

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
) FILE NO. 962-3137
)
 GUILDWOOD DIRECT LIMITED, also doing)
 business as INTERMED LABORATORIES,) AGREEMENT CONTAINING
 a corporation.) CONSENT ORDER
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)

The Federal Trade Commission has conducted an investigation of certain acts and practices of Guildwood Direct Limited, a corporation, ("proposed respondent"). Proposed respondent, having been represented by counsel, is 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 Guildwood Direct Limited, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Guildwood Direct Limited, also doing business as Intermed Laboratories, is a Delaware corporation with its principal office or place of business at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York 14302.
2. Proposed respondent admits all the jurisdictional facts set forth in the 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; 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.

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. "Clearly and prominently" shall mean as follows:
 - A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration 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.
 - B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.
 - C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that the ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or the first page.
 - D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "respondent" shall mean Guildwood Direct Limited, a corporation, its successors and assigns and its officers, agents, representatives and employees.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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 any product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. Such product causes significant weight loss, with or without changes in diet or exercise; or
- B. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

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 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 Insoles" 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, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER 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 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, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondent discloses, 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 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 any product in or affecting commerce, shall not represent, in any manner, expressly or by implication, that Advance Bio/Natural Research Labs is a bona fide, independent research organization or that it has published a report containing the results of valid, independent testing of such product.

V.

IT IS FURTHER 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 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:

- A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research; or
- B. The existence, nature, purpose or activities of any organization.

VI.

IT IS FURTHER ORDERED that:

A. Respondent shall pay to the Commission as consumer redress the sum of forty thousand dollars (\$40,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of seven thousand and five hundred dollars (\$7,500) no later than the date this order becomes final. Such payment shall be deposited into an escrow account to be designated by the Commission for the purpose of receiving payment due under this order.

B. In the event of respondent's default on the \$7,500 payment set forth in subpart A above, the amount of forty thousand dollars (\$40,000), less the sum of payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondent, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. Any funds paid by respondent pursuant to subparts A and B above shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the Slimming Insoles. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified

as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. The Commission's acceptance of this Order is expressly premised upon the financial statements and related documents provided by respondent to the Commission on November 18, 1996. After service upon respondent of an order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondent shall be given an opportunity to present evidence on this issue. If, upon consideration of respondent's evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of forty thousand dollars (\$40,000), less the sum of any payments made under subpart A above, to become immediately due and payable to the Commission, and interest computed at the rate prescribed in 29 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Commission may initiate to enforce this Order.

VII.

IT IS FURTHER ORDERED that respondent Guildwood Direct Limited, and its successors and assigns, 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 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 its 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.

VIII.

IT IS FURTHER ORDERED that respondent Guildwood Direct Limited, and its successors and assigns, 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. 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. Respondent 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 Guildwood Direct Limited, 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 Guildwood Direct Limited, and its successors and assigns, 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.

XI.

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__

GUILDWOOD DIRECT LIMITED

By: _____
DAVID C. STUCKY
President

SHELDON S. LUSTIGMAN
Attorney for Respondent

BETH GROSSMAN
Counsel for the Federal Trade
Commission

JEFFREY I. BLOOM
Counsel for the Federal Trade
Commission

APPROVED:

C. LEE PEELER
Associate Director
Division of Advertising Practices

JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

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3. 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.

4. Respondent has disseminated or has caused to be disseminated advertisements for Slimming Insoles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR!

"I LOST 74 POUNDS" Angela Meisel

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Erina Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but

stimulated to function effectively so the bodies [sic]
metabolism works normally and does not store excess fat!

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit." **Carmen Steffens-Baum**

"I'LL STAKE MY MEDICAL REPUTATION ON IT."

R METZ, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight, and rid your body of the flab while aiding your dietary system. They WILL work for you, or we'll refund every cent you paid for them. NO questions asked." (Exhibit A - Print Advertisement).

B. [Heading at top of page:]

"ADVANCE BIO/NATURAL
RESEARCH LABS

RESEARCH REPORTS

DATA CONTROL

FILE NO 97644KC
CASE HISTORIES [illegible]
TEST GROUP NC-46009

CASE FILE REGARDING:

DR. ROBERT METZ, M.D. SLIMMING INSOLES

STATEMENT:

Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. [sic] Slimming Insoles

...

CASE 2

Control Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

58% of the individuals tested lost 14 lbs. or more.

27% of the individuals tested lost 10 lbs. to 14 lbs.

15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

...

CASE 7

Individual Success Story - Subject Gabriele Geiger

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone.

...

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals." (Exhibit B - Direct Mail Advertisement).

- C. "Would you like to lose 10 lbs. like 15% of the test group did...or 14 lbs. like 27% did...or over 14 lbs. like 58% did? Or would you like to lose 20 lbs...30 lbs....50 lbs. or even 74 lbs. like Angela Meisel did -- without dieting or exercising?"

Then you must read this important message and join the over 370,000 Europeans who have discovered a NEW secret to weight loss!

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 478 people, the medical test results were announced as "Very Good"!. A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds" - with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

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Wouldn't you like to lose those extra pounds you put on over the years...And would you like to achieve all this without dieting or strenuous exercising?

...

**Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy--Not Fat!**

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat.

Dr. Metz's Slimming Insoles Are The First And Only Insoles That Reduce Weight And Regulate The Digestive System.

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund -- no questions asked." (Exhibit C - Direct Mail Advertisement).

5. Through the trade name "Slimming Insoles," and the means described in Paragraph 4, respondent has represented, expressly or by implication, that:
 - A. Slimming Insoles cause significant weight loss.
 - B. Slimming Insoles cause significant weight loss without changes in diet or exercise.
 - C. Testimonials from consumers appearing in the advertisements for Slimming Insoles reflect the typical or ordinary experience of members of the public who have used the product.

6. Through the trade name "Slimming Insoles," and the means described in Paragraph 4, 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 representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

[Exhibits A-C 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 Guildwood Direct Limited ("respondent").

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 respondent with deceptively advertising Slimming Insoles, 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 Insoles 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 Washington Post, New York Post, Denver Post and St. Louis Post, in newspaper inserts, in magazines such as American Women, Soap Opera Update and Woman's Own as well as in nationwide direct mailings.

The complaint alleges that, through the product name "Slimming Insoles" and the advertisements, respondent made unsubstantiated representations that the Slimming Insoles cause significant weight loss and that the weight loss occurs without changes in diet or exercise. According to the complaint, the ads also claim, without adequate substantiation, that testimonials from consumers appearing in the ads reflect the typical or ordinary experience of people who have used the product.

The complaint also alleges that respondent falsely represented that scientific studies demonstrate that the Slimming Insoles cause significant weight loss without changes in diet or

exercise. In addition, the complaint alleges that respondent falsely represented that an organization named Advanced Bio/Natural Research Labs is a bona fide, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles.

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

Part I of the order requires respondent 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. Part II prohibits respondent from using the name "Slimming Insoles" or any other name in a manner that represents that any product causes weight loss, unless respondent possesses competent and reliable scientific evidence that substantiates the representation.

Part III prohibits respondent 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 product, unless, at the time, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation or respondent discloses, clearly and prominently, and in close proximity to the testimonial or endorsement, what the generally expected results would be or that consumers should not expect to experience similar results.

Part IV prohibits respondent from representing that Advance Bio/Natural Research Labs is a bona fide, independent research organization or that it has published a report containing the results of valid, independent testing of any product. Part V prohibits, in connection with the sale of any food, dietary supplement, drug, device or weight loss product or program, misrepresentations of the existence, contents, validity, results, conclusions or interpretations of any test, study or research or the existence, nature, purpose or activities of any organization.

Part VI requires respondent to deposit \$40,000 into an escrow account, which will be used by the Commission to provide either direct redress to purchasers of the Slimming Insoles or will be paid to the United States Treasury, if the Commission determines that direct redress to consumers is wholly or partially impracticable. The order suspends the full \$40,000

liability, however, provided that respondent pays \$7,500 to the Commission no later than the date the order becomes final. The full \$40,000 becomes due, however, should respondent default in making the \$7,500 payment. In addition, the Commission's acceptance of the order is expressly premised upon financial statements and related documents provided by the respondent, and the Commission reserves the right to re-open the proceeding to determine if the financial information provided by respondent