

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

In the Matter of)	FILE NO. 912 3220
)	
)	
DEAN DISTRIBUTORS, INC.,)	AGREEMENT CONTAINING
a corporation, doing business as)	CONSENT ORDER TO
ADVANCED HEALTH CARE SYSTEMS,)	CEASE AND DESIST
CAMBRIDGE DIRECT SALES, and MEDIBASE.)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of Dean Distributors, Inc., a California corporation, and it now appearing that Dean Distributors, Inc., is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Dean Distributors, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission, that:

1. Proposed respondent Dean Distributors, Inc., ("proposed respondent" or "respondent") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 1350 Bayshore Hwy., Suite 400, Burlingame, California 94010. Advanced Health Care Systems, an operating division of Dean Distributors doing business as Cambridge Direct Sales and MediBase, has its offices and principal place of business at 2801 Salinas Hwy., Building F, Monterey, California 93940-6420.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 504.

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 attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the 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 require) and decision, in disposition of the proceeding.

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

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 § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist 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 by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the attached draft complaint and the following Order. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports to monitor

respondent's compliance with this agreement and Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after the Order becomes final.

ORDER

Definitions

- A. For purposes of this Order, "competent and reliable scientific evidence" shall mean those 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.
- B. "Weight loss program," or "diet program," shall mean any program designed to aid consumers in weight loss or weight maintenance; including, but not limited to, the "Food for Life Weight Management System," which includes the "Cambridge Diet Plan," the "Food for Life" weight loss programs, the "Maintain for Life" weight maintenance program; the "MediBase" medically-monitored weight management program; and related weight loss and weight maintenance programs and related food products and/or nutritional products.
- C. "Very low calorie diet," or "VLCD," shall mean any dietary regimen that provides 800 calories or less per day.
- D. "Distributor" shall mean any purchaser or other transferee of any weight loss product or program who acquires or has acquired, with or without valuable consideration, said product or program and who is or has been engaged in the resale of said product or program to other distributors or to end-use consumers. "Distributor" shall include, but is not limited to, any "counselor," "unit leader," "division manager," "area distributor," "circle of champions" member and all other providers of respondent's weight loss programs.
- E. For any Order-required disclosure in print media that is disseminated, either directly from respondent, or indirectly through respondent's distributors, to be made "clearly and prominently," or in a "clear and prominent manner," it must be given both in the same type style and in: (1) twelve (12) point type where the representation that triggers the disclosure is given in twelve (12) point or larger type; or (2) the same type size as the representation that triggers the disclosure where the representation is given in a type size smaller than twelve (12) point type.

F. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

I.

IT IS ORDERED that respondent Dean Distributors, Inc., a California corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of respondent's very-low-calorie diet ("VLCD") programs unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of any weight loss program.

B. Failing to provide to end-use consumers documents prepared for physicians that clearly and prominently disclose the health risks and complications that have been associated with very-low-calorie diets, including but not limited to the fact that VLCDs have been associated through published clinical studies with an increased risk of developing gallstones.

C. Misrepresenting the likelihood that participants of respondent's diet program(s) will regain all or any portion of lost weight.

D. Using any advertisement containing an endorsement or testimonial about weight loss or weight-loss maintenance success by a customer or customers of respondent's weight loss programs if the weight loss or weight-loss maintenance success depicted in the advertisement is not representative of what customers of respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss or weight-loss maintenance success the following statement:

"Results not typical."

Provided that if the endorsements or testimonials covered by this paragraph are in a broadcast medium, the disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure;

E. Making any representation, directly or by implication, about the success of customers on any diet program in achieving or

close proximity to such representation, the following information:

- (1) the average percentage of weight loss maintained by those customers;
- (2) the duration, over which the weight loss was maintained, measured from the date that customers ended the active weight loss phase of the program,

provided, however, that if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed;
- (3) the statement: "[respondent] makes no claim that this [these] result[s] is [are] representative of all customers in the [respondent's diet] programs;" and

provided, however, that if the customer population referred to is representative of the general customer population for that program, respondent is not required to make this statement;
- (4) the statement: "For many dieters, weight loss is temporary,"

provided, however, that respondent shall not represent, directly or by implication, that this statement does not apply to dieters in respondent's programs.

G. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey; the rate or speed at which any participant in any weight loss program has experienced or will experience weight loss; or the performance, efficacy, safety, or benefits of any weight loss program or weight loss product.

H. Representing, directly or by implication, that prospective participants in respondent's weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

II.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent such as dissolution,

assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III.

IT IS FURTHER ORDERED that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors or assigns, shall maintain and upon request make available to the Federal Trade Commission staff for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question any such claim or representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

IT IS FURTHER ORDERED that respondent shall forthwith distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees, that, directly or through any other corporation, subsidiary, division, or any other device, are engaged in the preparation and placement of advertisements or promotional materials, who communicate with customers or prospective customers, or who have any responsibilities with respect to the subject matter of this Order. Respondent shall also distribute a copy of this Order to all future officers, agents, representatives, independent contractors, and employees for a period of ten (10) years from the date of entry of this Order. This paragraph shall not apply to distributors, who are addressed in paragraph V.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall distribute, within thirty (30) days after service of this Order, a copy of this Order to, and obtain a signed and dated acknowledgment of receipt thereof from, each distributor who has acquired at least 300 cans of respondent's product in any one year;

B. Respondent shall distribute a copy of this Order to each future distributor who acquires at least 25 cans of respondent's product in any one month within thirty (30) days of the month in which that individual or entity acquires those cans, and shall obtain a signed and dated acknowledgment of receipt thereof;

C. Respondent shall institute a reasonable program of surveillance adequate to reveal whether any of respondent's distributors are engaging in acts or practices prohibited by this Order;

D. Respondent further shall (1) take reasonable steps to notify promptly any distributor that respondent determines is failing materially or repeatedly to comply with any Order provision; (2) provide the Federal Trade Commission with the name and address of the distributor and the nature of the noncompliance if the distributor fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that distributor has been notified as required by subparagraph V.D.(1) and continues conduct that constitutes a material or repeated violation of the Order, terminate the distributor, as permitted by applicable state law; and

E. Respondent shall retain and make available to the Commission upon request the originals of the signed and dated acknowledgments required under subparagraphs V.A. and V.B.

VI.

IT IS FURTHER ORDERED that 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 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 (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 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.

VII.

IT IS FURTHER ORDERED that respondent and its successors or assigns shall, within sixty (60) days after service of this

Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Signed this _____ day of _____, 19____.

DEAN DISTRIBUTORS, INC., a corporation

By: _____,

(Name and Title)

Ted J. Hannig
Edward G. Rogan
Ropers, Majeski, Kohn, Bently,
Wagner & Kane
Counsel for Respondent

FEDERAL TRADE COMMISSION

By: _____
Walter C. Gross, III

James Reilly Dolan
Counsel for the Federal Trade Commission

APPROVED:

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
DEAN DISTRIBUTORS, INC.,)	DOCKET NO.
a corporation, doing business as)	
ADVANCED HEALTH CARE SYSTEMS,)	
CAMBRIDGE DIRECT SALES, and)	
MEDIBASE.)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Dean Distributors, Inc., a corporation, through Advanced Health Care Systems, an operating division of Dean Distributors, Inc.,

drinking three formula drinks per day, and are referred to as very-low-calorie diet ("VLCD") programs. VLCDs are rapid weight loss, modified fasting diets of 800 calories or less per day requiring medical supervision. Other Food for Life Weight Management System diet programs allow an additional 400 calories per day in conventional food products. These programs, consisting of 820 calories per day, are referred to as low-calorie diets ("LCDs"). In addition, the Food for Life Weight Management System diet programs consist of behavior modification, motivational counseling, exercise, and weight-loss maintenance. The Food for Life Weight Management System diet programs consist of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52, 55.

PARAGRAPH FOUR: The MediBase diet program is a medically-supervised three step program. The first step is a VLCD program providing 420 calories per day, obtained by drinking three formula drinks per day. The second step is an LCD program combining 420 calories per day, obtained by drinking three formula drinks per day, and an additional 400 calories per day, in conventional food products. The third step is a weight-loss maintenance program. In addition, the MediBase diet program consists of behavior modification, motivational counseling, and exercise. The MediBase diet program consists of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. §§ 52, 55.

PARAGRAPH FIVE: 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, 15 U.S.C. § 44.

PARAGRAPH SIX: Respondent has disseminated or has caused to be disseminated advertisements for weight reduction and weight control products and programs. Respondent has created and provided camera-ready advertising copy to its participating distributors, referred to as "counselors," for placement in various periodicals that are in general circulation to the public, to promote the Food for Life Weight Management System diet programs to prospective customers. Respondent has further advertised its weight loss programs and products through the use of promotional materials, including pamphlets and brochures, given to customers and prospective customers by individual distributors referred to as "counselors."

PARAGRAPH SEVEN: Respondent's advertisements include but are not necessarily limited to the advertisements and promotional materials entitled "Program Guide" ©1992 (attached hereto as Exhibit A); "Program Guide" ©November 1992 (attached hereto as Exhibit B); "Physician Monitoring Guidelines" (attached hereto as Exhibit C); "A taste for success!" (attached hereto as Exhibit

D); "Treat Your Body With Ultimate Respect" (attached hereto as Exhibit E); two issues of "Breakthrough" (attached hereto as Exhibits F and G); and "If You Have Weight-Related Health Problems and Must Lose Weight . . ." (attached hereto as Exhibit H).

SAFETY CLAIMS

PARAGRAPH EIGHT: Respondent's advertisements referred to in PARAGRAPHS SIX and SEVEN, including but not necessarily limited to attached Exhibits A-H, include the following statements:

- (a) "The Food for Life Weight Loss Programs deliver their promise. You can lose weight safely. ... as much as 7 pounds in just one week." (Exhibit A, page 2)
- (b) "Nothing is as Simple ... Safe ... Effective ..."
(Exhibit B, page 3)
- (c) "Fast, effective, safe weight reduction!" (Exhibit E)
- (d) "If You Have Weight-Related Health Problems And Must Lose Weight... ...There Is A Medically Directed Program For You ... Nutritionally complete, excellent tasting **MediBase**® meal replacement ... Proven safe and effective in University testing" (Exhibit H)
(emphasis in original)

PARAGRAPH NINE: Through the use of the statements contained in the advertisements referred to in PARAGRAPH EIGHT, including but not necessarily limited to the statements in the advertisements attached as Exhibits A, B, E, and H, respondent has represented, directly or by implication, that the Food for Life Weight Management System and MediBase VLCD diet programs are unqualifiedly free of serious health risks.

PARAGRAPH TEN: Respondent has failed to disclose adequately that physician supervision is required to minimize the potential risk of the development of health complications to consumers on very-low-calorie diet programs. In view of the representation that the Food for Life Weight Management System and MediBase VLCD diet programs are free of serious health risks, the disclosure as to the requirement for medical supervision is necessary. The failure to adequately disclose this fact, in light of the representation as set forth in PARAGRAPH NINE, was, and is, false and misleading.

PARAGRAPH ELEVEN: Respondent has provided purchasers and prospective purchasers who elect to follow a very-low calorie diet protocol with a pamphlet, entitled "Physician Monitoring Guidelines" (Exhibit C), which contains the following statement:

"Occasional side effects have been reported in association with the use of a VLCD. In general, these symptoms are mild and transient.

Fatigue

Cold intolerance

Headache

Orthostatic hypotension

and, with less frequency, halitosis, dry mouth, constipation, diarrhea, epigastric discomfort, flatulence, muscle cramps, amenorrhea, temporary hair loss, and decreased libido.

Most symptoms subside after the initial phase of dieting, or upon resumption of a normal eating pattern. Many of the side effects can be avoided by maintaining adequate fluid intake (i.e. two liters of water or non-caloric, low-sodium, decaffeinated liquid)."

Food For Life dieter] will be in 'Control for Life.'" (Exhibit A, page 2)

- (c) "The Cambridge Food For Life Nutrition and Weight Management System is remarkably effective in providing long-term weight management." (Exhibit B, page 11)
- (d) "Andrea Ileo has good reason to show off... she is a product of the product! Ten years ago Andrea went from 170+ lbs. ['before' photo] to ... WOW! ['after' photo]" (Exhibit F, page 7)
- (e) "... Marie Carner, an inspiration to many, who lost 40 pounds and has kept it off for 2 years. Recently Marie sole sourced, losing an additional 12 pounds. She's fit, feels tremendous, and looks fantastic!" (Exhibit G, page 1)

PARAGRAPH FIFTEEN: Through the use of the statements contained in the advertisements or promotional materials referred to in PARAGRAPH FOURTEEN, subparagraphs (a)-(c), including but not necessarily limited to the statements in the advertisements attached as Exhibit A and B, respondent has represented, directly or by implication, that most Food for Life Weight Management System customers reach and maintain their weight loss goals either long-term or permanently.

PARAGRAPH SIXTEEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOURTEEN, subparagraphs (a)-(c), including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time respondent made the representation set forth in PARAGRAPH FIFTEEN, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SEVENTEEN: In truth and in fact, at the time respondent made the representation set forth in PARAGRAPH FIFTEEN, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH SIXTEEN was, and is, false

ordinary experience of members of the public who have used the program.

PARAGRAPH NINETEEN: Through the use of the statements referred to in PARAGRAPH FOURTEEN, subparagraphs (d) and (e), including but not necessarily limited to the advertisements attached as Exhibits F and G, respondent has represented, directly or by implication, that at the time they made the representation set forth in PARAGRAPH EIGHTEEN, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PARAGRAPH TWENTY: In truth and in fact, at the time

- (a) "You can lose 2 to 5 pounds per week on the Regular Program." (Exhibit A, page 3; Exhibit B, page 10)
- (b) "You can lose weight safely, quickly, and easily. ... as much as 7 pounds in just one week." (Exhibit A, page 2)

PARAGRAPH TWENTY-FIVE: Through the use of the statement contained in the advertisements referred to in PARAGRAPH TWENTY-FOUR, subparagraph (a), including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of two to five pounds per week.

PARAGRAPH TWENTY-SIX: Through the use of the statement contained in the advertisement referred to in PARAGRAPH TWENTY-FOUR, subparagraph (b), including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that an appreciable number of consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of seven pounds per week.

PARAGRAPH TWENTY-SEVEN: Through the use of the statements referred to in PARAGRAPH TWENTY-FOUR, including but not necessarily limited to the advertisement attached as Exhibit A,

PARAGRAPH THIRTY: The acts and practices of respondent alleged in this complaint constitute deceptive acts or practices in or affecting commerce and "false advertisements" in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

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-H 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 an agreement to a proposed consent order from Dean Distributors, Inc, a corporation doing business as Advanced Health Care Systems, Cambridge Direct Sales and Medibase. Proposed respondent markets low calorie and very low calorie diet programs through a multi-level distribution system and directly to independent physicians.

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 will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission has alleged that proposed respondent has made false and unsubstantiated claims in its advertising, promotional and sales materials that are likely to mislead consumers as to: (1) the likelihood of success in achieving and maintaining weight reduction; and (2) the health risks associated with rapid weight loss. Proposed respondent has represented, through consumer endorsements, that its diet programs produce successful results. The consumers featured in these testimonials purportedly achieved remarkable success in reaching a desired weight, and in changing their appearance. Through these consumer endorsements, proposed respondent has represented that the success achieved by such consumers in reaching their weight loss goal reflects the typical or ordinary experiences of participants of respondent's weight loss programs. The Commission has alleged that proposed respondent had failed to substantiate the claim that the weight loss success experienced by persons featured in these testimonial advertisements is representative of what consumers will generally achieve with the products.

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

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.