

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

COMMISSIONERS:

Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	DOCKET NO. C-3755
)	
)	
DEAN DISTRIBUTORS, INC.,)	
a corporation, doing business as)	
ADVANCED HEALTH CARE SYSTEMS,)	
CAMBRIDGE DIRECT SALES, and MEDIBASE.)	
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in

further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Dean Distributors, Inc., 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. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

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,

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 maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; provided, further, that for any representation that:

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

- (a) all customers who have entered the program, where the representation relates to such persons; provided, however, that the required sample 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 illness, pregnancy, or change of residence; or
- (b) all customers who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

2) any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of customers

who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

3) any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of customers 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.

F. Representing, directly or by implication, that any customers of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in 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,

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

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 on June 16, 2017, 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.

By the Commission.

Donald S. Clark
Secretary

Issued: June 16, 1997