

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of )  
 )  
 )  
BODYWELL, INC., also doing ) FILE NO. 972-3021  
 business as BODYWELL U.S.A., )  
 a corporation, and )  
 )  
GERARD DU PASSAGE, ) AGREEMENT CONTAINING  
 individually and as an officer ) CONSENT ORDER  
 of the corporation. )  
 )  
 )  

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The Federal Trade Commission has conducted an investigation of certain acts and practices of BodyWell, Inc., a corporation, and Gerard du Passage, individually and as an officer of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between BodyWell, Inc., by its duly authorized officer, and Gerard du Passage, individually and as an officer of the corporation, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent BodyWell, Inc., also doing business as BodyWell U.S.A., is a Delaware corporation with its principal office or place of business at 27 West 20th Street, Suite 1001, New York, NY 10011.

1.b. Proposed 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. His principal office or place of business is the same as that of BodyWell, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, 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 respondents 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 respondents, (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 decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive 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 respondents have read the draft complaint and consent order. They understand that they 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 in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondents" shall mean BodyWell, Inc., a corporation, its successors and assigns and its officers; Gerard du Passage, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

- A. Such product causes significant weight loss, with or without changes in diet or exercise;
- B. Such product causes weight loss at any particular rate or speed, or within any time period; or
- C. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

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

## II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not use the name "Slimming Soles" 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, 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 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, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

- B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
1. what the generally expected results would be for users of the product, or
  2. the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).

#### IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of 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, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, shall not violate any provision of the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, as amended, effective March 1, 1994, 58 Fed. Reg. 49095.

#### VI.

IT IS FURTHER ORDERED that respondents shall pay to the Commission as consumer redress the sum of one hundred thousand dollars (\$ 100,000.00) no later than the date this order becomes final. Such payment shall be deposited into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Slimming Soles 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

representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

IT IS FURTHER ORDERED that respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

IX.

IT IS FURTHER ORDERED that respondent BodyWell, Inc. 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. 20580.

X.

IT IS FURTHER ORDERED that respondent Gerard du Passage, for a period of four (4) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his

current business or employment, or of his affiliation with any new business or employment whose activities relate to the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any dietary supplement, drug, device, or weight loss product or program, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, for which any health or weight loss claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his 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. 20580.

XI.

IT IS FURTHER ORDERED that respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

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 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.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

BODYWELL, INC.

By: \_\_\_\_\_  
GERARD DU PASSAGE  
President

\_\_\_\_\_  
GERARD DU PASSAGE, individually

\_\_\_\_\_  
LINDA A. GOLDSTEIN  
JEFFREY S. EDELSTEIN  
DEBRA A. FREEMAN  
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APPROVED:

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Associate Director  
Division of Advertising Practices

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JOAN Z. BERNSTEIN  
Director  
Bureau of Consumer Protection

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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In the Matter of	)	
	)	
BODYWELL, INC., also doing	)	
business as BODYWELL U.S.A.,	)	DOCKET NO.
a corporation, and	)	
	)	
GERARD DU PASSAGE,	)	
individually and as an officer	)	
of the corporation.	)	

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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 10011.
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,*

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

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

...

'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.

...

**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 5, 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 5, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely



**Analysis of Proposed Consent Order  
To Aid Public Comment**

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,

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.

Parts VII through IX relate to respondents' obligations to maintain and make available to the Commission certain records; to provide copies of the order to respondents' personnel; and to notify the Commission of structural changes in the corporation. Part X requires Gerard du Passage to notify the Commission if he leaves his current employment or he affiliates with any new business or employment whose activities relate to the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any dietary supplement, drug, device, or weight loss product or program for which any health or weight loss claim is made. Part XI requires respondents to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty years, under certain circumstances.

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 in any way their terms.