and statistically I've got 5 months to live.

Robert Anderson:

My goodness.

Dr. Gibbons:

What would you do? And I kind of pathetically laughed. I said, gosh, you come to me and I'm just an old country doctor. And you come from the University. They didn't tell you what to do? Well, they told me to change my diet, but I'm diabetic. So I discussed with him this inmate, Shifflin. And I said, you know, he just doesn't absorb any fat and his cholesterol is down about 67 and his blood fat is down about 56, uh, I think if I were in your position I'd take this Cholestaway. And he said, "I think that's sound reasoning. I'm going to do it." And in three weeks his blood fats, the triglycerides, dropped from 1600 down to 600.

Robert Anderson:

In three weeks?

Dr. Gibbons:

In three weeks. His cholesterol come from 450 down to 300.

Robert Anderson:

That's really amazing.

Dr. Gibbons:

It was mind boggling.

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Robert Anderson:

That's really amazing. Well, for everybody out there, for anybody that might have just tuned in, we're talking with Dr. Gibbons, he's the inventor of a product that the Bogdana Corporation has adopted and it's called Cholestaway. And there are two, generally, the idea is that you take two of these tasty wafers which are a combination of nutrients and what they do is they prevent fat from getting into the body, so theoretically, more than theoretically, you can enjoy a tasty meal that has a lot of fat in it, not get very much fat, if any, into your body and then also in addition to losing weight, not getting fat into the body, cholesterol levels go down as well. But the cost is \$29.95. And of course, the Bogdana products that many of you are interested in. Most people start with the nutritional formula, uh, the nutritional formula is revolutionary -- and we like revolutionary products at the Bogdana Corporation. Our nutritional formula is revolutionary and it's the only formula in the world that has energy within the formula. It's a liquid formula, it has energy within it, the energy is held within the formula somehow as a result of the trace minerals holding the energy in the formula, and the energy causes a lot of good things to happen. The first thing that happens is that the energy, when gotten into the body at a cellular level, causes detoxification to occur. Causes the natural ability to detoxify to come back to excellent working order. So it's really your body that ends up cleaning itself out and not the product detoxifying you. And we have also in the formula, it's probably the most complete formula in the world nutritionally. It has 150 nutrients all broken down to microscopic size and all those nutrients are in perfect balance so there's no chance of bio-chemical imbalances resulting from the formula as is possible with people applying the mega-vitamin therapy to themselves. We have three bottles, we have three different sizes. We have a \$29 one-month supply, a \$55 two-month supply, and a \$79 three-month supply. And of course we have skin care products which many of you know about also that are quite unusual, having energy within them and micronutrition far different from what you pick up in the drugstore where you can't even read the labels because of all the chemical in those skin-care products. In our skin-care products you read the label, you'll see vitamin A and vitamin E, all broken down to microscopic size and having energy within them. But if you want to buy a nutritional formula or any of our skin-care products or "Fuel One" or any of our fine products call 1-800-52-HEALTH. That's 1-800-524-3258. And let's get back to Dr. Gibbons, the inventor of Cholestaway because we at Bogdana feel that he has an amazing scientific discovery here. One that can have a lot of implications for people's health and social life as well and more importantly, I think it's going to enable all of us to sit down and have whatever we like to eat, within reason of course, and still lose weight and keep fat out of the body. And back to Dr. Gibbons, Dr. Gibbons, let's continue with this discovery that you made. Can you tell us something about, the, uh, about what happens in respect to the cholesterol, or to the, in regards to the physiology of cholesterol. What happens to you ordinarily, scientifically when we get cholesterol into our body and it goes down the digestive tract and how also does Cholestaway, the two wafers that people take, how does that come into play in regard to that product?

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Dr. Gibbons:

There's a great deal of misunderstanding about cholesterol. Even among doctors. If you're familiar with candle wax, it's made of cholesterol. And you can't get it to dissolve in water, you can eat all the wax you want and it will go right through you. And you can't get it to dissolve in water. Cholesterol begins in the hormones. The core molecule that male and female hormones are built on, the core molecule that cortisone and its related hormones are built on, the chassis, so to speak, is cholesterol. So cholesterol is essential for your health. Your body makes it as it produces these hormones. Well, you just can't keep making, making, making them, you've got to get rid of them. As they pass through the liver, the liver takes the excess and chops off the little branches to the molecule that identify it as male hormone or female hormone or progesterone. It takes off the branches and leaves the core cholesterol. Cholesterol is chemically an alcohol and the liver burns the cholesterol alcohol group to change it to an acid group. This is the same process that say, hard cider turns to vinegar. The alcohol becomes acid. This makes the cholesterol very soluble and we don't call it cholesterol now we call it cholic acid. The liver puts the cholic acid into the intestine and the poor dumb intestine thinks it's a food fat and absorbs it. Sends it back to the liver, the liver says, this is not good, puts it back in the bile, and 95% is recycled every, continuously. And some people are very efficient at recycling the cholic acid and it makes an enormous amount of cholesterol in the blood as this is being reabsorbed. When we give Cholestaway it combines with this cholic acid in the intestine and makes it so it can't be dissolved in water any more and it carries it on through you. There are other products available cholestyramine or Questran does a similar action but not as effective. And the beauty of this thing is that it doesn't work in your liver, it doesn't work in your blood, it doesn't work in your blood stream, it actually works outside of you body by being, in your intestine.

Robert Anderson:

You know, also I think that one thing that might interest people, too, of course, there are so many people who are on drugs that have, and of course drugs have side-effects and in some cases they could be dangerous. There are drugs out there that do cause cholesterol to become lower but then one has to deal with side-effects, potential side-effects that could be harmful to the body and also those drugs on the market today, those prescription drugs that are sold in an effort to lower cholesterol level within people whose levels are dangerously high. Those drugs don't in any way cause people to lose weight or in any way enable them to sit down and have that pizza or that Kentucky Fried Chicken that you experimented with. But with all kidding aside, of course, we at Bogdana, we like to advocate that everyone get into a healthy diet and eat fruits and vegetables and do that. What I see, as far as this product is concerned, is that if you do cheat, if you do cheat, if you do go out there on time and sit down and have something that you really enjoy and perhaps for that particular moment or short period of time that we lose our health consciousness, if we do get into that, if we go to a wedding or something like that, we

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don't have to feel that we're doing a tremendous amount of harm to our body and we might have the peace of mind knowing that we won't be affected in the area of weight gain. In fact, just the opposite may happen. If we take Cholestaway on a steady basis, we may actually, not may, we will lose weight. I've been taking it more or less experimentally on myself and I've lost weight and I haven't really been trying. In fact, I've been making an effort to offset the product by eating more fat than I'd usually eat and ironically I've actually lost weight. So, I see the product is working and I'm really delighted that we have it. And ordinarily, it would sell for, retail for \$29.95. The nutritional formulas, most of you key into the first time, they retail for \$29 for a one-month supply, \$55 for a two-month supply, and \$79 for a three-month supply and we have an introductory skin-care kit that's \$39.94 and then we have also, that consists of all six of our skin-care products. And we also have a large collection discounted now from \$296 down to \$239. But once again, if anyone would like to order any of our fine products give us a call at 1-800-52-HEALTH. Think of 1-800-52 weeks of good health, H-E-A-L-T-H or 1-800-524-3258. Well, Dr. Gibbons, back to this product, I think that we're going have lot of people wanting to get Cholestaway from us, and one experiment that you made in an effort to really test this product before it was sold to the public was an experiment that you had gone through with ten women. Can you tell us about that?

Dr. Gibbons:

First, I'd like to correct one thing. I did not invent Cholestaway. I didn't invent hard water.

Robert Anderson:

(Laughing.) Okay.

Dr. Gibbons:

It is the minerals in hard water and I discovered that they have these beneficial effects on people. Uh, the experiment you referred to uh, I also work part-time at Fort Benjamin Harrison. And I was taking care of military dependents, and I selected ten women who'd had their gallbladders out. That told me that they were probably people who absorbed fat excessively from their diets and most gall stones are made from cholic acid or cholesterol. So I took these ten women, they were all overweight and concerned about it, and put them on six Cholestaway equivalents each day. And they all lost from three to nine pounds a month on it. (Laughing)

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Robert Anderson:

Well, that's really impressive. And Doctor, before we go on, I think there might be a lot of people asking the question "Well, how do you take 'Cholestaway'." Do you take it, do you take these two wafers, and they happen to be tasty by the way, I have a compulsion to eat them as a snack at this point, I've got to restrain myself. But, do you take them during the meal if you're having a high-fat meal or even one that's moderately consisting of fat? Do you take them during the meal or prior to the meal or how are they taken?

Dr. Gibbons:

I recommend that they be, they're pleasant to eat, chewed right with the meal so that they mix with your food and they can't work on the fat if they don't get in contact with it. But if you take it right with the food and it gets mixed in your food. But I might also point out that this is an excellent supplement. It is rich in calcium and particularly women should be taken calcium supplements any way. And this would answer that need also. But, I recommend that it be eaten with the meal . . . so it's mixed with the food.

Robert Anderson:

How many wafers would one take during a typical meal?

Dr. Gibbons:

Two.

Robert Anderson:

Two. And then, I understood also, you were telling me before the show, that if it's an especially fattening meal, like sitting down and having a few slices of pizza or having, as you said before, Kentucky Fried Chicken or any of those high-fat meals, you would take more wafers, more than two wafers . . .

Dr. Gibbons:

That's correct. I'd maybe take four if I was having lasagna or pizza.

Robert Anderson:

Now, how would it affect also, how would it affect someone who did not have a tremendously-high cholesterol level as opposed to the effect it might have on someone, for example, that you mentioned before, who might have a cholesterol level way up there in the 3 or 4 hundreds.

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Dr. Gibbons:

My experience has been that it has a great deal more effect on those with a very high cholesterol than the ones borderline. And those with very high cholesterol are people who are re-absorbing their cholesterol excessively. So the higher the cholesterol initially, the better it appears to be working.

Robert Anderson:

Uh-huh. Okay. I think it has a lot of implications, Cholestaway, and what I think most people are going to be interested in is not getting fat into the body. That it has an extremely significant effect on fat entering the body. Basically, one could sit down to a fattening meal and get very little fat into the body and, of course, that is a tremendous health implication because a lot of people view obesity as disease. There are so many diseases that are more frequently found in obese people. And of course obesity can be severely affected in everyone just by taking these two wafers and people, of course, one of the joys of it, is that people need not go on a Spartan diet in order to lose weight. You can simply take these two wafers during a meal and lose weight. And of course during an extremely high-fat meal Dr. Gibbons has recommended four wafers. But the other health implications have a lot to do with lowering cholesterol. There's been frequent results in people with high cholesterol going down to a cholesterol level that's well within the range of normalcy. So once again, if anyone would like to order any of our fine products give us a call at 1-800-52-HEALTH. Dr. Gibbons, it's been a pleasure. And Doctor, from all of us, including my listening audience, thank you from the bottom of hearts for coming up with this wonderful invention, Dr. Gibbons.

Dr. Gibbons:

Thank you.

Robert Anderson:

And everybody out there this has been Robert Anderson on "Let's Talk about Health."
Good health to everybody.

(Music plays.)

Announcer:

To obtain further information or to order the Bogdana products call: 1-800-52-HEALTH. That's 1-800-524-3258.

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EXHIBIT C

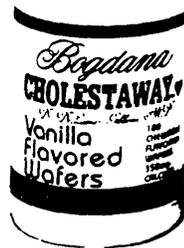
EXHIBIT C

CHOLESTAWAY was developed by Dr. DeLamar Gibbons, M.D., former Director of Clinical Research for the Saturday Evening Post and author of several books on cholesterol and diets.

CHOLESTAWAY is a natural magnesium/ calcium carbonate mineral formula in a delightfully palatable form. Simple and safe, just two small vanilla flavored wafers with each meal reduce the amount of fat absorbed from the diet.

CHOLESTAWAY is both safe and effective. Because it greatly lowers the amount of fat absorbed from the diet, many individuals may lose 4-9 pounds a month.

CHOLESTAWAY is not a drug. Unlike drugs which lower cholesterol it doesn't affect the blood or organs and has no side effects.



HOW CHOLESTAWAY WORKS

Our liver produces cholesterol in the breakdown and excretion of hormones that is excreted in the bile in the form of cholic acid. As the bile enters the intestine, the soluble cholic acid looks like food to the intestine and is absorbed into the blood stream. As the absorbed cholic acid is carried to the liver, it is excreted in the bile - only to be absorbed again and again from the intestine.

CHOLESTAWAY interrupts this vicious cycle of excretion-reabsorption-reexcretion of cholesterol by combining with the cholic acid to form an insoluble soap that cannot be reabsorbed. This is excreted in the stool. In this manner, CHOLESTAWAY reduces the body's cholesterol pool.

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EXHIBIT D

Lose 4-9 POUNDS a month with CHOLESTAWAY

EXHIBIT D



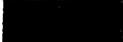
CHOLESTAWAY



Simple and safe, just two small vanilla-flavored wafers with each meal reduces the amount of fat absorbed from the diet.



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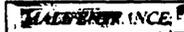
CHOLESTAWAY interrupts this vicious cycle of excretion/reabsorption/reexcretion of cholesterol by combining with the cholic acid to form an insoluble soap that cannot be reabsorbed. This is excreted in the stool. In this manner, **CHOLESTAWAY** reduces the body's cholesterol pool.

CHOLESTAWAY is also available in capsule form, with no sweeteners or binders.



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This product is carefully formulated, requiring many steps to completion, to retain maximum values. The results are a product that provides a spectrum of nutrients important to the body's cells, blood supply, glandular system and major organs, all designed for optimum results.

The ingredients in the Bogdana Nutritional formula are from natural sources, with no chemical additives or preservatives and no artificial colors or sweeteners. There are no toxic fillers or extenders such as would reduce the quality for added profits. Our method of formulation facilitates several factors which can help you with your health and aiding longer life:

- Easier assimilation which is better transformation of nutrients into living healthy tissue.
- Metabolism or a process of chemical exchange that aids in the purification and development of new healthier cells.

An essential key to the body's maximum performance is its ability to cope with the stresses associated with our everyday exposure to the environment. For example, food additives, water additives, and our exposure to various forms of drugs, chemicals, electric fields, and negative living conditions can all take their toll. Proper nutrition can help offset these negative and potentially harmful conditions.

High power magnification can reveal that when the blood supply has attained the best nutritional balance and is in contact with cells that an exchange is made. Substances pass through the cell membrane, flush through the nucleus of the cell and a "cleaning up" process takes place. Dark or grayish material is eliminated from the cell, which may contain aging pigments, and the cell can become livelier. When a split occurs we can find two younger healthy cells emerging.

A magnetic resonance has been incorporated in this product and helps the body in finding appropriate "targets."

This product can help the body achieve an effective and healthful nutritional balance. This of course can assist in your achieving homeostasis or better balance in your life.

We consider the Bogdana products to be in a class by themselves, and know of no other formulations like these products in existence on the face of the earth. This is why the Bogdana Corporation offers with total confidence 100% money back guarantee on your first order if you are not totally satisfied.

The Bogdana Nutritional Formula helps revitalize and replenish certain essential nutrients. The continued use of the product can help provide you with added energy and vitality.

Why not try it for yourself?


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EXHIBIT E

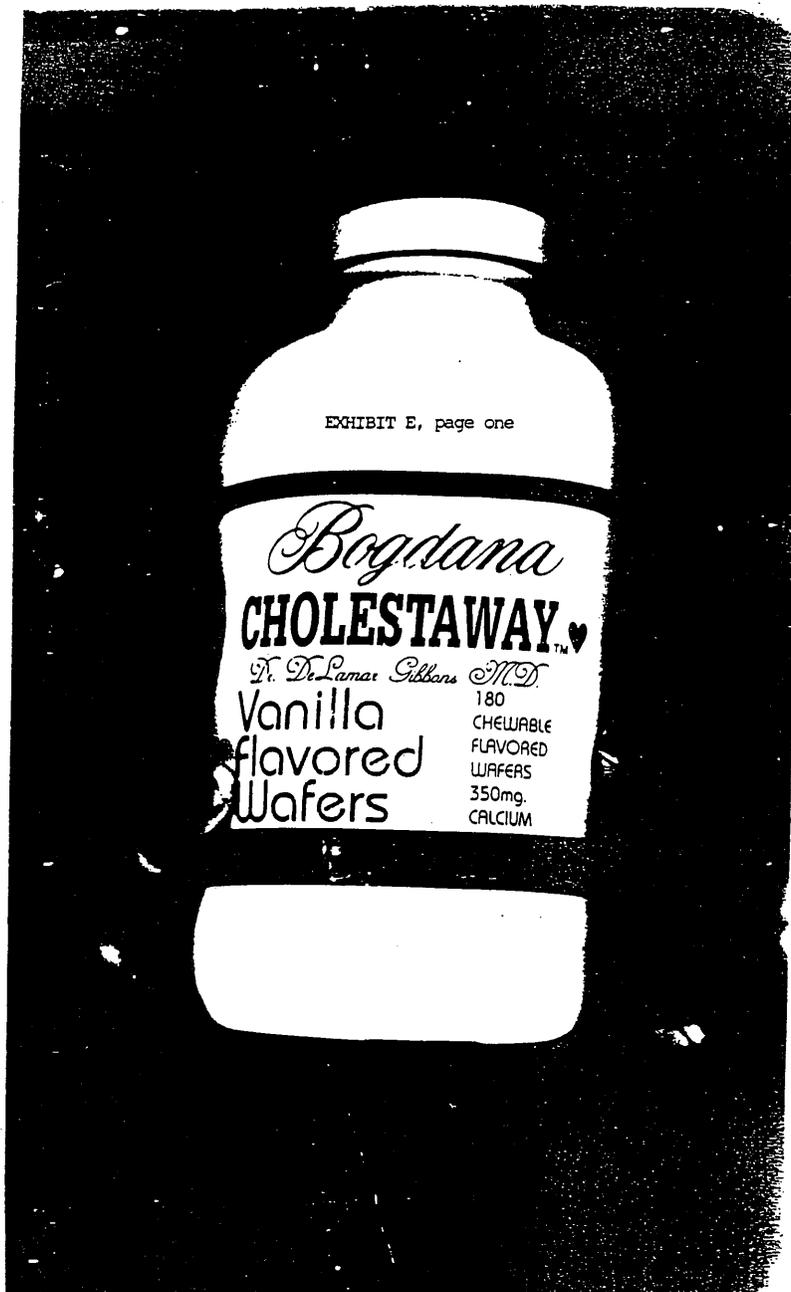
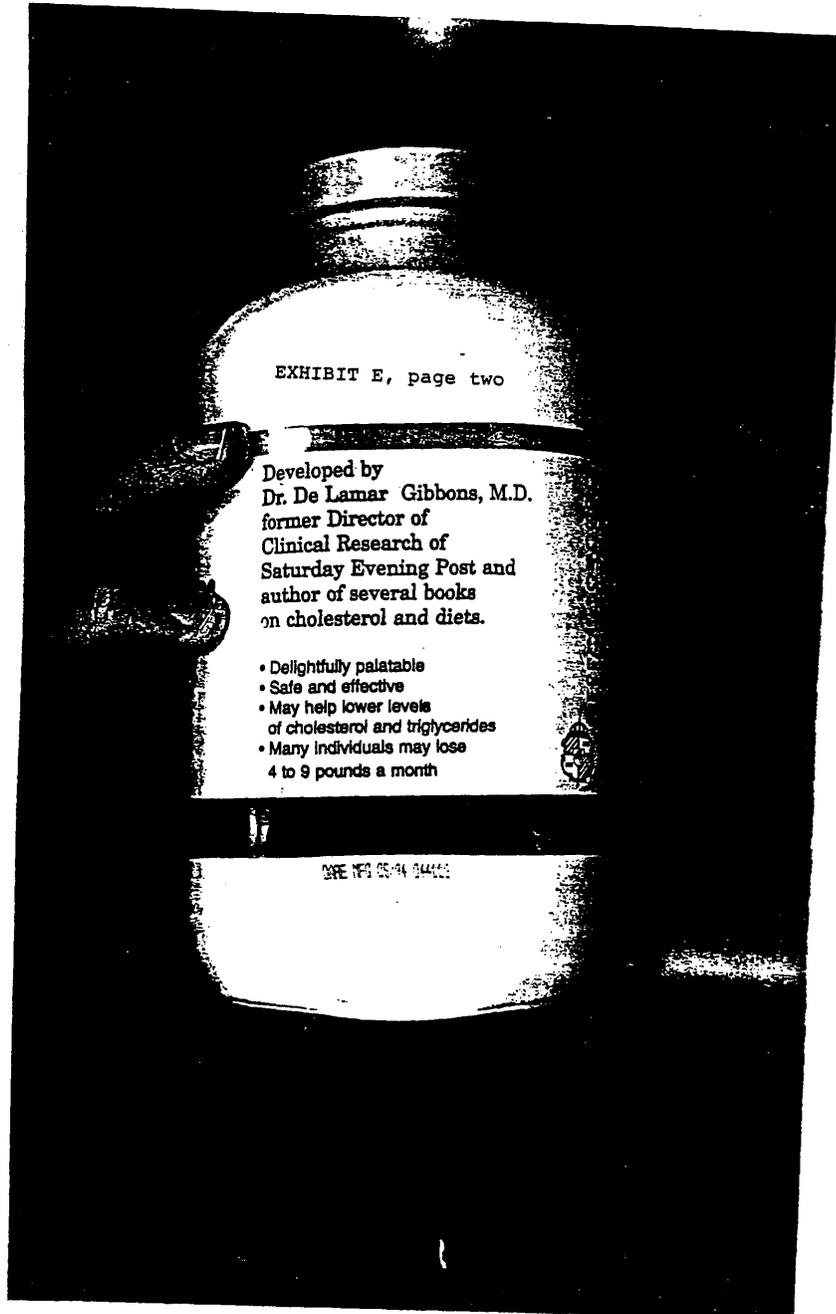


EXHIBIT E



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EXHIBIT F

EXHIBIT F

Transcript of Flora Source Radio Informercial #23

The Bogdana Corporation is proud to present "Let's Talk about Health" with your host, Robert Anderson. He'll talk about all aspects of health -- physical, mental, emotional and spiritual. Now here's your host, Robert Anderson.

Robert Anderson:

This is host Robert Anderson. I like to think about this as a comprehensive health show in which we talk about all levels of health -- the physical, mental, spiritual and emotional. We have an interesting show today. We have Dr. Scott, Scott Gregory with us and we, he's been on our show before. And he's an expert in diseases that affect the immune system where people have a weak immune system, they may have HIV-positive or full-blown AIDS or diseases, for example, like multiple sclerosis or chronic fatigue, that is the Epstein-Barr Syndrome, which is often accompanied by candida, that is yeast infection. There are so many, degenerative diseases or immuno-suppressed diseases that people have today. And it's becoming the scourge of our time, so I don't think there, there's anybody out there in the listening audience that does not know someone who doesn't have one of these diseases today. And it's uh, it's not really the norm. It's such an anomaly of man's history for so many people to be affected at the same time. So we're going to discuss with Dr. Scott Gregory who is an expert on immune diseases and disorders of the immune system and we're also going to start our show with a quote and the quote is: "I was not born this way and there is no reason this condition cannot change. Everything in the universe is in constant change and I am part of this universe." And this really is from Dr. Scott Gregory's book "A Holistic Protocol for the Immune System." It's just been published. And it's a very interesting book. And he, the entire theme of the book is has to do with the immune system and how to use natural pathways in health in order to achieve a strong immune system. And of course, that's extremely important in these times, there as so many people out there with diseases and one of the best things that we can do is prevention. And we have to really keep the immune system strong. And, kind of like also one of the excerpts from Dr. Scott Gregory's book that I just mentioned, having to do with his view point and also the view point of many doctor's who are into natural pathways to health and more or less their basic premise is as follows. And this is from Dr. Gregory's book: "Man's body is endowed with an enormous capability to adapt itself to abnormal, adverse conditions, but this capacity is limited when health-destroying conditions continue unchecked for long periods of time. Various disturbances in the functions of the organs and glands begin to manifest themselves. These may be in the form of fever, repeated colds and infections, tonsillitis, and enlarged liver, increased blood pressure, skin eruptions. In most cases, these are protective measures initiated by the organism in its effort to protect itself against the existing

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abnormal conditions. Ignored or suppressed by drugs, such symptoms may get progressively worse or change their nature and ultimately result in chronic, pathological and degenerative changes. It is becoming increasingly evident that the present-day medical approach with drugs treating isolated symptoms is unable to solve the problem of the catastrophic increase of degenerative diseases: AIDS, cancer, cardiovascular disorders, arthritis, diabetes, etc." And that's what we at Bogdana are concerned about also. We're concerned about prevention. We're concerned about getting poisons out of the body because certainly so much research has been done to the toxins that are within the body that man has never had to cope with to the extent that it's coping with today. Where actually our own natural ability to detoxify is breaking down in just about everybody because we have an overload of poisons in our body. Every breath we take has a measure of carbon monoxide within it, not to mention all of the other poisons that we breathe in: lead and well also the amalgam from our teeth, artificial colorings from food. But we're concerned about the about the same thing that Dr. Gregory is concerned about, and that is to keep a strong immune system, and we at the Bogdana Corporation, we have an unusual revolutionary product called the Bogdana Nutritional Formula. And we have three sizes: we have a \$29 one-month supply, we have a \$55 two-month supply, a \$79 three-month supply and as with all of our products we have a money-back guarantee for the first purchase. Give us a call at 1-800-52-HEALTH. Just think of fifty-two weeks of good health. 1-800-52-HEALTH. H-E-A-L-T-H or 1-800-524-3258. That's 1-800-524-3258. And with that said, Dr. Gregory, welcome to the show today.

Dr. Gregory:

Thank you. Thank you.

Robert Anderson:

And congratulations on your new book. It's a wonderful book and held me spellbound as I read it. And it set forth so many interesting ideas as to how people might achieve health and a strong immune system and you take into account so many important factors. And I think the big question that a lot of people would like to know is: Why are so many people immuno-suppressed? Why do so, they so many people have a weak immune system? In fact I suffered from that myself. I had the worst case of chronic fatigue, that is Epstein-Barr that my doctor had ever seen and thank God I came in contact with the Bogdana formulas because today I'm well. It took quite a while though and the formula caused me to detoxify and a lot of poisons came out of my body and the nice thing was with Bogdana, the energy causes the body to clean itself out. It's not really the product that cleans one out. But why are, why are so many people suffering from immuno-suppressed diseases today, Doctor?

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Dr. Gregory:..

Well, as you as you touched on earlier the most harmful elements today, that we come into contact with on a daily basis are drugs of all kinds, legal and illegal, the body doesn't really know the difference, alcohol, excessive dietary fats, refined sugars, contaminated foods and water, excesses of all kind whether it be food, drugs, excessive worry, anger, fear, the emotions, and those with strong immune system seem to keep it that way through proper nutrition, regular exercise, preventive practices and wholesome lifestyles. These factors all are inter-dependent and one influences and complements the other.

Robert Anderson:

I'll say that what I found fascinating in your book is, because it's often not acknowledged by the orthodox approach to healing, and that is the chapter that you have called, entitled "The Mind Is a Powerful Healer" and you go into our emotions and health and how there is so much evidence that emotions and physical well-being are connected. And I think that, on a simple level, we can prove this. I mean, I remember one time when I was in college going to an exam I hadn't prepared for and getting sick while driving in the car on the way to the exam. And on a basic level that's an example of how emotions or fear cause physical illness. And I don't think there's any reason to doubt it. Although in the past it sounded like hocus pocus, I think people are accepting the idea that their emotions are so important, play an important part in the physical well-being. And in this chapter you go into how discouragement, despair, hopelessness, fear, worry, anxiety, doubt, feeling, feelings of rejection, feelings of isolation, hurt, sorrow, sadness, anger, lack of confidence, panic, all of these contribute to a weak immune system. And that, of course, is not the only cause of people feeling sick or acquiring a weak immune system that is, that gets into a state where people are catching everything whether it's having one allergy after another or catching one cold after another. But you also go into the idea of how we can control our emotions and how we can more or less screen what comes into our mind and change our negative thoughts to positive. And it's important because you very clearly let us know in this book, in this chapter "The Mind Is a Powerful Healer," how important it is to keep our emotions, our feelings of, uh, our optimistic feelings in check or in line with good health and I'd like to have you, sir, just make your own comment about "The Mind Is a Powerful Healer" and go into that chapter for a moment.

Dr. Gregory:

Yes, thank you again. The, the chapter is devoted to these affirmations, in dealing with the chronically ill for a good many years -- over, over 20 years. Especially

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individuals that are immuno-suppressed. I found that that element, the element of the mind was, for the most part, neglected, and I talked to a close associate and I said "You know, I'm not getting the kind of results I should be. I feel that, that you know, I should be getting 90-100% total recovery rate and I'm not and I don't quite understand the missing element. And he mentioned "Well, there are other reasons people get sick. The emotional, the spiritual, the mental. And I thought "yes" I need to address those, I need to empower my patients, and I need to allow that positive, those positive cues to come forth, especially affirmations. So I, in this latest fifth edition of "The Holistic Protocol" I realized that I needed to put this chapter in on the mind and have some powerful affirmations that have helped, when I've been, myself in states of discouragement and despair. And what go me to the point where I could lift up above it and they were very powerful in my process so I included them in this book and in this chapter.

Robert Anderson:

Uh-huh. Well, one of the, before the show you were telling me an interesting example. You were talking about the mind, the body, health, and you were talking about the emotions and you were mentioning a very interesting example that to me is absolute proof that our emotions have such an effect on the physical well-being. Having to do with something you have read about a witch doctor. Can you tell us about that?

Dr. Gregory:

Yes. Dr. Rossi, who has undertaken a new science, which he called psychobiology and he wrote a book and he determined that, and he did a lot of studies, in some parts of Africa he found that a shaman witch doctor would take a bone, and he'd point it at an individual and say "Die" and the person would succumb. They would actually go into you know, would actually die. And what seemed to be going on was that he would paralyze the sympathetic and the parasympathetic nervous system and, in other words, just by saying it and by the power of a witch doctor, and maybe not too much different from today's modern time where some, you know, people want to have control will tell an individual that they're going to die, because you know they have this disease or that disease and it imprints in their mind the fear and they actually succumb to death.

Robert Anderson:

Yes, it certainly has proved that our internalized sentences and what we believe is important to our physical well-being. But one of the things that I can't ignore and of course, having gotten healed from my own immuno-suppressed diseased, chronic immune deficiency syndrome, or chronic fatigue that is Epstein-Barr, and

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having gotten healed only through natural approaches after going through so many orthodox protocols of treatment for that disease, having it for several years and only ultimately only becoming cured as a result of Bogdana, I really, I find it, I can't ignore really the idea that recently I read, for example, that there are very few cases of polio in the world and this was set forth, this idea was set forth in print in one of the orthodox medical magazines. And so it makes me feel that perhaps some of the artificial or prescription drug-type protocols that maybe they're valid after all. What would you, uh, what comment can you make about that particular excerpt. I wish I had the magazine available. But I'm sure a lot of people have read articles like that. What comment might you make about that?

Dr. Gregory:

Well, polio, as we know it, and as we were told, was controlled and cured using the polio vaccine. But Louis Pasteur on his deathbed said, "I made a terrible mistake. The disease is nothing and the terrain is all." And I think that probably the theory of immunology, as it is a theory, was basically just a theory and so, consequently, as we mentioned the mind is powerful and believe is powerful and we all believe and we all know that polio was cured by a vaccine. But the real truth was that polio was not. That what happened was that we're seeing a lot of increases in polio but in order to confound or confuse the issue because, because of the vaccine people's thinking is kind of in the realm of it's cured. We changed the name or the establishment changed the name to aseptic meningitis, which has exactly the same symptomology. It's the same disease. So we have an increase in aseptic meningitis which is basically polio. But we can't say, you now, it's polio, because we all know that we know it. So we call it aseptic meningitis and people are thinking that we have new diseases. And on and on with, for example, AIDS. To change and confuse the issue we call it HIV, HDLV-3, and HIV-1 and 2 and on and on and on. And so consequently, we change names when we don't understand anything and when we want to validate what may not necessarily be true.

Robert Anderson:

Now, of course, what what really impresses me about Dr. Scott is that, uh, Dr. Scott Gregory is that he has really had a lot, a high degree of success rate with HIV-positive and some cases full-blown AIDS. Actually turning them around and making them HIV, causing them to become HIV-negative through his protocol. And he's had a remarkable, almost lightening-speed effect on people with chronic fatigue and I wish I had met him several years ago and fortunately I got well by using Bogdana. But his protocol is very interesting and really works quite well. And he's also got a book out, by the way, in addition to the book we mentioned, the book that we're now discussing is his most recent book, that's recently been published "A Holistic Protocol for the Immune System" by Dr.

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Scott Gregory who's with us right now. But he's also got other books that are remarkable too. "They Conquered AIDS -- True Life Adventures" and in that book he sets forth his protocol and also talks about some of his success treatments with AIDS people. And, of course, everything that he does is all natural. He's not a believer in prescription drugs, and could you tell us, Doctor, since we don't have a lot of time, can you tell us more or less what you're general treatment principles are, your protocol for treating immuno-suppressed diseases, such as I had chronic fatigue or other people have the HIV-positive. What is your outline for your general treatment principles?

Dr. Gregory:

Yes. It was developed over the years. And I found that this was the most effective means. First eliminating the pathogens by utilizing non-toxic germicides. That would be considered Stage 1.

Robert Anderson:

So first is getting the poisons out of the body.

Dr. Gregory:

Yes.

Robert Anderson:

Detoxifying.

Dr. Gregory:

No, actually the first is, is using natural germicides to, to, uh, yes, get the poisons out of the body. But . . .

Robert Anderson:

By natural germicides what you, what do you mean by that, Doctor?

Dr. Gregory:

Well, natural germicides are types of products . . .

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Robert Anderson:

Like aloe vera, herbs like that?

Dr. Gregory:

Well, that comes under, yes. Actually, the first phase, eliminating the pathogens by utilizing non-toxic germicides is really not the detox. That's Stage 2. It could be generalized as more or less killing whatever it is you have. So these different ...

Mr. Anderson:

Killing the parasites, killing the viruses . . .

Dr. Gregory:

Yes, getting rid of the parasites, getting rid of the Epstein-Barr. Killing it, neutralizing it. Then the next stage is the detox stage. That stage is detoxification. And that involves different types of approaches to detoxification. We basically can detox our bodies through our lungs, through our respiration, through our skin, the skin being the largest organ in the body, and through different components that neutralize toxicity, different types of natural products. Then the third phase is energizing the body, and the Bogdana Corporation makes some great products that will allow the body to do what it does best and that's basically heal. And so that's the nourishment stage. That's the giving the body the energy to heal. And then the fourth stage is the repair stage. And often times the holistic health practitioner or provider will get the patient symptom free, but then does not increase the immune response, does not energize the body, give the body's immune system what it needs to work again and these different illnesses come back. So the fourth stage is just as important as the first stage. So again it's a four-stage process, basically very simplistically put: kill it, detoxify it, get it out of the body, increase the energy, and then rebuild the immune system.

Mr. Anderson:

That's interesting. Of course many of you might have heard our first show several months ago with Dr. Gregory and he was very instrumental in bringing our most recent product that we have as part of our product line to the Bogdana Corporation, and that is a product called Flora Source which is a wonderful product. And although I achieved wellness and got back on the road to health as a result of utilizing the Bogdana Nutritional Formulas along with the skin care products, they more or less work hand in glove or as a team, the internal and the

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external. But I wish that I had Flora Source at a time, because I think my achieving wellness and getting rid of chronic fatigue perhaps would have accelerated. Could you tell us something about Flora Source Doctor?

Dr. Gregory:

Yes, yes, it's a culture, it's many cultures actually. It's bio-active. It replaces the natural intestinal flora. In approximately, oh I'd say at least 90 to 98% of all individuals that are immunosuppressed, they have definitely digestive disfunction of some kind, malabsorption. So in other words, it's bad enough to be sick, but the worst end of the scenario is that you're suffering also from malnutrition, because the body is not manufacturing what it needs to heal. So the Flora Source in its process of adding to it these special nutrients that allow the flora in the digestive tract to function normally actually assist in the healing process by, for example, increasing more B vitamins, actually helping the body to manufacture more B vitamins, 'cause that's one thing the digestive flora does. Another thing the Flora Source does is it helps rid the body of different microorganisms that would in fact endanger, in the sense that they're pathogenic. So it has the principle of detoxification. I believe that the Flora Source in terms of my protocol would probably fit in in all four categories. Kill whatever it is that's in the digestive tract. Detoxify the digestive tract. And then it has, of course, the Flora Source has the ability to help the immune system work better also. It's been known that specific types of cultures do enhance the immune response. So it's a very good product. I've gotten very good results with it, with immunosuppressive disorders and I do add it as an adjunct. I [inaudible] most of my patients who are immunosuppressed need this product to get their digestive tract in proper function so that they can process these different microorganisms naturally and allow the body to detoxify them.

Mr. Anderson:

We thank you for bringing Flora Source to the Bogdana Corporation. For those of you who are interested in buying Flora Source it retails for \$29.95 and basically from what I understand is that one needs to just take about one bottle of the Flora Source, it comes in powder form, and it's a combination of the good bacteria that are found in the intestines of people who have never been exposed to prescription drugs. And that's important. Of course, so many doctors don't tell us that when they give us prescription drugs that those prescription drugs are antibiotics, that they kill off the good bacteria as well as the bad bacteria. And although we may feel relief from symptoms we're suffering from at the moment, down the line three, four, five years, later we develop, we could develop ailments or sicknesses such as chronic fatigue or other immunosuppressed diseases. So it's important to reestablish the positive bacteria colonies within the body. And I've also found out

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that one of the, of course the bacteria in that particular item, the product called Flora Source that is very interesting is the B. Laterosporus bacteria that should be in people's intestine but often is not because of prescription drugs. And from the way I understand it is that that kills candida or yeast within the body and of course that's how a lot of our problems with immunosuppressed or weak immune systems start is the good bacteria is no longer there as a result of being killed off by the prescription drugs. And candida or yeast infection which is -- yeast is a living organism -- it's allowed to run rampant through our body and cause a lot of problems. And also another interesting bacteria is in there, and that is bacteria that is responsible for the metabolism and assisting in the metabolism of carbohydrates, sugar starches and without it could mean that people might gain weight. So if anyone would like to order any of our fine products, whether if the Flora Source or the Bogdana Nutritional Formulas or the skin care products, uh, give us a call at 1-800-52-HEALTH. That go fifty-two weeks of good health. 1-800-52-HEALTH. H-E-A-L-T-H or 1-800-524-3258. That's 1-800-524-3258. Uh, what, uh since we were talking about candida, there are so many people out there with yeast infections, with candida or candida, one of the interesting comments that you made before, we were talking before the show, is you mentioned something about a woman who had a yeast infection for many years. Can you tell us that story doctor?

Dr. Gregory:

Yes, it was a friend of mine, and I was assisting her and we were working with the protocol and she was getting great results. Possibly, almost totally free, but still some lingering on times, sir. Candida is one of those illnesses that has many symptoms and she would think that she would be over it and then it would come creeping back. And we got some Flora Source and she got on it and now she totally is symptom free. And it's been that way for a good long time, and I believe that there's no or very little candida now in her body. And she's so grateful that she was able to conquer, subjugate this illness.

Mr. Anderson:

Doctor, I know that a lot of people are interested in what you have to say and we're talking to Dr. Scott Gregory and he's an expert in immunosuppressed diseases, weak immune systems. And he believes in people being healed through natural approaches. He does not believe in prescription drugs. He believes in treating people with all the natural remedies available, good nutrition, exercise, more or less doing a lot of different things for the health that are all pointed towards one thing and that's getting healthy and establishing a strong immune system and that's what Bogdana is all about, too. But Doctor, I know a lot of people would like to do two things, they would like to contact you your book and

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buy your book perhaps, and they would also perhaps like to speak with you and have a consultation with you about their health problems. First of all could you give is the number of your book.

Dr. Gregory:

Yes, thank you, it's 1-800-247-6553.

Mr. Anderson:

Okay. Can you repeat that once again? Ladies and gentlemen get your pens and write down this number.

Dr. Gregory:

1-800-247-6553.

Robert Anderson:

Okay, that's to buy any of the doctor's books and for consultations?

Dr. Gregory:

That telephone number is 310-459-2680.

Robert Anderson:

And once again please.

Dr. Gregory:

Area code 310-459-2680.

Robert Anderson:

Well thank you for being on the show, Doctor. For all of you out there in our listening audience this has been Robert Anderson. We're on "Let's Talk about Health" and good health to everyone.

[music]

Voice over:

To obtain further information or to order the Bogdana products all 1-800-52-HEALTH. That's 1-800-524.3258.

EXHIBIT G

Flora Source

EXHIBIT G

Scientific Health Enhancement Effects Of:
Bacillus Laterosporus • Bacillus Subtilis • Lactobacillus Sporogenes.

The classic use of antibiotics and chemotherapeutics seems to have reached limitations, in light of the chronic and persistent infections that plague mankind.

Flora Source is a pro-biotic or special class of bacteria, consisting of Bacillus Laterosporus, Bacillus Subtilis and Lactobacillus Sporogenes.

Bacillus Laterosporus is a friendly, non-lactic-acid producing bacteria, and is found in the human intestines in very small quantities, but will aid in creating an intestinal environment that is conducive to rapid colonization of any beneficial flora.

Bacillus Laterosporus has been clinically tested and found to be safe and effective, both topically and as intestinal flora. Taken internally, this product has shown positive results in relieving many of the gastrointestinal symptoms related to candida. Improvements in symptoms, such as: food sensitivities, constipation, diarrhea, abdominal pain, bloating and gas. Diminished body odors and bad breath were also noted.

Bacillus Subtilis can be found in various cavities of a healthy body, including those cavities covered with mucous membranes. When the spores of B. Subtilis reach the intestinal tract, germination takes place to produce vegetative cells, which discharge and liberate enzymes into the intestines. The spores of B. Subtilis are resistant to antibiotics such as aureomycin, tetracycline, chloramphenicol, nystatin, sulfamides, etc.; B. Subtilis grows and produces spores in the intestinal tract even when those antibiotics are present.

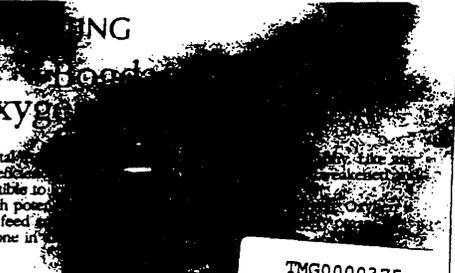
Lactobacillus Sporogenes: The rapid colonization enables it to control the growth of infectious organisms in the intestines much more rapidly than do the non-spore-producing Lactobacilli by reducing the amount of bile salt in the gut. Also an intestinal aid for: putrefaction, auto-intoxication, dyspepsia, anorexia, vomiting, flatulence, green stools, white diarrhea (Pseudo-cholera infantum).





INTRODUCING

Oxygen



Oxygen is vital for... nutritional deficiency... more susceptible to... O2 is a high power... necessary to feed... tissue and bone in...

TMG0000375

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft 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 the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated or that the facts, as alleged in the complaint, other than jurisdictional facts, are true; and

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that a 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 Bogdana Corporation is a California corporation with its principal office or place of business at 8929 Wilshire Boulevard, Third Floor, Beverly Hills, California.

2. Respondent Joseph L. Gruber is an officer of Bogdana Corporation. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of Bogdana Corporation. His principal office or place of business is the same as that of Bogdana Corporation.

3. Respondent Bogda Gruber is an officer of Bogdana Corporation. Individually or in concert with others, she formulates, directs or controls the policies, acts, or practices of Bogdana Corporation. Her principal office or place of business is the same as that of Bogdana Corporation.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "*respondents*" shall mean Bogdana Corporation, a corporation, its successors and assigns and its officers; Joseph L. Gruber and Bogda Gruber, individually and as officers of the corporation; and each of the above's agents, representatives and employees.
3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any other food, dietary supplement or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

- A. That such product significantly lowers or has any other effect on serum cholesterol levels, with or without changes in diet;
- B. That such product significantly lowers serum cholesterol levels or causes significant weight loss even if users eat foods high in fat, including fried chicken and pizza;
- C. That such product substantially reduces or eliminates or has any other effect on the body's absorption of dietary fat;
- D. That such product lowers low density lipoprotein cholesterol or improves the high density lipoprotein cholesterol to low density lipoprotein cholesterol ratio;

E. That such product is effective in the treatment of hardening of the arteries or heart disease;

F. That such product causes significant weight loss or has any other effect on weight, with or without changes in diet;

G. That such product significantly reduces or has any other effect on blood triglyceride levels;

H. That such product significantly reduces or has any other effect on blood pressure levels;

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

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Flora Source or any other food, dietary supplement or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. That such product replaces the natural intestinal flora that are lost due to illness, prescription drugs or antibiotics;

B. That such product reduces the risk of developing any illness, including but not limited to chronic fatigue syndrome (Epstein-Barr syndrome), AIDS, or any other immunosuppression disease;

C. That such product improves the body's absorption of nutrients, including B vitamins;

D. That such product enhances the body's immune response or is effective in the treatment of immunosuppression diseases, including AIDS;

E. That such product prevents weight gain;

F. That such product is effective in the prevention or treatment of anorexia; or

G. That such product is effective in the prevention or treatment of gastrointestinal disorders or symptoms including food sensitivities, constipation, diarrhea, dyspepsia, abdominal pain, bloating or gas;

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

III.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, concerning the product's efficacy, performance, safety or benefits, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Cholestaway or any substantially similar product in or affecting commerce, shall not use the name "Cholestaway" or any other name that represents, expressly or by implication, that the product will lower serum cholesterol levels, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

VI.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or
2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

VII.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, shall not create, produce, sell or disseminate:

A. Any advertisement that misrepresents, expressly or by implication, that it is not a paid advertisement;

B. Any television commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, clearly and prominently, and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the advertisement and immediately before each

presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number, e-mail address or mailing address for viewers to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein; or

C. Any radio commercial or other radio advertisement five (5) minutes in length or longer that does not broadcast, clearly and audibly, within the first thirty (30) seconds of the advertisement and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE LISTENING TO IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

Provided that, for the purposes of this provision, the presentation of a telephone number, e-mail address or mailing address for listeners to contact for further information or to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the announcement of the disclosure provided herein.

VIII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IX.

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

X.

It is further ordered, That respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI.

It is further ordered, That respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

XII.

It is further ordered, That respondent Bogdana Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect

compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

It is further ordered, That respondents Joseph L. Gruber and Bogda Gruber, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his or her current business or employment, or of his or her affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his or her duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIV.

It is further ordered, That respondent Bogdana Corporation, and its successors and assigns, and respondents Joseph L. Gruber and Bogda Gruber shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XV.

This order will terminate on July 28, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order,

whichever comes later; provided, however, that the filing of such a complaint will not effect the duration of:

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

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