

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	DOCKET NO. 9260
)	
JENNY CRAIG, INC.,)	AGREEMENT CONTAINING
a corporation, and)	

pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. 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 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 respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

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

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue 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 decision and order to respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. 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.

8. Respondents have read the 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 the purposes of this order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, surveys or other

evidence based on the expertise of professionals in the relevant area, that have 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" shall mean any program designed to aid consumers in weight loss or weight maintenance.

C. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

D. For any order-required disclosure in a print medium to be

unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation; provided, further, that for any representation that:

(1) any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) all participants who have entered the program, where the representation relates to such persons; provided,

proximity to such representation, the statement: "For many dieters, weight loss is temporary.";

provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program;

provided, however, that a truthful statement that merely describes the existence, design or content of a weight maintenance or weight management program or notes that the program teaches clients about how to manage their weight will not, without more, be considered for purposes of this Order a representation regarding weight loss maintenance success;

C.

of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

(2) for a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B and subparagraphs I.C. (1)-(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein;

MAINTENANCE INFORMATION

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

**[Disclosure of maintenance statistics goes
hereXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX]
For many dieters, weight loss is temporary.**

I have read this notice. _____
(Client Signature) (Date)

(b) require each potential client to sign such document; and

(c) give each client a copy of such document; and

(3) retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that: (1) compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondents must comply with both paragraph I.D. and paragraph I.C. of this order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Jenny Craig customers in losing weight or maintaining achieved weight loss; provided, however, that in determining the generally expected success for Jenny Craig customers, respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to change of residence or medical reasons, such as pregnancy; and that for endorsements or testimonials about weight loss success, respondents can satisfy the requirements of this subparagraph by accurately disclosing:

(a) the generally expected success for Jenny Craig customers in the following phrase: "Weight loss averages (number) lbs. over __ weeks"; or

(b) the average number of pounds lost by Jenny Craig customers, using the following phrase: "Average weight loss (number) lbs. More details at centers"; and, for a period of time beginning with the date of the first dissemination of any such advertisement and ending no sooner than thirty days after the last dissemination of such advertisement, making in any on-site video promotion the preceding disclosure orally and complying with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(I) give to each potential client a separate one-page document with an appropriate title that alerts customers that important information follows, which shall disclose, clearly and prominently, what the generally expected success would be for Jenny Craig customers in losing weight, expressed in terms of both average number of pounds lost and average duration of participation in the Jenny Craig program; such document shall be formatted in the following type size and style: heading (Helvetica 14 pt. bold), disclosures (Helvetica 14 pt. bold), signature block (Times Roman 12 pt.), and any other language (no larger than 14 pt.); provided, further, that no information that contradicts this information shall be included in the document required by this subparagraph;

(ii) ask each potential client to sign such document;

(iii) give each client a copy of such document; and

(iv) retain in each client file a copy of the notice provided to clients under the requirements of this subparagraph; or

(2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve; i.e., that consumers should not expect to experience similar results; respondents can satisfy the requirements of this subparagraph by clearly and prominently disclosing in close proximity to the representation one of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____ 's success is not typical. You may not do as well."

(e) "_____ 's experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, however, that a truthful statement that merely describes the existence, design or content of a weight maintenance or weight management program or notes that the program teaches clients how to manage their weight, or which states either through the endorser or in nearby copy that under the program "weight loss maintenance is possible," or words to that effect, will not, without more, be considered for purposes of this paragraph a representation regarding weight loss maintenance success or trigger the need for separate or additional maintenance disclosures required by other paragraphs of the order;

provided, further, that:

(I) a representation about maintenance by an endorser that states a number or percentage, or uses descriptive terms that convey a quantitative measure, such as "I have kept off most of my weight loss for 2 years," shall be considered a representation regarding weight loss maintenance success;

(ii) if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any 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.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either (1) in close proximity to such representation, the existence and amount of all mandatory costs and fees associated with the program offered; or (2) in immediate conjunction with such representation, the following statement: "Plus the cost of [list of products or services that participants must purchase at additional cost].";

provided, further, that in a broadcast medium, if the representation that triggers the disclosure is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Misrepresenting, directly or by implication, the rate or speed at which any participant in any weight loss program has experienced or will experience weight loss.

K. Failing to disclose, clearly and prominently, in writing either:

- 1) to all participants when they enter the program; or
- 2) to each participant whose average weekly weight loss exceeds two percent (2%) of his or her initial body weight, or three pounds, whichever is less, for at least two consecutive weeks;

that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Misrepresenting, directly or by implication, the performance, efficacy, price, safety, or benefits of any weight loss program or weight loss product.

M. Representing, directly or by implication, that participants on any weight loss program recommend or endorse the program unless, at the time of making any such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

N. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey.

II.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change 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 three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission 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 such representation, or the basis relied upon for such representation, including complaints from consumers.

IV.

IT IS FURTHER ORDERED that respondents shall distribute a copy of this order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this order; and, for a period of ten (10) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall distribute a copy of this order to

ruling is upheld on appeal.

VII.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the date of service of this order, and one year thereafter, 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_____.

JENNY CRAIG INC., a corporation.

By _____
Sidney Craig
Chief Executive Officer

JENNY CRAIG INTERNATIONAL, INC., a corporation.

By _____
Sidney Craig
Chief Executive Officer

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Counsel for Respondents

FEDERAL TRADE COMMISSION

By _____

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APPROVED:

Jeffrey Klurfeld
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CONCUR:

Joan Z. Bernstein
Director
Bureau of Consumer Protection

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

In the Matter of)	
)	
JENNY CRAIG, INC.,)	
a corporation, and)	DOCKET NO. 9260
)	
JENNY CRAIG INTERNATIONAL, INC.,)	
a corporation.)	
)	

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Jenny Craig, Inc., a corporation, and Jenny Craig International, Inc., a corporation ("Jenny Craig" or "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent Jenny Craig International, Inc., a California Corporation, is a wholly-owned subsidiary of respondent Jenny Craig, Inc., a Delaware Corporation. Jenny Craig, Inc. dominates and controls the acts and practices of Jenny Craig International, Inc. Both corporations maintain their offices and principal places of business at 445 Marine View Avenue, #300, Del Mar, California 92014.

PARAGRAPH TWO: Respondents have advertised, offered for sale, and sold weight loss and weight maintenance services and products, including 1000 to 1500 calorie-a-day weight loss programs which they make available to consumers at numerous company-owned and franchised "Jenny Craig Weight Loss Centres" nationwide. These products also include "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PARAGRAPH THREE: The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondents have disseminated or have caused to be disseminated advertisements for the Jenny Craig Weight Loss Program, including but not necessarily limited to the attached Exhibits A through V.

SUCCESS CLAIMS

PARAGRAPH FIVE: The advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibits A through I and Exhibit N, contain the following statements:

- (a) "Jeanne-Mer Garcia lost 81 lbs." (Exhibit A)
- (b) "Maggie Cardoza lost 105 lbs." (Exhibit B)
- (c) "Toni Todd lost 32 lbs." (Exhibit C)
- (d) "Carol Puckett lost 100 lbs." (Exhibit D)
- (e) "Faith Shipp lost 95 lbs." (Exhibits E and N)
- (f) "[Claudine St. Clair] lost 18 lbs." (Exhibit F)
- (g) "Evelyn Moore lost 52 lbs." (Exhibit G)
- (h) "Jaynie Qualls lost 71 lbs." (Exhibit H)
- (I) "Kathy Chamblin lost 73 lbs." (Exhibit I)

PARAGRAPH SIX: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FIVE, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-I and N, respondents have represented, directly or by implication, that Jenny Craig customers typically are successful in reaching their weight loss goals.

PARAGRAPH SEVEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FIVE, including but not necessarily limited to the statements in the advertisements attached as Exhibits A-I and N, respondents have represented, directly or by implication, that at the time they made the representation set forth in PARAGRAPH SIX, respondents possessed and relied upon a reasonable basis that substantiated the representation.

PARAGRAPH EIGHT: In truth and in fact, at the time they made the representation set forth in PARAGRAPH SIX, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH SEVEN was, and is, false and misleading.

PARAGRAPH NINE: The advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibit B and Exhibits D through M, contain the following statements:

- (a) "I'd tried a million other weight loss programs, but I'd always gain the weight back." (Exhibit D)
- (b) "I lost 95 pounds in just over six months. And, I've kept the weight off for nearly one year!" (Exhibit E)
- (c) "I lost eighteen pounds in only six weeks. And I've kept the weight off for over a year." (Exhibit F)
- (d) "My weight slowly crept up over the years. I joined Jenny Craig because I wanted to lose those extra pounds

- (a) Overweight or obese Jenny Craig customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently, and
- (b) Jenny Craig customers typically are successful in maintaining their weight loss achieved under the Jenny Craig Weight Loss Program.

PARAGRAPH ELEVEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH NINE, including but not necessarily limited to the statements in the advertisements attached as Exhibits B and D-M, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH TEN, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH TWELVE: In truth and in fact, at the time respondents made the representations set forth in PARAGRAPH TEN, they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation as set forth in PARAGRAPH ELEVEN was, and is, false and misleading.

PROJECTION OF WEIGHT LOSS CLAIM

PARAGRAPH THIRTEEN: In the routine course and conduct of their business, respondents state, during the initial sales presentation, that consumers typically will reach their desired weight loss goal within the time frame set by respondents' "PD Presentation" computer program.

PARAGRAPH FOURTEEN: In truth and in fact, consumers typically will not reach their desired weight loss goal within the time frame set by respondents' "PD Presentation" computer program. Therefore, the representation set forth in PARAGRAPH THIRTEEN was, and is, false and misleading.

PARAGRAPH FIFTEEN: Through the use of the statements described in PARAGRAPH THIRTEEN, respondents have represented, directly or by implication, that at the time they made the representation set forth in PARAGRAPH THIRTEEN, respondents possessed and relied upon a reasonable basis for the representation.

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

PRICE CLAIMS

PARAGRAPH SEVENTEEN: The advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibit L and Exhibits N through R, contain the following statements:

- (a) "Pay as you go for just \$9 a week, or lose all you want for just \$49." (Exhibit L)
- (b) "Lose all the weight you want for only a \$185 service fee." (Exhibit N)
- (c) "Jenny Craig was different. It didn't have any gimmicks. It's one set price. There wasn't any adding. It was honest. This was the truth. And I've checked every place." (Exhibit O)
- (d) "Call the wrong weight loss program and you end up playing 'Let's Make a Deal.' Some have hidden charges. Others, high administrative fees. And some even charge you by the pound. It's like they punish you just because you have to lose weight. At Jenny Craig, we charge you one low fee to lose all the weight you want. No gimmicks. No hidden charges. Jenny Craig. Where weight loss means losing weight. Not your bank account." (Exhibit P)
- (e) "Most weight loss programs spend more time on their figures than yours. They figure out ways to hit you with administrative fees. Hidden charges. Some even charge you by the pound. It's like they're punishing you for losing weight. At Jenny Craig you can lose all the weight you want for one low service fee. No gimmicks. No hidden costs. Jenny Craig. Where you get thin. And your wallet doesn't." (Exhibit Q)
- (f) "Our price is guaranteed. At Jenny Craig, we fervently adhere to one, often overlooked principle: Honesty. That's why our price is exactly what we say it is. No hidden costs. No deal-of-the-day. It's just one set price. And we'll even tell it to you over the phone. If all that doesn't sound too remarkable, try calling other programs and compare for yourself. Chances are you'll be very surprised at what they tell you. Or more likely, what they don't tell you." (Exhibit R)

PARAGRAPH EIGHTEEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH SEVENTEEN, including but not necessarily limited to the statements in the advertisements attached as Exhibits L and N-R, respondents have represented, directly or by implication, that

the advertised price is the only cost associated with losing weight on the Jenny Craig Weight Loss Program.

PARAGRAPH NINETEEN: In truth and in fact, the advertised price is not the only cost associated with losing weight on the Jenny Craig Weight Loss Program. There are substantial additional mandatory expenses associated with participation in the Jenny Craig program that far exceed the advertised price. Therefore, the representation set forth in PARAGRAPH EIGHTEEN was, and is, false and misleading.

PARAGRAPH TWENTY: In their advertising and sale of the Jenny Craig Weight Loss Program, respondents have represented, directly or by implication, that the advertised price is the only cost associated with losing weight on the Jenny Craig Weight Loss Program. Respondents have failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the Jenny Craig program. This fact would be material to consumers in their purchase decisions regarding the program. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

HEALTH RISKS CLAIMS

PARAGRAPH TWENTY-ONE: In the routine course and conduct of their business, respondents state:

- (a) "In just a moment the computer will show you how safely and easily you are going to lose weight without feeling hungry. To put your mind at ease...we have a registered dietitian along with our medical consultant team to ensure that while your weight loss is easy, it is also 100% safe and hunger-free." (Suggested sales script for Jenny Craig tour guide)
- (b) "Our Program provides a safe, easy weight loss that is personally supervised." ("Sample Telephone Script" contained in Jenny Craig Sales Manual)
- (c) "Our experience has taught us that using drugs is neither safe nor permanent. Our program aims at more permanent weight loss results and it's 100% safe." ("Sample Telephone Script" contained in Jenny Craig Sales Manual)

PARAGRAPH TWENTY-TWO: In the routine course and conduct of their business, respondents provide their customers with diet protocols that require said customers, inter alia, to come in to a Jenny Craig Weight Loss Centre at least once a week for monitoring of their progress, including weighing in.

PARAGRAPH TWENTY-THREE: Through the use of the statements set forth in PARAGRAPH TWENTY-ONE, and through the conduct of the monitoring described in PARAGRAPH TWENTY-TWO, respondents have represented, directly or by implication, on an ongoing basis to each customer, that customers on respondents' weight loss program lose weight safely and do not experience an increased risk of developing health complications.

PARAGRAPH TWENTY-FOUR: In the course of regularly monitoring their customers' weight loss progress, respondents, in some instances, are presented with weight loss results indicating that a customer is losing weight significantly in excess of what would be expected, considering the daily caloric intake prescribed for that customer, which is an indication that the customer may not be consuming all of the calories prescribed by his or her diet protocol. Such conduct could, if prolonged, result in health complications associated with rapid weight loss.

PARAGRAPH TWENTY-FIVE: Respondents have failed to disclose, either in their advertising, at point of sale, or to individual customers losing weight too rapidly, that such weight loss, if prolonged, could result in health complications, including the development of gallbladder disease. This fact would be material to consumers in their purchase and use decisions regarding respondents' program.

PARAGRAPH TWENTY-SIX: In light of the representations set forth in PARAGRAPH TWENTY-THREE, respondents' failure to disclose that not consuming all of the calories prescribed by the diet protocol, if prolonged, could result in health complications, including the development of gallbladder disease, is a deceptive practice.

PARAGRAPH TWENTY-SEVEN: In providing the advertisements referred to in PARAGRAPH FOUR and the materials referred to in PARAGRAPH THIRTEEN and PARAGRAPH TWENTY-ONE to their individual franchised stores for the purpose of inducing consumers to purchase their weight loss services and products, respondents have furnished the means and instrumentalities to those stores to engage in the acts and practices alleged in PARAGRAPHS FIVE through TWENTY-SIX.

CUSTOMER SATISFACTION CLAIMS

PARAGRAPH TWENTY-EIGHT: The advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the attached Exhibits S through V and Exhibit L, contain the following statements:

- (a) "9 out of 10 Clients Would Recommend Jenny Craig....
When we asked our clients if they would recommend our program to their friends they gave us a resounding,

`Yes!' And we think that's the best advertising we could ever hope for. You probably know someone who's been successful on the Jenny Craig program. Call now and find out just how they did it." (Exhibit S)

- (b) "86% liked the counseling...89% liked the program...And 94% would recommend us to a friend. National Survey of Jenny Craig Clients Oct-Dec 1991. Now what could be more impressive than that?" (Exhibit T)
- (c) "The other day I saw a commercial that said nine out of ten Jenny Craig clients would recommend Jenny Craig to their friends. Nine out of ten. Which got me to thinking..." (Exhibit U)
- (d) "National Survey of Jenny Craig Clients
Oct-Dec 1991

Percentage of Jenny Craig clients responding
'completely satisfied' or 'very satisfied':

* With the overall Jenny Craig program	89%
* With the weekly personal counseling sessions	87%
* With the friendliness of the Jenny Craig staff	91%
* That would recommend the program to a friend	94%

YOU'RE PROBABLY WONDERING WHAT ELSE WE COULD POSSIBLY DO TO IMPRESS YOU." (Exhibit V)

- (e) "In fact, 9 out of 10 Jenny Craig clients would recommend Jenny Craig to their friends." (Exhibit L)

or more of Jenny Craig customers would recommend the Jenny Craig Weight Loss Program.

PARAGRAPH THIRTY-TWO: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the statements in the advertisements attached as Exhibits S-V and L, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPHS TWENTY-NINE and THIRTY-ONE, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH THIRTY-THREE: In truth and in fact, at the time they made the representations set forth in PARAGRAPHS TWENTY-NINE and THIRTY-ONE, respondents did not possess and rely upon a

ANALYSIS OF PROPOSED CONSENT
ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Jenny Craig, Inc., and Jenny Craig International, Inc. (hereinafter "Jenny Craig" or "respondents"), marketers of the Jenny Craig Weight Loss Program. The Jenny Craig Weight Loss Program is offered to the public nationwide through company-owned and franchised clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the 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 any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleged that the respondents deceptively advertised: (1) their program's success in helping customers achieve and maintain weight loss; (2) the time frame within which consumers will achieve their desired weight loss goals; (3) the purchase price of the program; and (4) the extent to which Jenny Craig customers would recommend the program to others. The complaint further alleged that respondents engaged in the deceptive practice of failing to warn clients whom they monitor of the health importance of following the diet protocol.

Weight Loss and Weight Maintenance Success Claims

The complaint against Jenny Craig alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and maintaining the weight loss achieved on the program. Through consumer testimonials and other advertisements, Jenny Craig represented that its customers typically are successful in reaching their weight loss goals and in maintaining, either long-term or permanently, the weight loss achieved under the Jenny Craig program.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the proposed order, in Part I.A., requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or

maintaining weight loss. To ensure compliance, the proposed order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) all participants who have entered the programs where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, Part I.B. of the proposed order requires the respondents, when making any claim that participants of any diet program have successfully maintained weight loss, to disclose the fact that "For many dieters, weight loss is temporary." In addition, Part I.C. requires respondents to disclose the following information relating to that claim:

(1) the average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) the duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in respondents' maintenance program(s) that follows active weight loss, if that is the case (e.g., "Participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on a maintenance program)), " and

(3) the proportion of the total participant population that those participants represent, if the participant population referred to is not representative of the general participant population for that program (e.g., "Participants on maintenance -- 30% of our clients -- kept off an average of 66% of the weight for one year (includes time on maintenance program))." (In lieu of that factual disclosure, respondents may state: "Jenny Craig makes no claim that this result is representative of all participants in the Jenny Craig program)."

Third, for maintenance success claims made in broadcast advertisements of thirty-seconds or less duration, the proposed order, in Part I.D., provides that Jenny Craig, in lieu of making the factual disclosures set out in Part I.C., may (1) include in such advertisements the statement "Check at our centers for details about our maintenance record," and (2) provide consumers at point-of-sale with a document containing certain maintenance information, which includes the factual disclosures required by Part I.C. The proposed order specifies that this document must be signed by the client and retained in the company's client file.

The proposed order makes clear that the alternative disclosure requirement contained in Part I.D. does not relieve Jenny Craig of the obligation to substantiate any maintenance success claim in accordance with Part I.A. of the proposed order. In addition, the proposed order specifies that, if Jenny Craig makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term," Jenny Craig would have to make all the disclosures required by Part I.C. in the ad and provide the disclosures at point-of-sale.

Fourth, Part I.E. of the proposed order addresses weight-loss and weight-loss maintenance success claims, made through endorsements or testimonials, that are not representative of what Jenny Craig Weight Loss Program participants generally achieve. Part I.E. requires respondents to disclose either what the generally expected success would be for Jenny Craig customers, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 C.F.R. 255.2 (a). Under the proposed order, Jenny Craig may disclose "generally expected success" by use of the following format in the relevant advertisement: "Weight loss averages _____ lbs. over _____ weeks." Alternatively, respondents may disclose in the advertisement the average number of pounds lost by their customers, and provide to each potential customer, prior to entering into an agreement, a form containing more detailed weight loss information.

Respondents may disclose "limited applicability" by use of one of several alternative statements, such as "This result is not typical. You may be less successful."

Finally, the proposed order, in Part I.L., generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss Claims

The Commission's complaint further alleges that Jenny Craig failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goals within the time frame set by the company's computer program. To address this practice, Part I.I. of the proposed order prohibits Jenny Craig from representing that prospective participants will reach a specified weight within a specified period of time, unless respondents possess and rely upon competent and reliable scientific evidence substantiating the representation. Part I.J. of the proposed order would prevent respondents from misrepresenting the rate or speed at which any program participant has experienced or will experience weight loss.

Price Claims

The Commission's complaint against Jenny Craig also alleges that the company falsely represented that the price it advertised for its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that respondents failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in four ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, Part I.G. of the proposed order requires Jenny Craig to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Third, Part I.H. of the proposed order requires the respondents to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Finally, Part I.L. generally prohibits the company from misrepresenting the price of any weight loss program.

Health Risks Claims

According to the complaint, Jenny Craig provides its customers with diet protocols that require the customers to come into one of proposed respondents' centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondents, in some instances, have been presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. The Commission's complaint alleges that Jenny Craig failed to disclose to consumers who were losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address this allegation in two ways. First, the proposed order, in Part I.K., requires Jenny Craig to disclose in writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order, in Part I.L., generally prohibits any misrepresentation concerning the safety of any weight loss program.

Customer Satisfaction Claims

The complaint also alleges that Jenny Craig deceptively advertised that "nine out of ten" Jenny Craig clients would recommend Jenny Craig to their friends. The complaint further alleges that the company's claim that competent and reliable studies or surveys substantiate the "nine out of ten" claim was false.

The proposed order seeks to address these claims in two ways. First, Part I.M. would require respondents to possess competent and reliable evidence (which when appropriate must be competent and reliable scientific evidence) for any representation that participants on any weight loss program recommend or endorse the

program. Second, Part I.N. would prevent respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey.

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.