

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
 MICHAEL S. LEVEY, individually)
 and as an officer of Positive)
 Response Marketing, Inc., and)
)
 POSITIVE RESPONSE MARKETING, INC.,)
 a corporation, also trading)
 and doing business as)
 POSITIVE RESPONSE TELEVISION and)
 POSITIVE RESPONSE ADVERTISING.)

Docket No. C-3459

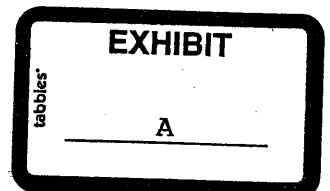
COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Positive Response Marketing, Inc., a corporation, also trading and doing business as Positive Response Television and Positive Response Advertising, and Michael S. Levey, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1: (a) Respondent Michael S. Levey ("Levey") is an officer and shareholder of Positive Response Marketing, Inc. Individually or in concert with others, he formulates, directs and controls the acts and practices of Positive Response, including the acts and practices alleged in this complaint. Levey resides at 1975 North Topanga Canyon Boulevard, Topanga, California 90290.

(b) Respondent Positive Response Marketing, Inc. ("Positive Response"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Positive Response also trades and does business as Positive Response Television and Positive Response Advertising. Positive Response has its principal office and place of business at 1861 North Topanga Canyon Boulevard, Topanga, California 90290.

PARAGRAPH 2: (a) From 1987 until approximately February 1989, Levey was an employee and shareholder of Twin Star



Productions, Inc. ("Twin Star"). Individually or in concert with others, Levey formulated, directed and controlled the acts and practices of Twin Star, including the acts and practices alleged in this complaint. Levey and Positive Response developed, wrote, directed, edited and produced the television advertisements for numerous products advertised, offered for sale, sold and distributed by Twin Star to consumers throughout the United States, including the "EuroTrym Diet Patch," a weight-loss product; "Foliplexx," a hair-loss product; and "Y-Bron," an impotence treatment. These advertisements, which are referred to as program-length commercials, run for 30 minutes or less and fit within normal television broadcasting time slots. Respondents' commercials were broadcast on network, independent and cable television stations throughout the United States.

(b) Since March 1989, Levey and Positive Response have been engaged in and continue to be engaged in developing, writing, directing, editing and producing television advertisements for numerous products advertised, offered for sale, sold and distributed by National Media Corporation and Media Arts International, Ltd., to consumers throughout the United States, including the "Magic Wand," an immersion-style kitchen mixer. These advertisements, which are referred to as program-length commercials, run for 30 minutes or less and fit within normal television broadcasting time slots. The commercial for the Magic Wand is part of a series of commercials titled "Amazing Discoveries." Respondent Levey acts as the host for the series. Respondents' commercials are broadcast on network, independent and cable television stations throughout the United States.

PARAGRAPH 3: The EuroTrym Diet Patch, Foliplexx and Y-Bron are "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PARAGRAPH 4: 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.

False and Unsubstantiated Efficacy Claims

PARAGRAPH 5: Respondents have disseminated or have caused to be disseminated advertisements for the EuroTrym Diet Patch, including but not necessarily limited to a 30-minute television

commercial identified as "The Michael Reagan Show" and attached as Exhibit A. This advertisement contains the following statements:

1. Mike Reagan:

"You know, we have all kinds of patches we hear about all the time. We hear about the patch you put behind your ear for motion sickness. We hear about the patch for people with heart problems. Now there's also a patch for regulating your pulse. You have a diet patch. How can your diet patch help people lose weight?"

Dr. Keith Kenyon:

"Well, remember, we are bodies electric. That's why an EKG measures the electrical current from your heart. Now what my solution does, it's an electrically charged solution, and we put it on acupuncture points, and acupuncture points connect our electrical system of our body. When we put this electrical charge solution on our acupuncture points, it sends a signal to the brain, the hunger part of the brain, the appetite control center of the brain, and it does this non-transdermally, and the electrical signal makes you feel that you're not hungry."

2. Man:

"Just a little thing like this will really be helping me a lot in trying to reduce weight because it really takes that sensation of hunger and craving for food. It really takes it away."

3. Woman:

"For the first time, I have found something that really works. I'm not hungry any more and I'm losing weight and it's so easy."

4. Man:

"I'm a single guy. I'm young. I have a lot to live for. I want to lose this weight. That's when I started using the Diet Patch. The Diet Patch allowed me to lose the weight, even though I had tried other diets in the past. The one

thing that was missing was that I was always hungry. So, after I got off the diet, I subsequently gained more weight. But the Diet Patch really worked for me and it allowed me to keep off the weight and not feel hungry."

5. Mike Reagan:

"Richard, tell me. There are so many diets out there. There's the powder diets, the pill diets and so on. Why is everybody buying the Diet Patch?"

Richard Crew:

"Well, because they discovered that, really, pills and powders are really not the answer. The most effective weight-loss system is to reduce the quantity of food that you eat, in other words, reduce your caloric intake. Now, when you do that, you will obviously get hungry. Therefore, the patch prevents hunger (from) taking place and therefore the diet sustains itself. In other words, you can stay on it longer."

6. Dr. Marshall Berger:

"But seriously, I don't have any ill effects as far as being uptight or hyper. It's very easy for me to monitor my intake of food. I'm just not hungry. I don't think about the food and it's just very easy for me."

7. Mike Reagan:

"And what you believe is your EuroTrym Diet Patch is going to solve that problem?"

Christine Westheim:

"Yes. Most of the people that have been using the Diet Patch have found it to be a solution to a problem that they've been dealing with most of their lives."

8. Announcer:

"If you're among the 88 million Americans that need to lose weight, there's good news. Now you can join the thousands that have said goodbye forever to pills, powders and fad starvation diets since

they've discovered the easiest, the safest, the most effective fat-fighting weapon ever, the original EuroTrym Diet Patch System. And the Diet Patch is so simple to use. After activating the non-transdermal patch, simply apply it to the appetite control center's acupuncture point and forget about it. For the next 12 to 14 hours, the EuroTrym Diet Patch puts you back in control of your appetite so you can begin immediately to shed those unwanted pounds. It even works while you're sleeping. Whether your weight-loss goal is 20, 30, 50 or even 100 pounds or more, with the EuroTrym Diet Patch you can finally have the body of your dreams, and maybe someone else's, too."

9. Mike Reagan:

"I mean, Dr. Kenyon, is everybody experiencing this kind of weight loss? Is this typical?"

Dr. Keith Kenyon:

"Well, 70 to 80 percent it succeeds with. Of course, nothing works on everybody. Nothing in medicine works on everybody. But there is a high percentage of successful weight loss with this product."

10. Mike Reagan:

"Now, I understand that a small but well-monitored study was done by a doctor, what, Robert Rogers in Florida?"

Richard Crew:

"Yes, that's correct."

Mike Reagan:

"You want to tell us about that?"

Richard Crew:

"Yes, I will . . . I went to see him a few months ago and we talked about the product and he's also been in touch with Dr. Kenyon a few times on the telephone. And he's conducting, he's prescribing the patch and the system to patients of his and he's getting some remarkable results. There's some there, there's one with a ten-pound

loss, we have one that's over 50 pounds, and there's a lady that's actually lost 80 pounds. But one interesting case was when the lady who lost about 100 pounds before she came to Rogers, not on the patch but just through her own efforts, because she followed a system which lowered the caloric rate, but she got to a plateau and she used the patch and she instantly started to lose weight again and she since lost another 35 pounds, which I think is marvelous."

PARAGRAPH 6: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 5, including but not necessarily limited to the "The Michael Reagan Show" advertisement attached as Exhibit A, respondents have represented, directly or by implication, that:

- (a) Use of the EuroTrym Diet Patch prevents feelings of hunger.
- (b) Use of the EuroTrym Diet Patch enables users to lose substantial amounts of weight.
- (c) Use of the EuroTrym Diet Patch enables users to lose weight in a large majority of cases.
- (d) Competent and reliable tests or studies establish that the EuroTrym Diet Patch promotes weight loss.

PARAGRAPH 7: In truth and in fact:

- (a) Use of the EuroTrym Diet Patch does not prevent feelings of hunger.
- (b) Use of the EuroTrym Diet Patch does not enable users to lose substantial amounts of weight.
- (c) Use of the EuroTrym Diet Patch does not enable users to lose weight in a large majority of cases.
- (d) No competent and reliable test or study establishes that the EuroTrym Diet Patch promotes weight loss.

Therefore, the representations set forth in PARAGRAPH 6 were, and are, false and misleading.

PARAGRAPH 8: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 5, including but not necessarily limited to "The Michael Reagan Show" advertisement attached as Exhibit A, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH 6, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH 9: In truth and in fact, at the time they made the representations set forth in PARAGRAPH 6, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH 8 was and is false and misleading.

PARAGRAPH 10: Respondents have disseminated or have caused to be disseminated advertisements for Foliplexx, including but not necessarily limited to a 30-minute television commercial identified as "Breakthrough '88" and attached as Exhibit B. This advertisement contains the following statements:

1. Sarah Simmons: "We learned of Foliplexx International quite by accident. When our remote crew went into the field to interview Americans across the country who are experiencing hair loss, they ran into several people who had been using the Foliplexx System quite successfully. These people indicated that their hair loss had stopped and, in many instances, they were actually experiencing re-growth."
2. Announcer: "Regardless of your age, the fast-acting powerful Foliplexx System will provide an environment so perfect, so nutritionally charged, that thousands have already had their hair-loss stopped and are enjoying the relief and excitement of seeing re-growth. Do not confuse Foliplexx with any other product or system you tried or heard about before. Foliplexx is the only bio-active system having the complex synergistically combined ingredients just proclaimed as safe and effective by medical professionals."
3. Steve Carlson: "Mr. Sarradet, it looks like you have a fan here. Can you tell me how long it takes to notice results when someone starts on your Foliplexx System?"

Richard Sarradet: "Well, Steve, usually they're reporting noticeable results in anywhere from three to six weeks. The first indications are the stopping of hair loss. First thing I noticed was that there was less of my hair in the bottom of the shower, which made me quite happy."

Steve Carlson: "Is the Foliplexx System guaranteed to work?"

Richard Sarradet: "Our own in-house study shows that it works for a strong percentage of people who still have living follicles realizing, of course, that so far, nothing works for everybody. Now, to answer your question. The Foliplexx System comes with an unconditional 90-day guarantee, and we feel that's plenty of time for people to find out if the system will work for them. Now, the fact that we offer such an incredible money-back policy and we've kept the price of the product low, we feel that anyone experiencing hair loss or who wants to prevent future hair loss has absolutely nothing to lose by trying our system."

4. Man: "I've been very concerned about my hair loss. I have a receding hair line, long, wide forehead and a rather definite bald spot at the top of my head. And so, my hair was falling out. I could see a lot of hair in the comb every day. And, by jingle, I started using, Foliplexx and it seems to have stopped. Appearance is very, very important. One should always look one's best, I feel. And when your hair begins to fall out, until recently, it's been a permanent, well, disaster."

5. Sarah Simmons: "Demetre, when you and I were talking earlier, you told me some very impressive results your clients had been getting using the Foliplexx formulation. Would you mind telling our viewing audience something about that?"

Demetre Addis:

"I'd be happy to, Sarah. This gentleman's name is Ron. And Ron came to us with a problem quite common known as 'losing his hair' or 'balding.' Ron's problem was in the crown area here. There was literally almost no hair at all, and now, since we've been using the Foliplexx formula, you can see that this whole area is filled in considerably. The hair is looking thicker and healthier.

Behind us, we have another example, results that we get from the Foliplexx formula. This gentleman's name is Phil and he's Terry's client. Since she's been using the Foliplexx formula on him, his recession area is where he had the problem and it's all filling in. The results are sensational and we're all very pleased with it."

6. Ron:

"The first thing that I noticed when I started using the system was a lot less hair loss. I noticed that there was not a lot of hair in the shower at the bottom. But I was losing my hair. I felt that I was losing my youth, and I was kind of depressed about that and I didn't want to be in that situation. And the system was out there to be used and so I started using it and I'm very happy with the results. I was at a party and a friend, I had run into him, that I hadn't seen in some time and he took, and noticed that I was growing quite a bit of hair back there. And he is losing his hair in the back and like he was kind of envious of me getting my hair back."

7. Man:

"I noticed that the hair started coming back. There was real short hairs that you noticed with a guy that's going bald. And I noticed that they started growing and getting longer, and I started even getting thicker hair. So I've been real pleased with the results. I've just been on the program about two months. I'm just so damn happy! I can't believe it!"

8. Announcer: "If you or someone you know is experiencing the agony, frustration and embarrassment of hair loss, there is good news. The new powerful Foliplexx System has just been approved by its exclusive North American manufacturer for release without prescription. Independent tests reviewed by the medical and scientific professionals who attended the International Hair Loss Symposium proclaimed the ingredients in Foliplexx to be safe and effective regardless of nationality, ethnic origin or hair color. That means that anyone ready to do something about their hair loss can stop just complaining and start taking action now."
9. Announcer: "The doctors and scientists that attended the International Hair Loss Symposium concluded that there is indeed a safe and effective treatment for those thousands of men and women worldwide experiencing unwanted hair loss. The Foliplexx formulation was extremely effective on patients regardless of nationality, ethnic origin or hair color."
10. Sarah Simmons: "Then, in your opinion, doctor, does the Foliplexx System just released by Mr. Sarradet's company...can that actually work?"
- Dr. Ward Dean: "Well, I've personally interviewed a number of people who've already been on the program and they're quite excited and satisfied with the results, and frankly, I'm quite impressed myself. I think the results speak for themselves."

PARAGRAPH 11: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 10, including but not necessarily limited to the "Breakthrough '88" advertisement attached as Exhibit B, respondents have represented, directly or by implication, that:

- (a) Use of Foliplexx curtails loss of hair, thus relieving or preventing baldness.

- (b) Use of Foliplexx promotes growth of new hair where hair has already been lost, thus curing or reversing the advance of baldness.
- (c) Foliplexx is an effective remedy for baldness in a large percentage of cases.
- (d) Competent and reliable tests or studies establish that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

PARAGRAPH 12: In truth and in fact:

- (a) Use of Foliplexx does not curtail loss of hair, and does not relieve or prevent baldness.
- (b) Use of Foliplexx does not promote growth of new hair where hair has already been lost, and does not cure or reverse the advance of baldness.
- (c) Foliplexx is not an effective remedy for baldness in a large percentage of cases.
- (d) No competent and reliable test or study establishes that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

Therefore, the representations set forth in PARAGRAPH 11 were, and are, false and misleading.

PARAGRAPH 13: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 10, including but not necessarily limited to the "Breakthrough '88" advertisement attached as Exhibit B, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH 11, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH 14: In truth and in fact, at the time they made the representations set forth in PARAGRAPH 11, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH 13 was and is false and misleading.

PARAGRAPH 15: Respondents have disseminated or have caused to be disseminated advertisements for Y-Bron, including but not necessarily limited to a 30-minute television commercial identified as "Let's Talk" and attached as Exhibit C. This advertisement contains the following statements:

1. Lyle Waggoner: "Now, you've given the ingredients in the product Y-Bron here to some of your patients with favorable results. Is that correct?"
- Dr. Marvin Hausman: "That's correct. We've used yohimbine which is a product that has activity in the central nervous system; in the - in the head region, it causes an increase in libido - a sexual desire. We've also had evidence that it increases penile-erectile response."
2. Lyle Waggoner: "Carl, what happened when you used this formulation? What kind of results did you . . . could you see or feel?"
- Carl: "Well, suddenly, the erections were very different than before . . . And you know, your sex drive greatly improves. It's like a miracle happens."
- Lyle Waggoner: "Dr. Hausman, is this a typical reaction?"
- Dr. Marvin Hausman: "Yes, it depends on the diagnosis and the reason for using the program and the medication. Many people experience excellent results with this treatment program."
3. Case Study 4C711: "I started taking the Y-Bron and within three, two or three weeks, it began to have an effect on me. I began to feel it, I began to have an erection and not only had the erection, I was able to maintain the erection until we both received, we both attained satisfaction."
4. Case study 5P021: "I'm 58 years old. I've been married 40 years, and very, very happily married. My wife was very happy with me. But I became unhappy with myself because I found that I was impotent. What is impotence? Impotence is when you can't function with your loved one. And you hide, you do things, you stay away from close quarters with your loved one, your mate, due to your inadequacies. Then I found the Y-Bron program. Now I'm so

happy. My whole life has changed. I'm like I was when I was first married: young, vibrant, and full of life, looking forward to the future."

5. Case study 0S005: "It happened just a couple of years ago. My wife and I used to argue over the most ridiculous things: who's gonna mow the lawn, who's gonna cook. But I knew what the problem was. It wasn't her, it was me. I was impotent. The problem was so severe, we got a divorce. When I went into the Y-Bron program, after just a few weeks, I started to see the results. It was fantastic. I felt youthful, energetic. I felt like a new man."
6. Case study 1B007: "And I'm very, very happy now. I know that I'm having a good relationship, an intimate sexual relationship with my lady, and I'm the happiest guy in the world. Well actually, this has lasted now for several years. I am 64 years old. We still have this marvelous relationship, and I think I owe it all to Y-Bron, because before then, I-I didn't think there was any hope. I just thought I'd just kind of get old and fade away and not have any kind of a sex life at all. It's proved entirely different. I feel like I'm 30 years old. I love it."
7. Lyle Waggoner: "Okay, but Y-Bron does increase the libido?"
Gary Ballen: "Absolutely."
8. Announcer: "Every day we're surrounded by pollution, anxiety and stress that can often lead to frustrating and embarrassing male impotency. But for thousands, this silent suffering has been ended, thanks to Y-Bron. A safe and effective formulation to address the problem of non-organic impotency. After recently undergoing two clinical studies, the Y-Bron formulation was shown successful in increasing desire and ability by raising the libido level in many male test subjects. The test

results were so impressive that now Y-Bron comes with a 60-day money-back guarantee so you have nothing to lose."

9. Lyle Waggoner: "Mr. Ballen, we were talking before we went on the air about your product Y-Bron, and you were telling me that this has been changing people's lives. Could you share that with our audience?"

Gary Ballen: "Yes, Lyle, I can. We originally developed the product to treat male impotence. However, after various clinical tests, we discovered that not only did it help, frankly, the impotent, but it also helped those who were experiencing a loss of sexual desire."

10. Audience member: "Mr. Ballen, are there any side effects from your Y-Bron product?"

Gary Ballen: "There are no known -- We've done two clinical trials, and there are no side effects. But, however, there are no negative side effects. However, there are some very good side effects. Most people report a feeling of well-being, of less stress, of being more sensual with their partner, feeling more sensual. Warmer, just a . . . even younger."

11. Lyle Waggoner: "Welcome back to Let's Talk. Now we're talking about the silent suffering of sexual dysfunction. And a new product, called Y-Bron, just released that appears to increase the sex drive and has been a tremendous help in treating impotent men. Now, I have a question. Dr. Hausman, if a person, if a man, has dysfunction or a loss of sex desire, is Y-Bron the answer?"

Dr. Marvin Hausman: "Oh, from the studies we've been presented with today, the studies have shown that Y-Bron could be effective in increasing male sexual libido, male sexual desire."

PARAGRAPH 16: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 15, including but not necessarily limited to the "Let's Talk" advertisement

attached as Exhibit C, respondents have represented, directly or by implication, that:

- (a) Use of Y-Bron relieves, cures, prevents, or reverses impotence.
- (b) Use of Y-Bron increases sexual drive, ability, desire, or libido.
- (c) Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) Competent and reliable tests or studies establish that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

PARAGRAPH 17: In truth and in fact:

- (a) Use of Y-Bron does not relieve, cure, prevent, or reverse impotence.
- (b) Use of Y-Bron does not increase sexual drive, ability, desire, or libido.
- (c) Y-Bron is not an effective remedy for impotence nor does it increase sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) No competent and reliable test or study establishes that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

Therefore the representations set forth in PARAGRAPH 16 were, and are, false and misleading.

PARAGRAPH 18: Through the use of the statements contained in the advertisements referred to in PARAGRAPH 15, including but not necessarily limited to the "Let's Talk" advertisement attached as Exhibit C, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH 16, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH 19: In truth and in fact, at the time they made the representations set forth in PARAGRAPH 16, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH 18 was and is false and misleading.

Deceptive Demonstrations

PARAGRAPH 20: Respondents have prepared advertisements for the Magic Wand, including but not necessarily limited to a 30-minute television commercial identified as "Amazing Discoveries: Magic Wand." This advertisement depicts an immersion-style kitchen mixer crushing the pulp of a whole, fresh pineapple and states that it is done "in seconds, literally seconds." The pulp is then used to make a tropical drink. The advertisement also depicts the immersion-style kitchen mixer whipping skim milk, which is shown in the advertisement being used as mousse-like desserts and cake frosting.

PARAGRAPH 21: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH 20, including but not necessarily limited to the "Amazing Discoveries: Magic Wand" advertisement, respondents have represented, directly or by implication, that:

- (a) The immersion-style kitchen mixer can crush a whole, fresh pineapple in seconds.
- (b) Skim milk whipped by the immersion-style kitchen mixer can be used as mousse-like desserts and cake frosting.

PARAGRAPH 22: In truth and in fact:

- (a) The immersion-style kitchen mixer cannot crush a whole, fresh pineapple in seconds, or in any reasonable period of time.
- (b) Skim milk whipped by the immersion-style kitchen mixer cannot be used as mousse-like desserts and cake frosting, because it stays whipped for only a few minutes.

Therefore, the representations set forth in PARAGRAPH 21 were, and are, false and misleading.

PARAGRAPH 23: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH 20, including but not necessarily limited to the "Amazing Discoveries: Magic Wand" advertisement, respondents have represented, directly or by implication, that:

- (a) The demonstration of the immersion-style kitchen mixer included an unaltered, whole, fresh pineapple used to make a tropical drink.

- (b) The demonstration of the immersion-style kitchen mixer included mousse-like desserts and cake frosting made from skim milk whipped by the immersion-style kitchen mixer.

PARAGRAPH 24: In truth and in fact:

- (a) The demonstration of the immersion-style kitchen mixer did not include an unaltered, whole, fresh pineapple used to make a tropical drink. Respondents substituted crushed pineapple pulp with a slice of pineapple on top to resemble a whole, fresh pineapple.
- (b) The demonstration of the immersion-style kitchen mixer did not include mousse-like desserts and cake frosting made from skim milk whipped by the immersion-style kitchen mixer. Respondents substituted Cool Whip dairy topping to resemble mousse-like desserts and prepared frosting mix to resemble cake frosting.

Therefore, the representations set forth in PARAGRAPH 23 were, and are, false and misleading.

Deceptive Format

PARAGRAPH 25: Through the advertising and dissemination of "The Michael Reagan Show," "Breakthrough '88," "Let's Talk," and "Amazing Discoveries: Magic Wand" advertisements, respondents have represented, directly or by implication, that these commercials are independent television programs and not paid commercial advertising.

PARAGRAPH 26: In truth and in fact, "The Michael Reagan Show," "Breakthrough '88," "Let's Talk," and "Amazing Discoveries: Magic Wand" advertisements are not independent television programs and are paid commercial advertising. Therefore, the representation set forth in PARAGRAPH 25 was, and is, false and misleading.

Deceptive Endorsements

PARAGRAPH 27: Through the statements and depictions contained in the advertisements referred to in PARAGRAPHS 5, 10 and 15, including but not necessarily limited to "The Michael Reagan Show," "Breakthrough '88," and "Let's Talk" advertisements, respondents have represented, directly or by implication, that various testimonials and endorsements contained therein:

- (a) Reflect the typical or ordinary experiences of consumers after using the advertised products.
- (b) Were obtained from individuals or other entities who, at the time of providing their endorsements, were independent from all of the individuals and entities marketing the product.

PARAGRAPH 28: In truth and in fact, the various testimonials and endorsements contained in the advertisements referred to in PARAGRAPHS 5, 10 and 15:

- (a) Do not reflect the typical or ordinary experiences of consumers after using the advertised products.
- (b) Were in some instances obtained from individuals or other entities who, at the time of providing their endorsements, were not independent from all of the individuals and entities marketing the product.

Therefore, the representations set forth in PARAGRAPH 27 were, and are, false and misleading.

PARAGRAPH 29: Respondents have disseminated or have caused to be disseminated advertisements for various products, including but not necessarily limited to the "Amazing Discoveries: Magic Wand" advertisement, which display the purported seal of an organization called the National Association of Advertising Producers ("NAAP"), and contain the following statement:

"The following special promotional program has been approved by the National Association of Advertising Producers for its integrity and excellence."

PARAGRAPH 30: Through the use of the statements and depictions contained in the advertisements referred to PARAGRAPH 29, including but not necessarily limited to the "Amazing Discoveries: Magic Wand" advertisement, respondents have represented, directly or by implication, that:

- (a) The NAAP is an existing organization whose qualifications give it the expertise to evaluate commercials for their integrity and excellence.
- (b) The NAAP is an entity that, at the time of providing the endorsements, was independent from all of the individuals and entities marketing the product.

PARAGRAPH 31: In truth and in fact,:

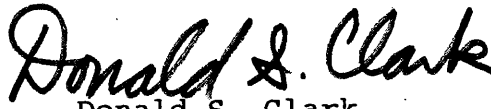
- (a) The NAAP is not an existing organization whose qualifications give it the expertise to evaluate commercials for their integrity and excellence.
- (b) The NAAP is not an entity that, at the time of providing its endorsements, was independent from all of the individuals and entities marketing the product.

Therefore, the representations set forth in Paragraph 30 were, and are, false and misleading.

PARAGRAPH 32: The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission on this twenty-third day of September, A.D. 1993, has issued this complaint against respondents.

By the Commission, Commissioner Azcuenaga recused.


Donald S. Clark
Secretary

SEAL