



released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Tj EMC /P <</M

D. For any order-required disclosure in a print medium 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 point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type.

E. 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.

F. For any order-required disclosure given in the video portion of a television or video advertisement to be made "clearly and prominently" or in a "clear and prominent manner," the disclosure must be of a size and shade, and must appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

## I.

IT IS ORDERED that Weight Watchers International, Inc., a corporation ("respondent"), its successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, 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, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates 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 respondent's 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, however, that the required sample may exclude those participants 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; or

(b) all participants who have completed a particular ph( r)3(e)4mal partst paear-1(e1-10(a)4(ve4(i)-2(pa)0(veh( r)

completion of the active maintenance phase of respondent's program, or earlier termination, as applicable; and

(3) any weight loss is maintained permanently, said evidence shall, at a minimum, 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 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.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.D. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary.";

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

provided, however, that a truthful statement that merely describes the existence, design, or

provided, however, that for representations about weight loss maintenance success that do not use a number or percentage, or descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term", respondent may, in lieu of the disclosures required in C.(1)-(3) above,

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

(ii) for a period of time beginning with the date of the first dissemination or broadcast of any such advertisement and ending no sooner than thirty (30) days after the last dissemination or broadcast of such advertisement, give to each potential participant, by following the procedures set out in Appendix A, a printed document containing all the information required by paragraph I.B. and subparagraphs I.C.(1)- (3) of this order;

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent 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;

provided, however, that in determining the success of participants in maintaining weight loss, respondent may exclude those participants 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;

D. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity

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(ii) for a period of time beginning with the date of the first dissemination or broadcast of any such advertisement and ending no sooner than thirty (30) days after the last dissemination or broadcast of such advertisement, give to each potential participant, by following the procedures set out in Appendix B, a printed document containing what the generally expected success would be for Weight Watchers customers in losing weight, expressed in terms of both average number of pounds lost and average duration of participation in the Weight Watchers program,

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;

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 participants 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; and

(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.

E. Making comparisons between the efficacy or success of one or more of respondent's weight loss programs and the efficacy or success of any other weight loss program(s), including but not limited to any other of respondent's weight loss programs, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

F. Making any representation, directly or by implication, about the rate or speed at which any participant in any weight loss program has experienced or will experience weight loss, unless true.

G. Making any representation, directly or by implication, about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey, unless true.

H. Making any representation, directly or by implication, about the performance or efficacy of any weight loss program, unless true.

## 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 corporate 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 three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its 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 its 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 respondent shall, within ten (10) days after the service of this order, distribute a copy of this order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, and to its regional managers; and distribute to those having point of sale responsibilities under the order, written instructions implementing the point of sale obligations of the orders; and, for a period of five (5) years from the date of service of this order, distribute same to all future such officers, agents, representatives, independent contractors, employees, and regional managers.

## V.

IT IS FURTHER ORDERED that:

A. Respondent shall use its best efforts to obtain its weight loss program franchisees' and licensees' compliance with this order by doing the following:

(1) Respondent shall, within forty-five (45) days

after service of this order, distribute a copy of this order to each of its weight loss program franchisees or licensees, return receipt requested;

(2) Respondent shall review advertising and promotional materials submitted to it from its franchisees or licensees prior to dissemination and publication to determine complianc



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 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 affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty (20) years; and
- B. 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.

Signed this day of , 19 .

WEIGHT WATCHERS INTERNATIONAL, INC., a corporation.

By

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weight loss centers in accordance with the procedures set forth in Appendix A of the proposed order. The proposed order specifies that consumers must acknowledge receipt of this document and that it must be signed by the client and retained in the customers record of service for three years.

Third, Part I.D. of the proposed order addresses advertisements containing an endorsement or testimonial about weight loss success or weight loss maintenance when those claims are not representative or “typical” of what Weight Watchers participants generally achieve. Part I.D. requires Weight Watchers, when employing such “atypical” weight loss success or weight loss maintenance testimonials, to disclos

speed at which any participant in any weight loss program has experienced or will experience weight loss, unless true.

Part I.G. of the proposed order would require Weight Watchers to cease and desist from making any representation, directly or by implication, about the existence, contents, validity, results,

(5) maintain separate files for each franchisee or licensee containing a copy of the signed receipt and copies of any correspondence relating to any advertising and promotional materials with respect to the issues raised by the order for a period of three (3) years;

(6) make these files available to the Commission staff for inspection and copying; and

(7) where the order provides for the distribution of documents containing certain information to participants, to include such information in "Program" materials which its franchisees or licensees are required to supply to each participant.

In addition, subparagraph B. of Part V. requires Weight Watchers to include in all future weight loss program agreements with new franchisees or licensees a requirement that the franchisee or