

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 respondent William E. Shell, M.D., having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 William E. Shell, M.D. was an officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc. He formulated, directed and controlled the policies, acts and practices of said corporations. His home address is at 3048 Nicada Drive, in the City of Los Angeles, State of California.

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

It is ordered, That 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, "*respondent*" shall mean William E. Shell, M.D., individually and as a former officer of IMT.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product prevents or reduces the body's absorption of fat from consumed food or absorbs any amount of fat from consumed food unless the representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product:

- A. Provides any weight loss benefit;
- B. Lowers blood cholesterol levels;
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease; or
- D. Can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, 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.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product or program, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondent shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;

1477

Decision and Order

- B. The licensing or other contractual rights to market any such product or program;
- C. Any technical assistance; or
- D. Any advertising, labeling or promotional materials.

VI.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part V of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

A. Take reasonable steps sufficient to determine, commencing with the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondent is or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.

B. Immediately terminate any business relationship with any person who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

VII.

It is further ordered, That:

A. Respondent, directly or through any corporation, subsidiary, division or other device, shall not:

1. Advertise, promote, offer for sale, sell or distribute Lipitrol or any weight loss, fat reduction or cholesterol reduction product composed of any combination of fiber and bile extract, unless he first obtains a performance bond in the principal amount of one million dollars (\$1,000,000);

2. Hold any ownership interest, share or stock in, other than a passive investment, or serve as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product composed of any combination of fiber and bile extract, unless he first obtains a performance bond for each such business entity or activity in the principal sum of one million dollars (\$1,000,000);

3. Advertise, promote, offer for sale, sell or distribute any weight loss, fat reduction or cholesterol reduction product or program, not including the treatment of patients in connection with his private medical practice, unless he first obtains a performance bond in the principal amount of two hundred and fifty thousand dollars (\$250,000); or

4. Hold any ownership interest, share or stock in, other than a passive investment, or serve as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, not including the treatment of patients in connection with his private medical practice, unless he first obtains a performance bond for each such business entity or activity in the principal sum of two hundred and fifty thousand dollars (\$250,000).

B. Each such bond shall be deemed continuous and remain in full force and effect as long as respondent engages in or holds any ownership interest, share or stock in, or serves as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction and for at least three (3) years after respondent has ceased to engage in any such activity.

C. Each such bond shall cite this order as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or in part, to any violation of Sections 5 and 12 of the FTC Act, to any violation of the provisions of this order, or to any other cause attributable to respondent's engaging or participating in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction.

D. Each such bond shall be an insurance agreement providing surety for financial loss issued by a surety company that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring and that is admitted to conduct surety business in each state where the entity to be insured does business. Each such bond shall be in favor of both: (1) the Commission for the benefit of consumers injured due, in whole or in part, to any violation of Sections 5 and 12 of the Federal Trade Commission Act, to any violation of the provisions of this order, or to any other cause attributable to respondent's engaging or participating in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction; and (2) any consumer so injured. Each such bond shall be executed in favor of the Commission or in favor of any injured consumer if the Commission or the consumer demonstrates, by a preponderance of the evidence, that respondent has violated any condition of the bond.

E. Respondent shall provide a copy of each such bond required by this Part to the Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington, at least ten (10) days before commencing any activity or business for which the bond is required.

F. Respondent may not disclose the existence of the performance bond to any consumer, or other purchaser or prospective purchaser, to whom a covered weight loss, fat reduction or cholesterol reduction product or program is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond is required by order of the Commission in settlement of charges that respondent engaged in false and misleading representations.

G. The bond required by this Part shall be in addition to, and not in lieu of, any other bond required by law.

H. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

It is further ordered, That respondent, his successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of twenty thousand dollars (\$20,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in four installments, the first payment of five thousand dollars (\$5,000) to be made within 60 days after the date that this order becomes final; the second payment of five thousand dollars (\$5,000) to be made no later than the first day of the fourth month thereafter; the third payment of five thousand dollars (\$5,000) to be made no later than the first day of the eighth month thereafter; and the final payment of five thousand dollars (\$5,000) to be made within one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondent's indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondent shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of twenty thousand dollars (\$20,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondent in Part VIII(A) of this order. The respondent shall, within seven (7) days of the date that this order becomes final, file all documents necessary to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The

respondent shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected and recorded. The Commission will release this security interest upon receipt of all payments required by Part VIII(A) of this order.

D. The funds paid by respondent, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Lipitrol in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondent relinquishes all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

IX.

Nothing in this order shall prohibit respondent 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 ("FDA"), or under any new drug application approved by the FDA.

X.

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

XI.

It is further ordered, That respondent 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 Commission for inspection and copying:

A. All advertisements or 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 his 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.

XII.

It is further ordered, That respondent 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. Respondent 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.

XIII.

It is further ordered, That respondent shall, for a period of five (5) years after the date of issuance of this order, notify the Commission within thirty (30) days of his affiliation with any business or

employment involving any activities related to the advertising, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. The notice shall include respondent's new business address and telephone number, current home address, and a description of the nature of the business or employment, respondent's interest in the new business or employment and his 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 shall, within sixty (60) days after the date of service of this order, and at other such times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

XV.

This order will terminate on June 16, 2017, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any 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 respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this 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.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

IN THE MATTER OF

WILLIAM PELZER, JR.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3750. Complaint,* June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the former officer of Interactive Medical Technologies, Ltd. and Effective Health, Inc., which market cellulose-bile products, from assisting entities that he knows or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, and requires the monitoring of the business practices of certain parties to whom assistance is provided.

Appearances

For the Commission: *Nadine Samter and Patricia Hensley.*

For the respondent: *William Baker, Baker & Baker, Santa Ana, CA.*

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 respondent William Pelzer, Jr., having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating

* Complaint previously published at 123 FTC 1477 (1997).

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 William Pelzer, Jr., was an officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc. He formulated, directed and controlled the policies, acts and practices of said corporations. His address is at P.O. Box 269006, in the City of San Diego, State of California.

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

It is ordered, That 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, "*respondent*" shall mean William Pelzer, Jr., individually and as a former officer of IMT and EHI.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or

cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;

B. The licensing or other contractual rights to market any such product or program;

C. Any technical assistance; or

D. Any advertising, labeling or promotional materials.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part I of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

A. Take reasonable steps sufficient to determine, at the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondent is or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.

B. Immediately terminate any business relationship with any person who respondent knows or should know, is making any false or misleading benefits, performance, efficacy or safety claim or any

benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

III.

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

IV.

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

V.

It is further ordered, That respondent 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 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 his 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.

VI.

It is further ordered, That respondent 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. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order and, for a period of five (5) years thereafter, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent shall, for a period of ten (10) years after the date of issuance of this order, notify the Commission within thirty (30) days of his affiliation with any business or employment involving any activities related to the labeling, advertising, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. The notice shall include respondent's new business address and telephone number, current home address, and a description of the nature of the business or employment, respondent's interest in the new business or employment and his 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.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

IX.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any 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 respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this 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.

IN THE MATTER OF
INTERACTIVE MEDICAL TECHNOLOGIES, LTD., ET AL.

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

Docket C-3751. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based companies, which market cellulose-bile products, to have scientific substantiation for claims regarding the benefits or safety of any product or program, including claims that it reduces the body's absorption of fat or sugar; provides any weight loss benefit, allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems; reduces the risk of these health problems; or can be used safely and beneficially in amounts sufficient to cause diarrhea. The consent order also prohibits the respondents from misrepresenting the existence or results of any test or study, from assisting entities that they know or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, requires them to monitor the business practices of certain parties to whom they provide assistance, and requires Interactive Medical Technologies and Effective Health, Inc. to pay \$35,000 in redress over a period of one year.

Appearances

For the Commission: *Nadine Samter* and *Patricia Hensley*.

For the respondents: *Edward Swanson, Swanson & Meepos*, Santa Monica, CA.

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 respondents Interactive Medical Technologies, Ltd. ("IMT") and Effective Health, Inc. ("EHI") having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents IMT and EHI, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents IMT and EHI of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement

* Complaint previously published at 123 FTC 1477 (1997).

purposes only and does not constitute an admission by these respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents IMT and EHI 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, 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 Interactive Medical Technologies, Ltd., 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 2139 Pontius Avenue, in the City of Los Angeles, State of California.

2. Respondent Effective Health, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2139 Pontius Avenue, in the City of Los Angeles, State of California.

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

ORDER

It is ordered, That 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 Interactive Medical Technologies, Ltd., and Effective Health, Inc.,

corporations, their successors and assigns and their officers, agents, representatives and employees.

3. "*In or affecting 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 labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product prevents or reduces the body's absorption of fat from consumed food or absorbs any amount of fat from consumed food unless the representation is true and, at the time it 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 labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, 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, that any such product:

- A. Provides any weight loss benefit;
- B. Lowers blood cholesterol levels;
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease; or
- D. Can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea,

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 further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 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.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, 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, about the benefits, performance, efficacy or safety of any such product, 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 shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondents know or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any weight loss, fat reduction or cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

- A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;
- B. The licensing or other contractual rights to market any such product or program;
- C. Any technical assistance; or
- D. Any advertising, labeling or promotional materials.

VI.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part V of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

- A. Take reasonable steps sufficient to determine, commencing with the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondents are or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.
- B. Immediately terminate any business relationship with any person who respondents know or should know is making any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

VII.

It is further ordered, That respondents IMT and EHI, corporations, their successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of thirty-five thousand dollars (\$35,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in three installments, the first payment of eleven thousand dollars (\$11,000) to be made no later than the date that this order becomes final; the second payment of eleven thousand dollars (\$11,000) to be made no later than the first day of the sixth month thereafter; and the third payment of thirteen thousand dollars (\$13,000) to be made no later than one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondents' indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondents shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of twenty-four thousand dollars (\$24,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondents in Part VII(A) of this order. The respondents shall, within seven (7) days of the date that this order becomes final, file all documents necessary to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The respondents shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected

and recorded. The Commission will release this security interest upon receipt of all payments required by Part VII(A) of this order.

D. The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Lipitrol in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

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 ("FDA"), or under any new drug application approved by the FDA.

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 FDA pursuant to the Nutrition Labeling and Education Act of 1990.

X.

It is further ordered, That respondents 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 Commission for inspection and copying:

A. All advertisements or 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 respondents IMT and EHI 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, for a period of five (5) years thereafter, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation; the creation or 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 change in corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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 shall, within sixty (60) days after the date of service of this order, and at other such times as the 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.

XIV.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any 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 respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this 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.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

1535

Complaint

IN THE MATTER OF

KCD HOLDINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3752. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based companies, which market cellulose-bile products, and its officers to have scientific substantiation for claims regarding the benefits or safety of any product or program, including claims that it reduces the body's absorption of fat or sugar; provides any weight loss benefit, allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems; reduces the risk of these health problems; or can be used safely and beneficially in amounts sufficient to cause diarrhea. The consent order also prohibits the respondents from misrepresenting the existence or results of any test or study, and requires KCD, KCD Holdings and Richards to pay \$150,000 in redress over a period of one year.

Appearances

For the Commission: *Nadine Samter* and *Patricia Hensley*.

For the respondents: *Geoffrey Levitt, Venable, Baetjer, Howard & Civiletti*, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that KCD, Incorporated, KCD Holdings, Inc., and Deerfield Corporation, corporations, and Clark M. Holcomb, individually and as a former officer of KCD, Incorporated, and KCD Holdings, Inc., and Bonnie L. Richards, individually and as a current officer of KCD, Incorporated, and KCD Holdings, Inc., and Gerald E. Hatto, individually and as an officer of Deerfield 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 KCD Holdings, Inc. ("KCD Holdings"), is a Nevada corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California.

2. Respondent KCD, Incorporated ("KCD"), is a California corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California. KCD is a wholly-owned subsidiary of KCD Holdings.

3. Respondent Deerfield Corporation ("Deerfield") is a California corporation with its principal office or place of business at 1455 Valley High Avenue, Thousand Oaks, California. Respondent Deerfield is now and has been at all times relevant to this complaint an advertising agency of KCD and KCD Holdings.

4. Respondent Clark M. Holcomb ("Holcomb") was the president, director and a majority shareholder of KCD Holdings and KCD from November 1993 through April 1996. Individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of KCD Holdings.

5. Respondent Bonnie L. Richards ("Richards") is vice president, secretary, and director of KCD Holdings and KCD. Individually or in concert with others, she formulates, directs, controls or participates in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of KCD Holdings.

6. Respondent Gerald E. Hatto ("Hatto") is an officer and the owner of Deerfield. Individually or in concert with others, he formulates, directs, controls or participates in the acts and practices of Deerfield Corporation, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Deerfield.

7. Respondents have advertised, labeled, offered for sale, sold and distributed products to the public, including SeQuester, an over-the-counter fat reduction and weight-loss tablet. SeQuester is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

8. Since at least May 1994, respondents KCD, KCD Holdings, Holcomb and Richards ("KCD respondents") have advertised, distributed and sold an over-the-counter fat reduction and weight-loss product to the public through, among other means, newspaper and radio advertisements disseminated nationally. The KCD respondents have wholesaled this product to retail drug stores and other retailers for resale to the general public. The product, sold under the name "SeQuester," is a combination of fiber and ox bile extract.

9. 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.

10. The KCD respondents have prepared and disseminated or have caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits A through E. Respondents Deerfield and Hatto have prepared and disseminated or have caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits A through C and E. These advertisements contain the following statements and depictions:

A. **THIS
IS WHAT
SEQUESTER
DOES TO
THE FAT
IN FOOD
YOU
EAT**

Introducing SeQuester - the revolutionary tablet that "shrinks" the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat - safely and naturally - *before* it's absorbed, so it won't wind up on your body.

SeQuester's unique, patented ingredients bind fat molecules to vegetable fiber passing them gently and harmlessly through your digestive tract. It's like you never ate them at all. Shrink fat with SeQuester. Take advantage of introductory savings, and discover the safe, natural approach to fat reduction. It's in the diet section, today.

(Exhibit A -- newspaper advertisement)

B. **THE FAT STOPS HERE**

Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "shrink" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "remove" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy. Just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.

(Exhibit B -- newspaper advertisement)

C. For the holidays, don't cut it all out.

Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say, "no." So consider your choices:

Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this coupon and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and effortlessly through the digestive tract. Just take one or more tablets 30 minutes before meals.

This season, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drugstores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of sensible nutrition and moderate exercise. By following this program, studies suggest that SeQuester contributes to a safe, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

(Exhibit C -- newspaper advertisement)

D.

Q. SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

(Exhibit D -- product package insert)

E.

SeQuester

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

(Exhibit E -- product package label)

The KCD Respondents

11. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

1535

Complaint

A. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

B. SeQuester significantly reduces the body's absorption of sugar from consumed food.

C. Scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that SeQuester causes significant weight loss.

12. In truth and in fact:

A. SeQuester does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. SeQuester does not significantly reduce the body's absorption of sugar from consumed food.

C. Scientific research does not demonstrate that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that SeQuester causes significant weight loss.

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

13. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and(B), at the time the representations were made.

14. In truth and in fact, the KCD respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph thirteen was, and is, false or misleading.

15. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. SeQuester causes significantly greater loss of weight and body fat than diet and exercise alone.

D. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease, and other health problems associated with a high-fat diet.

F. Use of SeQuester in amounts sufficient to cause diarrhea is beneficial and safe.

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

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

Respondents Deerfield and Hatto

18. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

D. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

F. SeQuester significantly reduces the body's absorption of sugar from consumed food.

1535

Complaint

19. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eighteen, at the time the representations were made.

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

21. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that scientific research demonstrates that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

22. In truth and in fact, scientific research does not demonstrate that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

Therefore, the representation set forth in paragraph twenty-one was, and is, false or misleading.

23. Respondents Deerfield and Hatto knew or should have known that the representations set forth in paragraphs eighteen, nineteen and twenty-one were, and are, false or misleading.

24. 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

EXHIBIT A

THIS IS WHAT SEQUESTER™ DOES TO

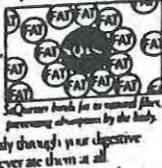
**THE FAT
IN FOOD
YOU
SEE.**

Introducing SeQuester—the revolutionary tablet that “shrinks” the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat—safely and naturally—before it’s absorbed, so it won’t wind up on your body.

SeQuester’s unique, patented ingredients bind fat molecules to vegetable fiber, passing them gently and harmlessly through your digestive tract. It’s like you never ate them at all.

Shrink fat with SeQuester. Take advantage of untold savings, and discover the safe, natural approach to fat reduction. It’s in the diet section, today.

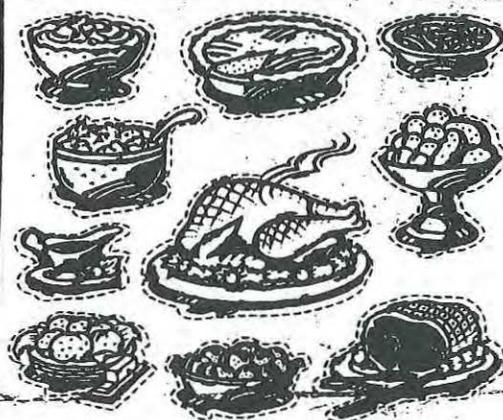
(STORE IMPRINT)

AD # 2

SQ-141

COMPLAINT EXHIBIT A

EXHIBIT C



**For the holidays, don't cut it all out.
Just take SeQuester.**

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are passing us on. So many parties, so much good food, so hard to say "no." So consider your choices. Either you can cut out all those rich, delicious foods that make life wonderful.

Or you can cut out this craving and introduce yourself to SeQuester—a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their calorie fat content won't be showing up on your scale—or in your arteries—come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and efficiently through the digestive tract. Just take one or more tablets 30 minutes before meals.

This means, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drug stores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of healthy exercise and balanced nutrition. By following this program, studies suggest that SeQuester maintains a healthy, balanced level of body fat and weight significantly more successful than dieting and exercise alone.

SeQuester
Before you enter a store, take SeQuester.



SeQuester
\$2.00 OFF
RITE AID

SeQuester is now available at Rite Aid.

RA-43

1535

Complaint

EXHIBIT D



SeQuester.

A guide to a healthy lifestyle

INSIDE:
Valuable tips on SeQuester use.
Plus: sensible eating & exercise habits.

NOTE: The following is the copy for the SeQuester insert

COMPLAINT EXHIBIT D

SQ-22

KTLS INCORPORATED • 2807 TOWNSHIP ROAD • SUITE 100 • WESTLAKE VILLAGE, CALIFORNIA
805-494-6687 • FAX 805-494-4120

Complaint

123 F.T.C.

EXHIBIT D

Page 2
SeQuester

Thank you for purchasing SeQuester™. This natural patented product helps reduce fat absorption and let's you lose weight naturally and comfortably.

Take hold of the fat, before the fat takes hold of you!

Please study the Important Information contained in this pamphlet. It is designed to help you get the maximum benefit from SeQuester. It contains many tips on food selection, food preparation, exercise and how to use SeQuester most effectively.

THE REAL ENEMY: Your real enemy is not *weight*. Your real enemy is *fat*. SeQuester helps fight fat.

HEALTHY HEART OBJECTIVE:

Number 1: To feed my body less fat.

Number 2: To train my body to burn fat more efficiently.

PROBABLE BENEFITS:

- Improved Health • Reduced fat intake • Reduced body weight
- Increased energy level and productivity

THE EFFECTIVE, HEALTHY WAY TO TAKE YOUR SEQUESTER:

SeQuester is a tested product that will help you lose fat. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of those programs cause us to lose water weight, and even muscle weight. But, weight is not our number one enemy – fat is. SeQuester fights fat, and *losing fat takes time*. Read and follow these instructions carefully. Make SeQuester a consistent part of your weight loss program. *Give yourself 90 or more days to see measurable results. (The initial few days of your SeQuester program may even show some weight increase. Don't panic. This is normal.)* Follow our *GoodFood* dietary guidelines and get into the good exercise habit. Good luck!

Q: HOW SHALL I BEGIN?

A: *Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking SeQuester during or after a meal will not produce satisfactory results. Just be sure that before you take your first bite, take your SeQuester.*

EXHIBIT D

Page 3
SeQuester

Q: HOW MANY TABLETS SHOULD I TAKE PER DAY?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3 to 6 tablets per day to see which is most effective for them.

Q: HOW WILL I KNOW MY DOSAGE IS SATISFACTORY?

A: You're on the right track when one or more of the following occur: (1) Stools appear lighter in color; (2) Stools appear bulkier; (3) Stools may float in water. These indications result from fats being passed through your digestive tract and eliminated in the stool.

Q: SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: IF I EAT A 100% FAT-FREE MEAL, SHOULD I STILL TAKE MY SEQUESTER?

A: If one of your meals contains absolutely no fat, it is not necessary to take SeQuester for that particular meal.

Q: SHOULD I TAKE VITAMINS SUPPLEMENTS WHILE TAKING SEQUESTER?

A: If you wish to take vitamin supplements, we advise doing so 1 hour prior to taking your SeQuester or 2 hours after taking SeQuester. We have observed no evidence of fat-soluble vitamin deficiency during our human testing, however taking a multiple vitamin/mineral supplement is always a good idea.

Q: WHAT ABOUT ADDITIONAL SIDE EFFECTS?

A: Three out of 10 people in our test group experienced excess gas when taking SeQuester. If this is a concern we strongly recommend that you get some activated charcoal tablets. They are very inexpensive and can be found

Complaint

123 F.T.C.

EXHIBIT E

SeQuester™

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

The combination of special ingredients, through our patented manufacturing process, negatively affects the availability of fat and sugar. The mechanism that produces this action remains unclear.

100% money back guarantee.

Sequester should be used with a properly balanced diet and exercise program.

NUTRITIONAL INFORMATION PER TABLET (ONLY 2 CALORIES EACH)

Protein	35.0 mg	Fiber	180.0 mg
Fat	0.06 grams	Carbohydrates	340.0 mg

Vitamins & Minerals = less than 25% RDA

Total Tablet Weight = 700 milligrams

RECOMMENDED USE: For adults only. Take 1 or 2 tablets 3 times per day 1/2 hour before meals with a FULL glass of water.

NOTICE: Before considering any weight loss program, it is advisable to consult with your physician. This product, when used in excess, may cause diarrhea, abdominal cramping, or gas. If this occurs, product dosage should be temporarily reduced or discontinued. Store in a cool dry place.

INGREDIENTS: Activated-Fiber Complex (Barley/Rice Fiber, Sodium Choleate Complex), Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicone Dioxide, Methylcellulose, Magnesium Stearate, Acerola and Propylene Glycol.

Manufactured Exclusively For:
KCD, Inc. Westlake Village, CA 91361

Made in the USA
U.S. Patent #4,865,850

COMPLAINT EXHIBIT E

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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, 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 the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the 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, 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 KCD Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

2. Respondent KCD, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

3. Respondent Deerfield Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business

located at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

4. Respondent Clark M. Holcomb was an officer of KCD Holdings, Inc., and KCD, Incorporated. He formulated, directed and controlled the policies, acts and practices of these corporations. His home address is at 2190 Upper Ranch Road, in the City of Westlake Village, State of California.

5. Respondent Bonnie L. Richards is an officer of KCD Holdings, Inc., and KCD, Incorporated. She formulates, directs and controls the policies, acts and practices of these corporations. Her home address is at 4791 Parma Lane, in the City of Agoura Hills, State of California.

6. Respondent Gerald E. Hatto is an officer of Deerfield Corporation. He formulates, directs and controls the acts and practices of this corporation. His home address is at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

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

ORDER

It is ordered, That 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. "*KCD respondents*" shall mean KCD Holdings, Inc. ("KCD Holdings"), KCD, Incorporated ("KCD"), corporations, their successors and assigns and their officers; Clark M. Holcomb ("Holcomb"), individually and as a former officer of the corporations; Bonnie L. Richards ("Richards"), individually and as an officer of the corporations; and each of their agents, representatives and employees.

3. "*Deerfield respondents*" shall mean Deerfield Corporation ("Deerfield"), a corporation, its successors and assigns and its officers; Gerald E. Hatto ("Hatto"), individually and as an officer of the corporation; and each of their agents, representatives and employees.

4. Unless otherwise specified, "*respondents*" shall mean KCD Holdings, KCD and Deerfield, corporations, their successors and assigns and their officers; Holcomb, Richards and Hatto, individually and as officers or former officers of the corporations; and each of the above's agents, representatives and employees.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. Section 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product or program prevents or reduces the body's absorption of fat or sugar from consumed food, unless the representation is true and, at the time it 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 labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program:

- A. Provides any weight loss benefit;
- B. Causes greater loss of body fat than diet and exercise alone;
- C. Allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems associated with a high-fat diet; or
- D. Reduces, or reduces the risk of, high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet,

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 further ordered, That the KCD respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea, unless, at the time the representation is made, the KCD 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 labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, 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.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product or program unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That with respect to the Deerfield respondents, it shall be a defense to Sections I, II and V of this order

that they neither knew nor had reason to know of an inadequacy of substantiation for any such representation; provided further that it shall be a defense to Section IV of this order that they neither knew nor had reason to know that the test, study or research did not prove, demonstrate or confirm that representation.

VII.

It is further ordered, That KCD Holdings, Inc., KCD Incorporated and Bonnie L. Richards, their successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of one hundred and fifty thousand dollars (\$150,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in thirteen installments, the first installment of twenty-five thousand dollars (\$25,000) to be made no later than the date that this order becomes final; the next eleven payments of ten thousand, four hundred and sixteen dollars (\$10,416) to be made no later than the first day of each of the following eleven months; and the final installment of ten thousand, four hundred and twenty-four dollars (\$10,424) to be made no later than one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondents' indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondents shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of one hundred and twenty-five thousand dollars (\$125,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondents in Part VII(A) of this order. The respondents shall, within seven (7) days of the date that this order becomes final, file all documents necessary

to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The respondents shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected and recorded. The Commission will release this security interest upon receipt of all payments required by Part VII(A) of this order.

D. The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of SeQuester in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty or punitive assessment.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any drug under any tentative final or final standard promulgated by the Food

and Drug Administration ("FDA"), or under any new drug application approved by the FDA.

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 FDA pursuant to the Nutrition Labeling and Education Act of 1990.

X.

It is further ordered, That respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable written request make available to the Commission for inspection and copying:

A. All advertisements or 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 respondents 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, such statements to be retained by respondents for a period of five (5) years. 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.

XII.

It is further ordered, That respondents KCD Holdings, KCD and Deerfield, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation; the creation or 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 corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents 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 Holcomb, Richards, and Hatto shall, for a period of five (5) years after the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of their current business or employment, and of their affiliation with any new business or employment. The notice shall include the respondents' new business addresses and telephone numbers, current home addresses, and a description of the nature of the business or employment and their 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 respondents shall, within sixty (60) days after the date of service of this order, and at other such 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 June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any 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 respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this 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.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

Complaint

123 F.T.C.

IN THE MATTER OF

GUILDWOOD DIRECT LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3753. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the use of the name "Slimming Insoles" to represent that a product causes weight loss without scientific substantiation. The consent order requires the respondents to have scientific evidence to substantiate any claims regarding the effectiveness, benefits, and efficacy of any weight loss or fat loss product. In addition, the consent order requires testimonials to represent the typical experience of consumers or to clearly and prominently disclose the generally expected results. Furthermore the order prohibits the respondent from representing that Advance Bio/Natural Research Labs is an independent research organization and from misrepresenting the existence or results of any test or study. In addition the consent order requires the respondent to pay \$40,000 in consumer redress, of which all but \$7,500 is suspended.

Appearances

For the Commission: *Beth Grossman and Jeffrey Bloom.*

For the respondent: *Sheldon S. Lustigman, Lustigman Law Firm,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Guildwood Direct Limited ("respondent"), has 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 Guildwood Direct Limited is a Delaware corporation with its principal office or place of business at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

2. Respondent has advertised, labeled, offered for sale, sold and distributed to the public Slimming Insoles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Insoles are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: The Salt Lake Tribune, The Denver Post, The Modesto Bee, The New York Post, The St. Louis Post, American Woman, Crochet World, Soap Opera Update, Women's Own, Low Fat Meals and Beautiful Brides, and have been distributed as free standing inserts by News America.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Slimming Insoles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR!"

"I LOST 74 POUNDS" Angela Meisel

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Erina Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to the under-performance of the dietary system, it should be stimulated to function effectively so the bodies [sic] metabolism works normally and does not store excess fat!

*No Dieting *No Pills

*No Nervousness

*No Frantic Exercising

*No Strange Formulas

*No Special Foods to Buy

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal... You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU [sic] METABOLISM WORKING.

...
This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the

reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great!
MEDICAL TEST RESULTS | VERY GOOD | 478 PEOPLE TESTED
TESTIMONIALS ABOUND

"During 4 weeks I lost 6 pounds, the same happened to all of my friends." Carmen Schlashter

"I lost 8 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight." Mrs. Petra Jung

"I have lost 10 pounds without torturing myself." Gabriele Geiger

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit." Carmen Steffens-Baum

"I'LL STAKE MY MEDICAL REPUTATION ON IT." R. Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight, and rid your body of the flab while aiding your dietary system. They WILL work for you, or we'll refund every cent you paid for them. NO questions asked." (Exhibit A - Print Advertisement).

B. [Heading at top of page:]

"ADVANCE BIO/NATURAL RESEARCH LABS RESEARCH REPORTS DATA CONTROL FILE NO 97644KC CASE HISTORIES [illegible] TEST GROUP NC-46009 CASE FILE REGARDING: DR. ROBERT METZ, M.D. SLIMMING INSOLES

STATEMENT: Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. [sic] Slimming Insoles

...
CASE 2

Control Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

58% of the individuals tested lost 14 lbs. or more.

27% of the individuals tested lost 10 lbs. to 14 lbs.

15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

...
CASE 7

Individual Success Story - Subject Gabriele Geiger

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone.

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals." (Exhibit B - Direct Mail Advertisement).

C. "Would you like to lose 10 lbs. like 15% of the test group did...or 14 lbs. like 27% did...or over 14 lbs. like 58% did? Or would you like to lose 20 lbs...30 lbs....50 lbs. or even 74 lbs. like Angela Meisel did -- without dieting or exercising?

Then you must read this important message and join the over 370,000 Europeans who have discovered a NEW secret to weight loss!

1558

Complaint

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 478 people, the medical test results were announced as "Very Good"! A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds" - with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

... Wouldn't you like to lose those extra pounds you put on over the years...And would you like to achieve all this without dieting or strenuous exercising?

...
Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy--Not Fat!

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat.

Dr. Metz's Slimming Insoles Are The First And Only Insoles That Reduce Weight And Regulate The Digestive System.

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund -- no questions asked." (Exhibit C - Direct Mail Advertisement).

5. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Slimming Insoles cause significant weight loss.

B. Slimming Insoles cause significant weight loss without changes in diet or exercise.

C. Testimonials from consumers appearing in the advertisements for Slimming Insoles reflect the typical or ordinary experience of members of the public who have used the product.

6. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

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

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that scientific studies demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise.

9. In truth and in fact, scientific studies do not demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. Through the means described in paragraph four, respondent has represented, expressly or by implication, that Advance Bio/Natural Research Labs is a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles.

11. In truth and in fact, Advance Bio/Natural Research Labs is not a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles. Advance Bio/Natural Research Labs is a fictitious trading name utilized by Guildwood Direct Limited in its advertising. Therefore, the representation set forth in paragraph ten was, and is, false or misleading.

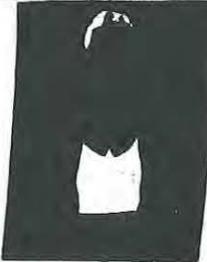
1558

Complaint

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

EXHIBIT A

REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR



"I lost 74 Pounds"

V. J. FORTNEY

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Angela Meiser

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Enna Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to the under-performance of the dietary system, it should be stimulated to function effectively so the bodys metabolism works normally and does not store excess fat!

- o No Dieting
- o No Pills
- o No Nervousness
- o No Frantic Exercising
- o No Strange Formulas
- o No Special Foods to Buy

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal. This happens without taking health-damaging medicines with



harmful side effects. You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU METABOLISM WORKING.

Your feet will tingle pleasantly when you walk and even when you sit they may feel more active than usual. This is due to the unusual massaging knobs on the insoles made of Nobamed. The knobs correspond exactly to the reflex zones in the soles of the



feet which reflect and stimulate the digestive organs. This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great!



TESTIMONIALS ABOUT

- "During 4 weeks I lost 6 pounds, the same happened to all of my friends"
 Carmen Schlessler
- "I lost 8 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight."
 Mrs. Petra Jung
- "I have lost 10 pounds without torturing myself"
 Gabriela Geiger
- "I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit."
 Carmen Steffens-Baum

"I'll stake my medical reputation on it."

R Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight and rid your body of fat while aiding your dietary system. They WILL work for you or we'll refund every cent you paid for them. NO questions asked. Why eat one more day? Why not look and feel your absolute best?

INTERMED LABORATORIES, Dept. 3215
2101 West Lafayette, Detroit, MI 48216-1877

AA701

I want to start losing weight immediately send me the Slimming Insoles indicated below!
(Women's Sizes 6-10 Men's Sizes 8-13)

One pair for only \$19.95 plus \$3.95 postage handling Women's Men's Size

Two pair for only \$29.95 plus \$4.95 postage handling Women's Men's Size

Enclosed is Cash Money order for \$ _____

Charge my Visa MasterCard Exp. Dt. _____

Card No. _____

Signature _____

Name _____

Address _____

City _____

State _____ Zip _____

CREDIT CARD ORDERS CALL TOLL FREE
1-800-922-2217
Monday to Friday 8:30AM TO 6:30PM EST
Sunday 10:00AM TO 5:00PM EST
Ask for Operator # AA702

Complaint

EXHIBIT B



RESEARCH REPORTS

EXHIBIT B
Page 1**DATA CONTROL**

FILE NO. 97644.KC
 CASE HISTORIES Metz
 TEST GROUP NC-46009

CASE FILE REGARDING:**DR. ROBERT METZ, M.D. SLIMMING INSOLES****STATEMENT:**

Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. Slimming Insoles

CASE 1

Taken From the European Television Program "Market Information".

The Dr. Metz Slimming Insoles, which we have been offering to our customers, have now finally received the recognition they deserve. On the 29th of May, 1995, the consumer television program "Market Information" portrayed the Slimming Insoles as an effective method to fight off excessive pounds. The test person, Mr. Kohler, whom the program had picked to do this test, lost 14 lbs. during the trial period. This weight loss was verified by weighing before and after, in the presence of the broadcaster. The original commentary of this critical program "The Slimming Insoles are the absolute best!"

CASE 2

Cont. of Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

- 68% of the individuals tested lost 14 lbs. or more.
- 27% of the individuals tested lost 10 lbs. to 14 lbs.
- 15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

CASE 3

Individual Success Story - Subject H.W., St. Gallen

"I have tried umpteen diets in the past..."

"Lost pounds came back just as fast as I'd lost them. Since I have been using Dr. Metz's Slimming Insoles my weight has slowly but steadily gone down. I think Slimming Insoles are perfect, and can recommend them to anyone!"

Complaint

123 F.T.C.

EXHIBIT B

EXHIBIT B

Page 2

CASE 4**Individual Success Story - Subject H.V., Lucerne**

"I feel better than ever before...I was skeptical to start with because there are so many quacks claiming to help you lose weight. But only a few weeks of using Dr. Metz's Slimming Insoles changed my opinion. Without taking medication whose side effects are unknown, I lost weight and feel better than I ever did before."

CASE 5**Individual Success Story - Subject P.M., Winterthur**

"I've lost 8 lbs...A colleague told me how easily and comfortably he was slimming using reflex zone massage. At first I laughed at him. But week by week I was taught a lesson. So I too ordered a pair of Slimming Insoles and now I'm impressed. After following the clear instructions exactly, I've lost 8 lbs. in only 6 weeks. The claim in your ad "A fabulous figure by the most natural method" is true. Congratulations to Dr. Metz on his Slimming Insoles."

CASE 6**Individual Success Story - Name Withheld on Request**

"It is really true that your massage insoles have positively influenced my biological balance. The tablets, capsules and powders I used to take in the past always made me feel sick and dizzy. The egg diet even made me throw up on the third day. It's a pity that Dr. Metz's Slimming Insoles weren't available before. If this wonderfully gentle method of slimming had been available ten years ago, I would have been spared a lot of suffering."

CASE 7**Individual Success Story - Subject Gabriele Galdor**

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone."

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals. The all natural application of the insoles does not upset the body's ability to function in it's normal manner and does not stress the nervous system. The gentle massage action may also aid the feet for individuals who are forced to spend long periods walking.

Permission has been granted for the reproduction and release of all facts and information in this report

Complaint

EXHIBIT C



INTERMED LABORATORIES
2101 West Lafayette
Detroit, MI 48216-1877

EXHIBIT C

Page 1

**Would you like to lose 10 lbs. like 15% of the
test group did...or 14 lbs. like 27% did...
or over 14 lbs. like 58% did? Or would you like
to lose 20 lbs...30 lbs...50 lbs...or even
74 lbs. like Angela Meisel did —
without dieting or exercising?**

**Then you must read this important message
and join the over 370,000 Europeans who have
discovered a NEW secret to weight loss!**

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 473 people, the medical test results were announced as "Very Good!" A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds"— with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

Wouldn't you like to lose those extra pounds you put on over the years ... effortlessly slide into that slinky dress or slacks ... be the object of attention and admiration? Would you like to regain control of your weight without buying pills month after month ... without joining expensive weight loss programs ... without buying costly "special foods"? Would you like to regain your youthful appearance ... put the spring back in your step and face each day with a renewed vigor and vitality for life? And would you like to achieve all this without dieting or strenuous exercising?

If your answer is yes to any of these questions then you must read the exciting details about this amazing NEW discovery on the other side!!

Complaint

123 F.T.C.

EXHIBIT C

**Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy— Not Fat!**

EXHIBIT

Page 2

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat. When you walk you may feel a pleasant tingling sensation. Even when you sit your feet may still feel stimulated - confirming that the massaging action is working. Sounds simple? The most effective things usually are.

**Dr. Metz's Slimming Insoles Are The First And Only Insoles That
Reduce Weight And Regulate The Digestive System.**

Many doctors believe the body has the ability to cure itself when the conditions are right. Dr. Metz's Slimming Insoles work in exactly this natural, convenient manner. You lose weight naturally, without introducing foreign drugs or chemicals into your body, which may be more harmful than beneficial!

**GOOD NEWS—Now, For The First Time
Dr. Metz's Slimming Insoles Are Available In The U.S.!**

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund — no questions asked.

Yours for a slimmer, healthier, more active you,

Justin T. Winslow
Justin T. Winslow
Director

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 Guildwood Direct Limited, also doing business as Intermed Laboratories, 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 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

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

Decision and Order

123 F.T.C.

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. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that the ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or the first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "*respondent*" shall mean Guildwood Direct Limited, a corporation, its successors and assigns and its officers, agents, representatives and employees.

4. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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 make any representation, in any manner, expressly or by implication, that:

A. Such product causes significant weight loss, with or without changes in diet or exercise; or

B. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, 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 use the name "Slimming Insoles" or any other name in a manner that represents, expressly or by implication, that the product causes weight loss, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, 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, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, 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, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, 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).

IV.

It is further ordered, That respondent, 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 Advance Bio/Natural Research Labs is a *bona fide*, independent research organization or that it has published a report containing the results of valid, independent testing of such product.

V.

It is further ordered, That respondent, 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, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research; or

B. The existence, nature, purpose or activities of any organization.

VI.

It is further ordered, That:

A. Respondent shall pay to the Commission as consumer redress the sum of forty thousand dollars (\$40,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of seven thousand and five hundred dollars (\$7,500) no later than the date this order becomes final. Such payment shall be deposited into an escrow account to be designated by the Commission for the purpose of receiving payment due under this order.

B. In the event of respondent's default on the \$7,500 payment set forth in subpart A above, the amount of forty thousand dollars (\$40,000), less the sum of payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondent, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. Any funds paid by respondent pursuant to subparts A and B above shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the Slimming Insoles. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. The Commission's acceptance of this order is expressly premised upon the financial statements and related documents provided by respondent to the Commission on November 18, 1996. After service upon respondent of an order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondent shall be given an opportunity to present evidence on this issue. If, upon consideration of respondent's evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of forty thousand dollars (\$40,000), less the sum

of any payments made under subpart A above, to become immediately due and payable to the Commission, and interest computed at the rate prescribed in 29 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Commission may initiate to enforce this order.

VII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, 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 its 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.

VIII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, 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. Respondent 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. Respondent 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.

IX.

It is further ordered, That respondent Guildwood Direct Limited, 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.

X.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, 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 it has complied with this order.

XI.

This order will terminate on June 16, 2017, 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 respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this 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.

IN THE MATTER OF

BODYWELL, INC., ET AL.

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

Docket C-3754. Complaint, June 16, 1997--Decision, June 16, 1997

This consent order prohibits, among other things, the use of the name "Slimming Soles" to represent that a product causes weight loss without scientific substantiation. The consent order requires the respondents to have scientific evidence to substantiate any claims regarding the effectiveness, benefits, and efficacy of any weight loss or fat loss product. In addition, the consent order requires testimonials to represent the typical experience of consumers or to clearly and prominently disclose the generally expected results. Furthermore the order prohibits misrepresentations about the existence or results of any test or study, violations of the FTC Mail or Telephone Order Merchandise Rule, and requires the respondents to pay \$100,000 in redress.

Appearances

For the Commission: *Beth Grossman and Jeffrey Bloom.*

For the respondents: *Linda A. Goldstein and Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BodyWell, Inc., a corporation, and Gerard du Passage, individually and as an officer of the 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 BodyWell, Inc. is a New York corporation with its principal office or place of business at 27 West 20th Street, Suite 1001, New York, New York.

2. Respondent Gerard du Passage is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls or participates in the policies, acts or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of BodyWell, Inc.

3. Respondents have advertised, offered for sale, sold and distributed products to the public, including Slimming Soles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Soles are "devices," within the meaning of

Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: Cosmopolitan, Redbook, McCall's, Family Circle, The Denver Post, The National Enquirer, The Globe/ National Examiner, The Star, Woman's Day, Woman's Own, Diets & Exercise, Grit, Woman's World, Soap Opera Weekly, Capper's, Soap Dish, Soap Opera Digest, True Story, Weekly World News, The Sun, First For Women, Craft Works, Senior Citizens, Flower & Garden, TV Host, Soap Opera Magazine, Popular Magazine Group, Family, Woman's Day Low Fat Meals, USAir, American Legion, Walking Magazine, Good Cooks' Companion, Northwest, Retired Military Family, TV Blue Print, Almanac for Farmers, Farmers Almanac and Blum's Almanac, and have been distributed as free standing inserts through Valassis FSI and News America.

4. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated advertisements for Slimming Soles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "The discovery of a German Doctor has revolutionized the field of weight loss!...

LOSE WEIGHT FAST AS YOU WALK!

SEE HOW DOCTOR METZ' SLIMMING SOLES CAN MAKE YOU LOSE OVER 15 LBS WITHOUT THE SLIGHTEST EFFORT!

...and without dieting! You walk all the time... When you go shopping, at home, at work... Well did you know that just by walking, you can lose over 15 lbs without any diet or without doing any extra exercise? And that's what Dr. Robert Metz, a German weight loss expert and inventor of the first Slimming Soles, has discovered!

Guarantee

In asking to use Dr. Metz' Slimming Soles on a trial basis, you are not taking any risk except to see your body, day after day, becoming healthier and rejuvenated, (excess weight is dangerous to your health). However, if for any reason whatsoever, you were not 100% satisfied with the results obtained, all you have to do is to return your pair of Slimming Soles in its original box, and you will be immediately reimburse [sic], no questions asked. This is a full Guarantee.

A revolutionary discovery...

You certainly know the basic principles of Reflexology. It's that Chinese technique that consists of stimulating specific points on the sole of the feet, which correspond to a specific organ of the body.

A wide variety of disorders can be treated in this way: headaches, back pain and many other symptoms.

1577

Complaint

But what you don't know, it's what Dr. Robert Metz, a weight loss expert, has discovered.

This doctor has discovered that under your feet existed certain points that make you lose weight automatically if you stimulate them!

* These points "force" your body to get rid of its surplus fat.

* These points can make you lose over 15 lbs in just 6 weeks without dieting or doing any extra exercise!

From these observations, Dr. Metz invented and designed the first pair of Slimming Soles based on the technique of Reflexology. These sole [sic] will make you lose weight with every step you take!

Amazing results, scientifically proven!

A recent medical test has been conducted with 478 people who had all failed to lose weight using any known method. After 6 weeks, 58% of these people had lost 15 lbs or more, 27% had lost between 13 and 15 lbs., and 15% had lost 13 lbs. None of these people altered their eating habits, they didn't do any exhausting exercises or any particular form of gymnastics; all they did was slip Dr. Metz' Slimming Soles into their shoes!

And now put your body in a constant weight loss mode without any effort and without any diet, by Dr. Metz.

Now, you too can lose weight rapidly, without going on a special diet and without having to do any extra exercise. All you have to do is slip Dr. Metz' Slimming Soles into your everyday shoes and live normally.

Every time you walk, whether you're going shopping or you're simply around the house or at work, you'll be losing weight!

You don't have to change a thing in your eating habits, all you have to do is walk as you normally do, (without excess).

6 weeks to lose 16 lbs.

After 6 weeks, you should have already lost between 13 and 16 pounds (as proven by the tests!). And no one will know your secret since you were not on a diet!

...
By simply slipping the new Dr. Metz' Slimming Soles into your shoes, you should quickly lose between 13 to 16 lbs. If it's not the case and you lost only between 6 and 8 lbs instead of the 16 lbs you were looking for, all you have to do is to return your Dr. Metz' Slimming Soles in their original box and we will reimburse you immediately, no questions asked. It means that the trial won't have cost you a penny. But believe me with the Dr. Metz' Slimming Soles you will [sic] thrilled about the weight you have lost."

[In red type:] COUPON TO LOSE 16 LBS NO EFFORT!"

(Exhibit A - Print Advertisement)

B. [Large script:] "Lose 13 to 15 lbs.! With no Effort!

IT IS FINALLY POSSIBLE, THANKS TO DR. METZ' ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!

(script) and without dieting!

...

[A]re you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?

Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

...

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

* Points which "compel" your body to get rid of excess fat.

* Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology; they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

'I lost 9 pounds in six weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!' Mr. Peter Wintherthur

'I have had your insoles now for 7 days. I have lost 5 lbs.' BFB, Norristown, PA
AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE, WITHOUT EFFORT, AND WITHOUT DIETING!

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solum" Slimming soles, all you have to do is walk, just walk normally.

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it). You should find a new zest for life and a new energy.

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

1577

Complaint

...
Our Guarantee for a 90 Day Risk Free-Trial
In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge." (Exhibit B - Direct Mail Advertisement).

C. "COUPON TO LOSE 15 LBS. WITH NO EFFORT!"

Yes, I want to lose 13 to 15 lbs. With no effort, just by slipping Dr Metz' Slimming Soles into my shoes.

I understand that I don't have to do anything else - no diet, no workout.

....
Allow 2-3 weeks for delivery."
(Exhibit C - Direct Mail Advertisement).

6. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that:

A. Slimming Soles cause significant weight loss.

B. Slimming Soles cause significant weight loss without changes in diet or exercise.

C. Consumers using Slimming Soles will lose 13 to 16 pounds within six weeks, and will do so without changes in diet or exercise.

D. Testimonials from consumers appearing in the advertisements for Slimming Soles reflect the typical or ordinary experience of members of the public who have used the product.

7. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six, at the time the representations were made.

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

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that scientific studies demonstrate that Slimming Soles cause significant weight loss,

including 13 to 16 pounds within six weeks, without changes in diet or exercise.

10. In truth and in fact, scientific studies do not demonstrate that Slimming Soles cause significant weight loss, including 13 to 16 pounds within six weeks, without changes in diet or exercise. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In connection with the sale of Slimming Soles to consumers, respondents have represented, expressly or by implication, that Slimming Soles would be delivered to purchasers within a reasonable period of time.

12. In truth and in fact, in numerous instances, the Slimming Soles that were sold to purchasers have not been delivered to such purchasers within a reasonable period of time. Further, in numerous instances, respondents have failed to provide refunds of money paid by such purchasers within a reasonable period of time. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. 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

EXHIBIT A

EXHIBIT A



The discovery of a German Doctor has revolutionized the field of weight loss!

LOSE WEIGHT FAST AS YOU WALK

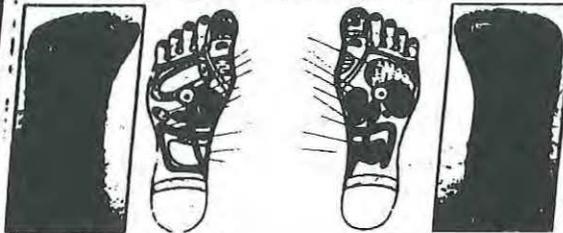
SEE HOW DOCTOR METZ' SLIMMING SOLES CAN MAKE YOU LOSE OVER 15 LBS WITHOUT THE SLIGHTEST EFFORT!

... and without dieting

You walk all the time... When you go shopping, at home, at work... Well did you know that just by walking you can lose over 15 lbs without any diet or without doing any extra exercise? And that's what Dr. Robert Metz, a German weight loss expert and inventor of the first Slimming Soles, has discovered!



PRINCIPLES OF REFLEXOLOGY
STIMULATING SPECIFIC POINTS ON THE SOLE OF THE FEET



Left sole

left foot sole

right foot sole

right sole



Dr. Robert Metz, weight loss expert.

GUARANTEE
In order to use Dr. Metz' Slimming Soles on a test basis, you are not taking any risk except to use your feet. They stay slimming healthier and rejuvenated, promote weight loss and improve your health. Because of the many human adjustments, you were not 100% satisfied with the results obtained, all you have to do is return your pair of Slimming Soles in its original box, and you will be automatically reimbursed, no questions asked. This is a full Guarantee.

Dr. Metz' Slimming Soles can be worn in any type of shoes. You will be able to wear them with your dressiest shoes to your most casual, (even your favorite sneakers...). As soon as you receive them slip them into your shoes and start walking. In just a few days you will already have lost weight!

A revolutionary discovery...

You certainly know the basic principles of Reflexology... it is that Chinese technique that consists of stimulating specific points on the sole of the feet, which correspond to a specific organ of the body.

A wide variety of disorders can be treated in this way: headaches, back pain and many other symptoms.

But what you don't know, is what Dr. Robert Metz, a weight loss expert, has discovered.

This Doctor has discovered that under your feet existed certain points that make you lose weight automatically if you stimulate them!

* These points "force" your body to get rid of its surplus fat.
* These points can make you lose **OVER 15 lbs** in just 6 weeks without doing any extra exercise!

From these observations, Dr. Metz conceived and designed the first pair of Slimming Soles based on the technique of Reflexology. These soles will make you lose weight with every step you take!

Amazing results, scientifically proven!

A recent medical test has been conducted with 478 people who had all failed to lose weight using any known method. After 6 weeks, 54% of these people had lost 15 lbs or more, 27% had lost between 13 and 15 lbs and 15% had lost 11 lbs. None of these people altered their eating habits, they didn't do any exhausting exercises or any particular form of gymnastics, all they did was slip Dr. Metz' Slimming Soles into their shoes!

And now put your body in a constant weight loss mode without any effort and without any diet, by Dr. Metz.

Now, you too can lose weight rapidly, without going on a special diet and without having to do any extra exercise. All you have to do is slip Dr. Metz' Slimming Soles into your everyday shoes and live normally.

Every time you walk, whether you're going shopping or you're simply around the house or at work, you'll be losing weight!

You don't have to change a thing in your eating habits, all you have to do is walk as you normally do, without excess!

6 weeks to lose 16 lbs.

After 6 weeks, you should have already lost between 13 to 16 lbs (as proven by the test!). You will have found a new zest for life, a new energy. You will again be able to slip into your favorite slinky dress. You will again see that special look in the eyes of those around you, as they admire your new figure and your new silhouette. You will become a completely new person, and people will "notice it"! And no one will know your secret unless you want to on a diet!

By slipping the new Dr. Metz' Slimming Soles into your shoes, you should quickly lose between 13 to 16 lbs. If it's not the case and you lost only between 6 and 8 lbs instead of the 16 lbs you were looking for, all you have to do is return your Dr. Metz' Slimming Soles in their original box and we will reimburse you immediately, no questions asked. It means that the trial won't have cost you a penny. But believe me with the Dr. Metz' Slimming Soles you will thrill about the weight you have lost.

How to begin to get a pair of Dr. Metz' Slimming Soles on trial.

To receive a pair of Dr. Metz' Slimming Soles on trial, without any commitment on your part, just complete the Trial Coupon below, indicate your shoe size and mail it today along with your payment to:
BODYWELL USA
175 Fifth Ave Suite 2151
New York, NY 10010

Be careful! Watch for cheap imitations. Only the Slimming Soles signed by Dr. Metz will guarantee you a healthy and lasting loss of weight.

COUPON TO LOSE 16 LBS NO EFFORT!

return quickly to: **BODYWELL U.S.A.**
175 Fifth Ave Suite 2151 New York, NY 10010

Well, I want to try the Dr. Metz' Slimming Soles. Please send me, for a risk-free trial with no commitments on my part (see guarantee on the left):

1 pair of Dr. Metz' Slimming Soles at the special price of only \$19.95 + \$2.50 S & H. Total \$22.45

SPECIAL OFFER: Save \$4!
2 pairs of Dr. Metz' Slimming Soles at the special price of only \$35.90+ \$2.50 S & H. Total \$38.40

BEST OFFER: Save \$8!
3 pairs of Dr. Metz' Slimming Soles at the special price of only \$51.85+ \$2.50 S & H. Total \$54.35

I pay by:
 Check or money order (payable to BODYWELL U.S.A.)
 Credit card _____ month _____ year

Credit card # _____ Exp. date _____

signature _____

Please indicate your shoe size: [] [] []

Name _____
Address _____
City _____ State _____ Zip _____

CALL TOLL FREE
1-800-262-1777

Complaint

123 F.T.C.

EXHIBIT B

EXHIBIT B

Page 1

A BodyWell USA Exclusive. . .

**A German Doctor Revolutionizes
everything we believe about weight loss!**

*Lose 13 to 15 lbs.!
With no Effort!*

**IT IS FINALLY POSSIBLE, THANKS TO DR. METZ'
ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU
LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!**

and without dieting!

Dear Friend,

Allow me to ask you this question:

You walk, don't you?

When shopping, or, perhaps, when going to work...

Well, are you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?



Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

Slim down as you walk. . . that's the claim made by Dr. Robert Metz, a German weight-loss specialist and inventor of the first "Erina Solum" Slimming Soles!

AN ORIGINAL DISCOVERY...

This discovery is based on the principles of reflexology, the ancient Chinese technique which consists of stimulating certain points on the soles of the feet, points which correspond to specific body organs.

It is thus actually possible to treat various ailments, such as digestive problems, migraine headaches, stomach aches, and many other afflictions as well. . .

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

- * Points which "compel" your body to get rid of excess fat.
- * Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

Please turn the page

BODY WELL USA, 175 FIFTH AVE., SUITE 3151, NEW YORK, NY 10010

1577

Complaint

EXHIBIT B

EXHIBIT B

Page 2

In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology: they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

READ WHAT THOSE WHO LOST WEIGHT WITH THESE SOLES HAVE TO SAY...

"I've never felt as good as I feel now..."

At first, I was skeptical, because, when it comes to losing weight, I have found that I was often dealing with charlatans. But after several weeks of use, I was completely convinced that Dr. Metz' Slimming Soles actually work. I've lost weight without having to use chemical products, whose ingredients and side effects are unknown. I've never felt as good as I feel now..."

Mrs. Erna U., Lucerne, Switzerland

"What you are writing is true!"

A co-worker told me that he was losing weight easily thanks to a massage of the reflexive zones. At first, I made fun of him. However, as the weeks went by, I was won over. I then ordered a pair of Slimming Soles myself... I must admit that I am quite impressed. I carefully followed the instructions, which are quite clear. I lost 9 pounds in 6 weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!"

Mr. Peter M., Wintherthur

"The points you make have changed my life!"

The points you make have changed my life. It's quite true that your Slimming Sole have a positive influence on my entire system. The pills, powders, and other products which I had taken in the past often made me nauseous and dizzy... If this amazing natural weight-loss method had been available 10 years earlier, I would have been able to avoid a number of painful and sometimes risky treatments..."

Mrs. Sabrina S., Baden, Switzerland

Complaint

123 F.T.C.

EXHIBIT B

EXHIBIT B

Page 3

"I can heartily recommend this wonderful invention!"

"...I've tried several diets. But I gained back the weight as quickly as I lost it. Since I have been using your slimming soles, I have lost weight... find these soles perfect, and I can only recommend this ingenious invention!"

Mrs. Nicole W., St. Gall

"Not only did I lose weight, but they help my feet!"

"...I have had your insoles now for 7 days. I have lost 5 lbs. I also have spurs of the heels, these insoles help my feet also. I don't have to take T-----l for my feet. Would you please send me Two more pairs of your insoles."

BFB, Norristown, PA

AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE, WITHOUT EFFORT, AND WITHOUT DIETING!

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

And whenever you walk, whether at home, doing your errands, or on your way to work, you will lose weight.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

With each step, the slimming reflexology points in the soles of your feet will be stimulated, and your body will naturally free itself of its excess fat.

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solum" Slimming Soles, all you have to do is walk: just walk normally.

6 WEEKS TO LOSE 15 POUNDS

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it!). You should find a new zest for life and a new energy. You can once again slip into your favorite slinky dress. You can astound your friends with your new figure! You can become another person, someone who will be noticed! And, since you didn't diet, no one will guess your secret!

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

*Go to the other side for
an extraordinary offer →*

1577

Complaint

EXHIBIT B

UNRECORDED

Page 4

**HERE'S HOW TO GET A PAIR OF SLIMMING SOLES
RISK FREE TRIAL:**

In order to receive a pair of Dr. Metz's Slimming Soles with no obligation on your part, all you have to do is fill out the enclosed Special Order Form, including your shoe size, and send it, along with your payment to:

**Body Well USA
175 Fifth Ave. Suite 2151
New York, NY 10010**

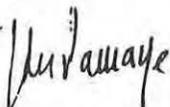
Act now, in order to be sure that you don't miss this remarkable opportunity to experience the delight that will be yours when you lose weight easily and naturally.

And one last thing...

Your Slimming Soles will fit all kinds of shoes. You can wear them in your finest dress shoes or in your most casual loafers. As soon as you get them, slip them into your regular shoes, and walk. You'll find yourself losing weight in just a few days!

I look forward to hearing from you.

Sincerely,



Gerard du Passage
President

P.S. Beware: Watch out for cheap imitations. Only the Slimming Soles carrying Dr. Metz's name give you the guarantee of a healthy and lasting weight loss.

Our Guarantee for a 90 Day Risk Free-Trial

In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge.

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