

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

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In the Matter of)	
)	DOCKET NO. C-3753
GUILDWOOD DIRECT LIMITED, also doing)	
business as INTERMED LABORATORIES,)	DECISION AND
a corporation.)	ORDER
)	
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 respondent has violated the said Act, and that a 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Guildwood Direct Limited, also doing business as Intermed Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York 14302.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

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 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 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.

By the Commission.

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Donald S. Clark
Secretary

ISSUED: June 16, 1997