

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman
 Mary L. Azcuenaga
 Janet D. Steiger
 Roscoe B. Starek, III
 Christine A. Varney

)	
In the Matter of)	
)	DOCKET NO. C-3708
VICTORIA BIE d/b/a BODY GOLD)	
)	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 complaint which the Denver Regional Office 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, her attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforementioned draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the

following jurisdictional findings, and enters the following order:

1. Respondent Victoria Bie d/b/a Body Gold is a sole proprietor doing business under and by virtue of the laws of the State of California, with her office and principal place of business located at 5930 La Jolla Hermosa Ave., La Jolla, California 92037.

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

DEFINITIONS

For the purposes of this order:

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; and
2. "Clearly and prominently" as used herein shall mean as follows:
 - (a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a 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 print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.
 - (c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

I.

IT IS ORDERED that respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any

partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of Chromium Picolinate, 24K with Chromium Picolinate, Daily Energy Formula, CitriGold, or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product causes, aids, facilitates or contributes to reducing body fat;
- B. Such product causes, aids, facilitates or contributes to causing weight loss;
- C. Such product causes, aids, facilitates or contributes to causing rapid weight or body fat loss;
- D. Such product causes or assists in causing weight or fat loss without dieting or strenuous exercise;
- E. Such product reduces serum cholesterol levels;
- F. Such product increases human metabolism;
- G. Such product increases lean body mass and builds muscle;
- H. Such product increases energy or stamina;
- I. Such product controls appetite and/or craving for sugar; or
- J. Such product regulates or controls blood sugar;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS ORDERED that respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device,

in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of L-Carnitine, Super Fat Burner Formula, or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product improves fat metabolism, which causes loss of body fat;
- B. Such product causes, aids, facilitates or contributes to achieving fat loss;
- C. Such product causes, aids, facilitates or contributes to achieving weight loss;
- D. Such product causes, aids, facilitates or contributes to muscle toning; or
- E. Such product enhances athletic performance and/or stamina;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's

IV.

IT IS FURTHER ORDERED that respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

V.

IT IS FURTHER ORDERED that respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, or offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 C.F.R. § 255.0(b)) of a product or program represents the typical or ordinary experience of members of the public, who use the product or program, unless at the time of making such a representation, the representation is true, and respondent possessed and relied upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

PROVIDED, however, respondent may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondent discloses clearly and prominently and in close proximity to the endorsement:

- a. what the generally expected performance would be in the depicted circumstances; or
- b. the limited applicability of the endorser's experience to what consumers may generally expect to achieve,

i.e., that consumers should not expect to experience similar results.

VI.

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

VII.

X.

IT IS FURTHER ORDERED that the respondent shall, within thirty (30) days after service of this order, distribute a copy of this order to all agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other sales materials covered by this order, and shall obtain from each such agent, representative or employee a signed statement acknowledging receipt of the order.

XI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this order.

XII.

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

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

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

By the Commission.

Benjamin I. Berman
Acting Secretary

ISSUED: January 22, 1997