

## IN THE MATTER OF

## P. LEINER NUTRITIONAL PRODUCTS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SECS. 5  
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9173. Complaint, Jan. 27, 1984—Decision, May 3, 1985*

This consent order requires two California firms engaged in the advertising, labelling, packaging, sale and distribution of nutritional supplements, among other things, to cease representing falsely or without proper substantiation, that Octacol 4 or any similar product can improve human vigor, endurance or other aspects of physical performance or fitness; or that the Octacosano, Triacontanol, Hexacosanol or tetracosanol contained in their products are related to athletic endurance or physical fitness. The firms are also barred from making claims regarding physical benefits to be derived from using such products unless they are properly substantiated; and from misrepresenting the purpose, reliability, results or conclusions of any test, research, article or scientific opinion. Additionally, the companies are required to maintain for a period of three years all materials that substantiate or contradict representations covered by the order.

*Appearances*

For the Commission: *Cheryl B. Anderson, Teresa A. Hennessy and Brinley H. Williams.*

For respondents: *Henry P. Sailer and Jonathan L. Wiener, Covington & Burling, Washington, D.C.*

## 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 PLNP Holdings, Inc., a corporation, and P. Leiner Nutritional Products, Inc., a corporation, hereinafter 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. Respondent PLNP Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent P. Leiner Nutritional Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent PLNP

Holdings, Inc. dominates or controls, knew of and approved, or benefits from the acts and practices of its only and wholly-owned subsidiary, P. Leiner Nutritional Products, Inc., including the acts and practices hereinafter set forth. Both corporate respondents have their offices and principal places of business at 1805 West 205th Street, Torrance, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture, offering for sale, and sale of nutritional supplements, including Octacol 4, and other products for personal or household use by members of the general public (hereinafter "consumer products").

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional material, including, but not limited to, the advertising and labeling referred to herein, to promote the sale of Octacol 4. As advertised, Octacol 4 is a "food" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. PLNP Holdings, Inc., and P. Leiner Nutritional Products, Inc., operate in various States of the United States and in the District of Columbia. Respondents' manufacture, offering for sale, sale, and distribution of nutritional supplements, including Octacol 4, mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their businesses, respondents have disseminated and caused the dissemination of advertisements for nutritional supplements, including Octacol 4, by various means in or affecting commerce, including national magazines, product labels, point of sale brochures, distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through D. Specifically, the aforesaid advertisements contain the following statements:

- (a) Octacol 4 Helps Increase Endurance, Stamina and Vigor .
- (b) . . . Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376—including high content octacosanol (Emphasis in Original).
- (c) To help you play stronger, play longer .
- (d) Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content octacosanol. Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, ~~jumping, weight training, tennis or skiing.~~

(e) . . . [I]n long-term university studies and related research, published results indicate that the four performance factors now available in Octacol 4—including high content Octacosanol—have shown significant effects on several types of human endurance. Result? Athletes participating in these research studies were able to play and perform stronger, longer .

(f) In particular, Octacol 4 may benefit athletes and active people participating in these extra effort sports:

Aerobics	Racquet Sports
Basketball	Running
Dance	Soccer
Football	Swimming
Hockey	Skiing
Jogging	Weight Training

PAR. 7. Through the use, *inter alia*, of the statements referred to in Paragraphs Six (a) through Six (f), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that the use of Octacol 4 will improve consumers' endurance, stamina, vigor, overall athletic performance, or overall physical fitness.

PAR. 8. Through the use, *inter alia*, of the statements referred to in Paragraph Six (b) and Six (d), respondents have represented, and now represent, directly or by implication, that Octacol 4 contains four sports stamina and performance factors—octacosanol, triacontanol, tetracosanol, and hexacosanol—that render Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 9. Through the use, *inter alia*, of the statements referred to in Paragraph Six (a) through Six (f) respondents have represented, and now represent, directly or by implication, that they possessed and relied upon a reasonable basis consisting of competent and reliable evidence that substantiated the representations referred to in Paragraphs Seven through Eight, at the time they first disseminated those representations and at each subsequent dissemination. Through the use, *inter alia*, of the statements referred to in Paragraph Six (e), respondents further represented:

(a) that, at the time they made the representations referred to in Paragraphs Seven and Eight, they possessed and relied upon scientific studies, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) that the scientific studies referred to in Paragraph Nine (a) provided a reasonable basis consisting of competent and reliable

scientific evidence that substantiated the representations in Paragraphs Seven and Eight.

PAR. 10. The representation contained in Paragraph Seven is false, for the reason that the use of Octacol 4 will not improve consumers' athletic endurance, stamina, vigor, overall athletic performance or overall physical fitness.

PAR. 11. The representation contained in Paragraph Eight is false, for the reason that none of the four factors referred to in Paragraph Eight renders Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 12. The representations contained in Paragraph Nine are false, for the reasons that respondents did not possess and rely upon a reasonable basis that substantiated the representations referred to in Paragraphs Seven and Eight at the time they made those representations. The representations referred to in Paragraph Nine (a) and (b) are false, for the reasons that the studies referred to:

(a) were not conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) did not provide a reasonable basis consisting of competent and reliable scientific evidence that substantiated the representations referred to in Paragraphs Seven and Eight.

PAR. 13. The use by respondent of the aforesaid acts and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers and to induce such persons to purchase Octacol 4.

PAR. 14. The aforesaid acts and practices of respondents were and are to the prejudice and injury of the public, and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

EXHIBIT A

**IMPORTANT NEWS.  
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,  
STAMINA AND VIGOR.**



**OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.**

Octacol 4 is important news for athletes. And active people.

Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.

To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376— including high content Octacosanol.

Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, tennis, dancing or weight training.

New Octacol 4 from Your Life®

**SAVE \$1**

WHEN YOU BUY ANY SIZE BOTTLE OF OCTACOL 4! PRESENT THIS COUPON AND \$1 WILL BE TAKEN OFF THE MARKED RETAIL PRICE!

**74990 100108**

STORE COUPON

**MORE GOOD NEWS!  
SAVE \$1 ON OCTACOL 4 AT THESE QUALITY STORES.**

**BI-MART  
FRED MEYER  
K MART  
PAY 'N SAVE**

And other fine stores.

Complaint

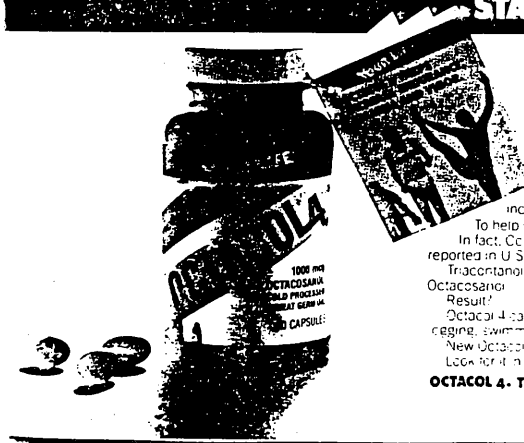
105 F.T.C.

EXHIBIT B

**YOUR LIFE OCTACOL 4.**

AS SEEN IN:  
SPORTS ILLUSTRATED  
PEOPLE  
RUNNER'S WORLD

**IMPORTANT NEWS**  
**NEW OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.**



Octacol 4™ is important news for athletes and active people. Because Octacol 4 is a natural, daily nutritional supplement that can help increase your personal sports stamina and endurance. To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,375: Tricosanol, Tetracosanol, Hexacosanol, and nonyl stearate Octacosanol.

Result? Octacol 4 can help you get the most from your body in sports: cycling, swimming, tennis, weight training, tennis or jogging. New Octacol 4 from 1984-1985.

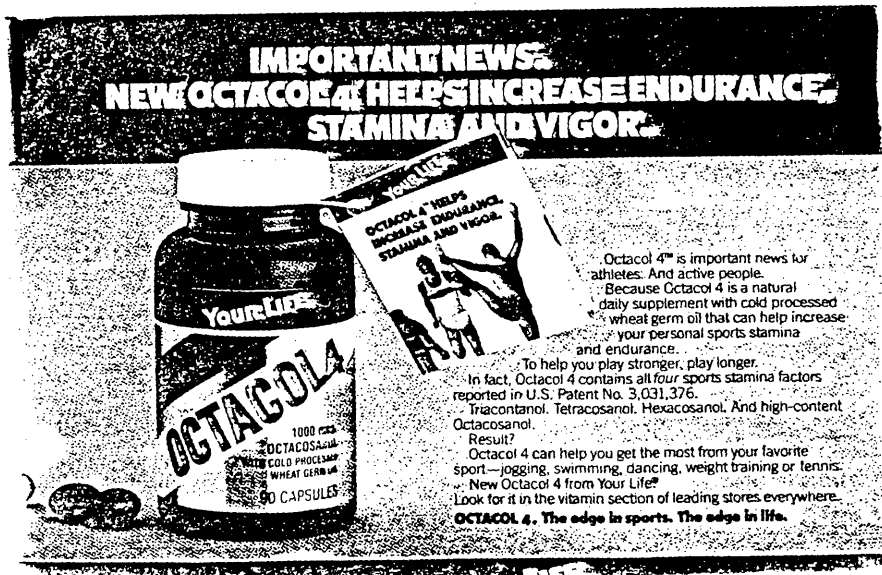
Look for it in the stamina section of leading sports magazines.

**OCTACOL 4. The edge in sports. The edge in life.**

**YOUR LIFE OCTACOL 4.**

AS SEEN IN:  
SPORTS ILLUSTRATED  
PEOPLE  
RUNNER'S WORLD

**IMPORTANT NEWS.  
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,  
STAMINA AND VIGOR.**



The advertisement features a central image of a white plastic bottle of 'Your Life Octacol 4' capsules. The bottle has a white cap and a label that reads 'Your Life OCTACOL 4 1000 mg OCTACOSANOL WITH COLD PROCESSED WHEAT GERM OIL 90 CAPSULES'. To the right of the bottle is a clipping from a magazine, likely 'Your Life', with the headline 'OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.' and a picture of a person in athletic gear.

Octacol 4™ is important news for athletes. And active people. Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.

To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content Octacosanol.

Result?

Octacol 4 can help you get the most from your favorite sport—jogging, swimming, dancing, weight training or tennis.

New Octacol 4 from Your Life®.

Look for it in the vitamin section of leading stores everywhere.

**OCTACOL 4. The edge in sports. The edge in life.**

