

The Commission has also alleged that proposed respondent has represented that the typical consumer of its products and services is successful in maintaining achieved weight loss, or, at a minimum, a substantial portion of achieved weight loss, over time. Proposed respondent has not provided adequate substantiation to support representations regarding the long-term effectiveness of the weight loss products and programs. Furthermore, according to the Commission's complaint, proposed respondent has represented that its maintenance claims were based in part upon a valid statistical analysis of its customers. However, the Commission has alleged that the analysis in question was not based upon a valid statistical sample of proposed respondent's customers.

Finally, the Commission has alleged that proposed respondent has represented that its physician monitored very-low-calorie diet programs are free of serious health risks without disclosing that physician monitoring is necessary to minimize the risk of serious health complications associated with very-low calorie diet programs. Further the Commission has alleged that in materials prepared specifically for physicians of patients using the very-low-calorie diets, proposed respondent failed to list serious adverse health complications that have been associated with very-low-calorie diets.

The proposed consent order seeks to address the alleged misrepresentations cited in the accompanying complaint by requiring proposed respondents to possess a reasonable basis for any future claims regarding weight loss or weight loss maintenance. The proposed consent order also requires proposed respondent to clearly and prominently disclose in any representation regarding the safety of respondent's VLCD diet programs that physician monitoring is required to minimize the potential for health risks, namely development of gallbladder disease.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 97-8799 Filed 4-4-97; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 962-3172]

Amerifit, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Connecticut-based company to pay \$100,000 to the Commission for disgorgement and would prohibit the respondent from representing that the Fat Burners products, or any other food, drug, or dietary supplement cause weight loss or reduce body fat unless, at the time the representation is made, it possesses and relies upon competent and reliable scientific evidence that substantiates the representation. In addition, the proposed consent agreement would prohibit the respondent from using the trade name "Fat Burners," unless it is used as part of the trade name "Fat Burners Diet, Exercise and Supplement System" and a disclosure statement is prominently and clearly placed on materials containing that name.

DATES: Comments must be received on or before June 6, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Jeffrey Feinstein, FTC/S-4302, Washington, D.C. 20580. (202) 326-3017 or 326-2372.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC

Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from AmeriFIT, Inc. (respondent). The agreement would settle a proposed complaint by the Commission that respondent engaged in unfair or deceptive acts or practices in violation of sections 5(a) and 12 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint alleges that respondent manufactured, advertised, labeled, offered for sale, sold and distributed products to the public, including "Fat Burners," "Fast Burners," "Improved Formula Fat Burners," and "Extra Strength Fat Burners" (collectively, "the Fat Burners products"), and represented that the Fat Burners products cause weight loss or reduced body fat. The Commission's complaint further alleges that respondent did not possess and rely upon a reasonable basis that substantiated those representations.

The consent agreement resolving these allegations prohibits respondent from representing that the Fat Burners products, or any other food, drug, or dietary supplement cause weight loss or reduce body fat unless, at the time the representation is made, it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

The agreement further prohibits respondent from using the name "Fat Burners" or any other name that communicates the same or similar meaning unless the material containing the name clearly and prominently contains the following disclosure:

THE DIETARY SUPPLEMENT IN THIS SYSTEM IS FOR NUTRITIONAL USE ONLY

AND DOES NOT CONTRIBUTE TO WEIGHT LOSS OR LOSS OF BODY FAT.

The agreement also requires respondent to pay \$100,000 to the Federal Trade Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 972-3021]

Bodywell Inc., et al., Also d/b/a Bodywell U.S.A.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the New York-based company and its principal to possess competent and reliable scientific evidence to support any claim that any product causes weight loss, with or without changes in diet or exercise, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit; and would prohibit them from using the name "Slimming Soles" or any other name in a manner that represents that any product causes weight loss, unless the respondents possess competent and reliable scientific evidence that substantiates the representation. The consent agreement also would prohibit the respondent from making any misrepresentations of the existence, contents, validity, results, conclusions or interpretations of any test, study or research, and from violating the Mail or Telephone Order Merchandise Rule, which, among other things, requires that purchasers be notified if the products are not delivered in a timely fashion. In addition, the consent agreement would require the respondents to pay \$100,000 for consumer redress or disgorgement.

DATES: Comments must be received on or before June 6, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Richard Cleland, FTC/H-482,
Washington, D.C. 20580. (202) 326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order

The Federal Trade Commission has accepted an agreement to a proposed consent order from BodyWell, Inc. and BodyWell, Inc.'s officer, Gerard du Passage ("respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges respondents with deceptively advertising Slimming Soles, insoles worn in the shoes that purportedly cause weight loss through "reflexology," without changes in diet or exercise. According to advertisements for the product, the Slimming Soles purportedly cause weight loss by massaging certain "reflex points" on the bottom of the foot during the course of a normal day's walking, thereby stimulating the body's digestive system to burn stored fat and cause weight loss.

Advertisements for the product appeared in newspapers such as the *Denver Post* and in the *National Enquirer*, in newspaper inserts, in magazines such as *Cosmopolitan* and *Woman's Day* as well as in nationwide direct mailings.

The complaint alleges that, through the product name "Slimming Soles" and the advertisements, respondents made unsubstantiated representations that the Slimming Soles cause significant weight loss; that the weight loss occurs without changes in diet or exercise; and that consumers using the Slimming Soles will lose 13 to 16 pounds within six weeks, without changes in diet or exercise. According to the complaint, the ads also claimed, without adequate substantiation, that the consumer testimonials in the ads reflect the typical or ordinary experience of people who have used the product.

The complaint also alleges that respondents falsely represented that scientific studies demonstrate that the Slimming Soles cause significant weight loss, including 13 to 16 pounds within six weeks, without changes in diet or exercise. In addition, the complaint alleges that respondents falsely represented that the product would be delivered to purchasers within a reasonable period of time. In fact, the complaint alleges, in numerous instances the Soles sold to purchasers were not delivered to those purchasers within a reasonable period of time.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future.

Part I of the order requires respondents to possess competent and reliable scientific evidence to support any claim that any product causes weight loss, with or without changes in diet or exercise, causes weight loss at any particular rate or speed, or within any time period, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit. Part II prohibits respondents from using the name "Slimming Soles" or any other name in a manner that represents that any product causes weight loss, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part III prohibits respondents from claiming that the experience represented in any user-testimonial or endorsement of any food, dietary supplement, drug, device, or weight loss product or program represents the typical or ordinary experience of members of the public who use the