

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)	FILE NO. 962 3172
)	
AMERIFIT, INC.,)	AGREEMENT CONTAINING
a corporation.)	CONSENT ORDER

acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

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 by others in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "respondent" shall mean AmeriFIT, Inc., a corporation, its successors and assigns, and its 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.

4. "The Fat Burners products" shall mean products using the terms "fat burners" and "fast burners" in their trade names, including but not limited to, Fat Burners, Fast Burners, Improved Formula Fat Burners, and Extra Strength Fat Burners.

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 the Fat Burners products or any other 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:

A. That such product can or will cause weight loss; or

B. That such product can or will reduce body fat,

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 partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Fat Burners or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name "Fat Burners" or any other name that communicates the same or similar meaning for such product; provided, however, that nothing in this Order shall prevent the use of the name "Fat Burners Diet, Exercise, and Supplement System" if 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."

For purposes of this Order, "clearly and prominently" shall mean as follows:

- A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of such 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 video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence 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. Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

- C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
- D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement; and
- E. On a product label, the disclosure shall be on the front panel of the label in immediate proximity to the largest presentation of the name, in a prominent type thickness and in a type size no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

III.

IT IS FURTHER ORDERED that respondent shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, the sum of one hundred thousand dollars (\$100,000). Respondent shall make this payment on or before the thirtieth day following the date of issuance of this order. In the event of any default of any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment.

IV.

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, or under any new drug application approved by the Food and Drug Administration.

V.

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 Food and Drug Administration pursuant to the Nutritional Labeling and Education Act of 1990.

VI.

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 Federal Trade Commission for inspection and copying:

- A. All advertisements, labeling, and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VII.

IT IS FURTHER ORDERED that, for a period of five years commencing with the date of issuance of this order, 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 this 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.

VIII.

IT IS FURTHER ORDERED that respondent 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, 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 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. 20580.

IX.

IT IS FURTHER ORDERED that respondent 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.

X.

This order will terminate twenty (20) years from the date of its issuance, 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 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 that th

Signed this ____ day of _____, 1996.

AMERIFIT, INC.

By: _____
MARTIN HERMAN
President and
Chief Executive Officer

NANCY L. BUC
Buc & Beardsley
Attorney for respondent

PHILIP KATZ
Buc & Beardsley
Attorney for respondent

FEDERAL TRADE COMMISSION

JEFFREY E. FEINSTEIN
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Commission

APPROVED:

JUSTIN DINGFELDER
Assistant Director
Division of Enforcement

ELAINE D. KOLISH
Associate Director
Division of Enforcement

JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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)
AMERIFIT, INC.,) DOCKET NO.
a corporation.)
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COMPLAINT

The Federal Trade Commission, having reason to believe that

B. "LOSE WEIGHT NOW! . . . Introducing FAT BURNERS, America's choice for nutritional weight loss support. If your goal is a thinner, more attractive body, then let FAT BURNERS lead the way." (Exhibit B).

5. Through the means described in Paragraph 4, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that the Fat Burners products cause weight loss or reduce body fat.

6. Through the means described in Paragraph 4, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5 at the time the

THEREFORE, the Federal Trade Commission this ____ day of
____, 199_, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL

[Exhibits A-B attached to paper copies of complaint, but not
available in electronic form.]

ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

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 reduce 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.