

## IN THE MATTER OF

## NATIONAL DIETARY RESEARCH, INC., ET AL.

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

*Docket 9263. Complaint, Nov. 9, 1993--Decision, Nov. 7, 1995*

This consent order prohibits, among other things, two Florida-based corporations and their owner from making claims regarding weight loss, hunger reduction, calorie absorption, cholesterol reduction, effects on cellulite or body measurements, or any other health benefits of any product or program they advertise or sell, unless the respondents possess competent and reliable scientific evidence to substantiate the claims. Also, the consent order prohibits the respondents from misrepresenting test results, from representing that any advertisement is something other than a paid advertisement, and from representing that an endorsement is typical of the experience of consumers who use the product, unless the claim is substantiated. In addition, the consent order requires the respondents to pay \$100,000 to the Commission.

*Appearances*

For the Commission: *Joel Winston, Richard Cleland, C. Lee Peeler and Joan Bernstein.*

For the respondents: *Roger Furey, Arter & Hadden, Washington, D.C. and Donovan Conwell, Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa, FL.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that National Dietary Research, a corporation, The William H. Morris Company, a corporation, and William H. Morris, individually and as the sole officer of said corporations ("respondents"), have violated Sections 5(a) and 12 of the Federal Trade Commission Act (15 U.S.C. 45 (a) and 52), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent National Dietary Research is a Florida corporation, with its principal office or place of business located at 1377 K Street, N.W., Suite 553, Washington, D.C.

(b) Respondent William H. Morris Company is a Florida corporation, with its principal office or place of business located at 2804 Smitter Road, Tampa, Florida.

(c) Respondent William H. Morris is the President of both National Dietary Research and the William H. Morris Company. Mr. Morris owns 100 percent of the capital stock of both corporations. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His principal office or place of business is located at 2804 Smitter Road, Tampa, Florida.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed Food Source One, a compressed tablet made largely from plant fiber, as a weight loss product. Respondents have also advertised, offered for sale, sold and distributed Vancol 5000, a compressed tablet made from plant fiber and other substances, as a product that reduces serum cholesterol. Each of these products is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. 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.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Food Source One, including, but not necessarily limited to, the attached Exhibits A-F and J-L. These advertisements and promotional materials contain the following statements:

#### 1. WEIGHT LOSS SURPRISES RESEARCHERS

WASHINGTON – A nutrition organization was hopeful that a nutritionally complete "hi-tech" food tablet would help erase world hunger problems, until a study revealed that one of the ingredients could cause significant weight loss without dieting! Researchers in Europe found that an ingredient in the aptly named product Food Source One actually caused people to lose weight, even though specifically instructed not to alter normal eating patterns, according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories.

While the development of Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the discovery has been a windfall for overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 30 pounds. She stated, "Not only have I lost 30 pounds but my

cholesterol has dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report, a telephone interview revealed that a Wilmington, North Carolina pharmacist lost 14 pounds in 15 days on the product and was never hungry. (Exhibits A, J and L).

## 2. WEIGHT LOSS MYSTERY Baffles Scientists

WASHINGTON -- Scientists are baffled by a natural food ingredient that causes people to lose weight even though they don't change the way they normally eat.

A study published in *The British Journal of Nutrition* says that the ingredient, often used to thicken ice cream, can cause significant weight loss without dieting. Although several explanations for the weight loss are suggested, the most likely according to scientists in a Finnish study, is that the ingredient seems to decrease the intestinal absorption of calories.

National Dietary Research, an organization committed to the research and development of nutritional solutions to world-wide health problems, along with consulting scientists, have successfully isolated and incorporated the ingredient into an improved method that greatly enhances the potential for weight loss over the ingredient alone. Called Food Source One, the significant breakthrough in nutritional weight control provides a three-way scientifically designed method to help prevent calorie absorption.

The mechanism by which Food Source One works to decrease body weight is a complicated process called nutri-bonding. When chewed and swallowed immediately before meals, high calorie fats are replaced with lower calorie nutrients, thereby providing optimum nutrition and a minimum number of fat calories as explained in an instruction sheet that accompanies the tablets. The instruction sheet should be followed for optimum results.

....

Physicians and pharmacists are praising Food Source One as a natural, drug free alternative for the treatment of obesity. (Exhibits B and K).

## 3. WHAT IS FIBERSPAN?

Fiberspan is the trade name for a special formulation of soluble type fiber shown to be effective for weight loss.

....

### HOW DOES SOLUBLE FIBER HELP ONE LOSE WEIGHT?

Studies published in respected scientific journals including the *American Journal of Clinical Nutrition* and *The British Journal of Nutrition* found that soluble fiber caused patients to lose weight. Part of the reason for the weight loss, according to scientists, is probably due to the appetite reduction properties. However, some studies have found that patients consuming soluble fiber lost weight without altering their normal eating patterns. The appetite reducing effects of the fiber cannot justify this phenomenon. Thus, scientists speculate that the fiber reduces intestinal absorption of a portion of the calories you consume leading to weight loss. The calories are trapped when the fiber forms a gel and are eliminated.

### IS FS-1 MORE EFFECTIVE FOR WEIGHT LOSS THAN THE FIBER ALONE?

FS-1 provides a three way scientifically designed process for improved weight loss that fiber alone cannot provide. The human appetite is too complex to be tricked for any length of time by the placement of a non-nutritive substance in the stomach. This is why the nutritional portion of FS-1 is so important.

....

**WHAT IS FOOD SOURCE ONE WITH FIBERSPAN?**

Food Source One with Fiberspan, commonly referred to as FS-1, is a nutritionally concentrated food tablet with a high fiber content. FS-1 functions just like real food but without all the calories. When chewed, swallowed and followed with water FS-1 expands in the stomach like a sponge as it soaks up water. The nutritional components of the tablet are then released in the stomach so that they are available for absorption.

**HOW DOES FS-1 CONTROL THE APPETITE?**

The same way eating a six course meal would kill the appetite, with food. First, the fiber creates a temporary full feeling, then the nutritional portion of the tablet gives a gentle rise in blood sugar levels for prolonged appetite suppression, just like a meal. (Exhibit C).

4. Food Source One also contains a unique blend of natural food fiber called Fiberspan. Fiberspan expands in the stomach to many times its own size to help reduce hunger. Furthermore, scientists say that the fiber in Fiberspan helps you lose weight by preventing the absorption of a portion of the calories you consume from food.

....

**THE NO DIET DIET** - Chew 3 to 5 FS-1 tablets followed by an 8 oz. glass of water, 30 minutes before each meal. FS-1 will reduce hunger so you will be satisfied with less food. You still enjoy all your favorite foods, but you will eat less. (Exhibit D).

**5. ACCIDENTAL DISCOVERY MAY END OBESITY**

**WASHINGTON** - Researchers may have discovered a way to end obesity--by accident!

In a study with a potential cholesterol lowering agent, scientists noted an unusual side effect. Instead of lower cholesterol levels, patients receiving a natural plant colloid lost weight while body weight in a control group remained constant.

The scientists say the mechanism behind the weight loss is not clear, but suggest it is partially due to a decrease in the intestinal absorption of calories. Scientists in another study published in the British Journal of Nutrition, found that patients consuming the same colloid lost weight in spite of being instructed not to alter normal eating patterns. Despite this evidence, other scientists may not agree on the weight loss benefits of colloids. Someday, pending further study, there could be universal agreement that colloids are helpful in confronting the problem of obesity. (Exhibit E).

**6. WEIGHT LOSS SURPRISES RESEARCHERS**

**WASHINGTON** -- A nutrition organization was hopeful that a nutritionally complete "hi-tech" food tablet would help erase world hunger problems, until a study revealed that one of the ingredients could cause significant weight loss.

Although other studies and scientists may not agree, researchers in Europe found that the ingredient, a natural plant colloid, actually caused people to lose weight, even though specifically instructed not to alter normal eating patterns, according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories.

While the development of the product called Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the formula which has since been improved with other natural colloids has

been a windfall for overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 30 pounds. She stated, "Not only have I lost 30 pounds but my cholesterol dropped from 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report a telephone interview with a Wilmington, North Carolina pharmacist lost 14 pounds in 3 weeks on the product and was never hungry .... A variety of nutritionally sound diet plans are specially prepared by NDR, accompany each bottle and provide a natural, drug free alternative for confronting the problem of obesity. (Exhibit F)

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that:

- (a) Food Source One causes significant weight loss.
- (b) Food Source One causes significant weight loss without dieting or otherwise changing normal eating patterns.
- (c) Food Source One is an effective treatment for obesity.
- (d) Food Source One reduces hunger and is an effective appetite suppressant.
- (e) Food Source One decreases the intestinal absorption of calories.
- (f) Food Source One may significantly reduce serum cholesterol.

PAR. 6. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials set forth in paragraph four, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits A-F, and J-L, respondents have represented, directly or by implication, that:

(a) Scientific studies of certain ingredients contained in Food Source One, including studies published in the British Journal of Nutrition and the American Journal of Clinical Nutrition, demonstrate that Food Source One causes significant weight loss.

(b) Scientific studies of certain ingredients contained in Food Source One, including a study published in the British Journal of Nutrition, demonstrate that Food Source One causes significant weight loss without dieting.

(c) Food Source One has a high fiber content.

(d) National Dietary Research is a *bona fide*, independent research organization that has conducted research seeking nutritional solutions to world-wide health problems.

PAR. 9. In truth and in fact:

(a) Scientific studies of certain ingredients contained in Food Source One, including studies published in the British Journal of Nutrition and the American Journal of Clinical Nutrition, do not demonstrate that Food Source One causes significant weight loss.

(b) Scientific studies of certain ingredients contained in Food Source One, including a study published in the British Journal of Nutrition, do not demonstrate that Food Source One causes significant weight loss without dieting.

(c) Food Source One does not have a high fiber content.

(d) National Dietary Research is not a *bona fide*, independent research organization and has not conducted research seeking nutritional solutions to world wide health problems.

Therefore the representations set forth in paragraph eight were, and are, false and misleading.

PAR. 10. Respondents have represented, directly or by implication, that certain of its advertisements for Food Source One, including, but not necessarily limited to, Exhibits B, J, K and L, are independent newspaper stories and not paid advertisements.

PAR. 11. In truth and in fact, the advertisements for Food Source One referred to in paragraph ten are paid commercial advertisements

and not independent newspaper stories. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Vancol 5000, including, but not necessarily limited to, the attached Exhibits G-I. These advertisements and promotional materials contain the following statements:

**1. CHOLESTEROL DISCOVERY PASSES MOM'S TEST**

WASHINGTON - The mother of a research scientist recently lowered her cholesterol more than 20% without changing her eating habits.

After a visit to her doctor, a Florida woman learned that her cholesterol level was an elevated 308 and she was encouraged to change her eating habits. When she returned 10 weeks later, the doctor was astounded that her cholesterol level has dropped to 243. Asked if she achieved the amazing results just by dieting she replied, "No I didn't diet at all, in fact I ate the things I shouldn't eat like bacon, sausage and ice cream. The only thing I did different was take some tablets my son gave me."

The woman's son is Dr. William Morris, director of research and development [at] National Dietary Research, an Organization dedicated to finding nutritional solutions to health problems.

....

Vancol 5000 is a chewable food tablet that contains extracts from foods known to lower cholesterol. According to the exclusive distributor for Vancol 5000, inquiries about the new product are being received from all over the country and has peaked [sic] the interest of doctors used to prescribing expensive cholesterol lowering drugs. (Exhibit G).

**2. THE VANCOL 5000 CHOLESTEROL LOWERING PLAN GUARANTEE**

A blood cholesterol level over 270 puts you at a high risk for heart disease. Have your cholesterol checked. If you need to lower your cholesterol, use Vancol 5000 as directed for 30 days. After 30 days, have it checked again. If your cholesterol has not been lowered significantly, bring your test results and empty bottle back for a FULL REFUND! LOWER YOUR CHOLESTEROL IN 30 DAYS OR YOUR MONEY BACK!

National Dietary Research - Washington, D.C. (Exhibit H).

**3. Recent Scientific data suggests that the ingredients contained in Vancol 5000**

have a beneficial effect on lowering total blood cholesterol levels, LDL cholesterol and may even increase HDL cholesterol. The Vancol 5000 Plan and the nutrients contained in the Vancol 5000 tablet were developed to lower cholesterol levels, improve overall health status and an individuals [sic] quality of life.

....

Beta Sitosterol has been shown experimentally to decrease elevated plasma cholesterol by interfering with the intestinal absorption [sic] of cholesterol.

....

Chromium picolinate supplementation has been shown to decrease LDL and total cholesterol levels and is effective in the treatment of hyperlipidemia.

....

Psyllium decreases absorption of cholesterol and lipids in the small intestines and causes the formation of short chain fatty acids, which are rapidly absorbed and may inhibit cholesterol synthesis.

.....

Calcium carbonate and magnesium stearate have been found to decrease cholesterol as explained in further detail on the following page.

.....

#### VANCOL 5000

Elevated Cholesterol Levels and Dietary Supplementation Chromium Picolinate  
Experimental study: Supplementation with 50-200 mcg of chromium daily, improved blood cholesterol and triglyceride levels. The decrease was due to chromiums [sic] function in fat metabolism and sugar metabolism. (Anderson, Richard A. Agricultural Research, 10:14-16, 1990)

Experimental Double-blind Crossover Study: During a 42 day period, 28 subjects were given chromium tripicolinate (200 mcg) or a placebo daily. The subjects ingesting chromium had a significant decrease in total cholesterol, LDL cholesterol (10.5% decrease) and serum apolipoprotein B, (the principal protein of LDL cholesterol fraction) decreased. HDL cholesterol and apolipoprotein A increased. Subjects ingesting the placebo had elevated apolipoprotein B levels. (Press RI et al. The effect of chromium picolinate on serum cholesterol and apolipoprotein fractions in human subjects. West J. Med. 1990 Jan; 152:41-45)

#### Psyllium

Double-blind Placebo Controlled Study: 26 hypercholesterolemic men were treated with psyllium or a placebo for 8 weeks. The psyllium group showed a 14% decrease in total cholesterol, 14.8% decrease in LDL/HDL cholesterol ratio and 20% decrease in LDL cholesterol. The placebo group showed no significant changes. (Anderson, J.W. et al. Cholesterol lowering effect of psyllium for hypercholesterolemic men. Arch Intern Med. 148:292-296)

Double-blind Study: 96 subjects with hypercholesterolemia were given 5.1 gms of psyllium or a placebo twice daily for 16 weeks, while following a prudent diet. Psyllium decreased total cholesterol by 5.6% and LDL cholesterol by 8.6%. The levels in the placebo group were unchanged. (Levin, E.G. et al. Comparison of psyllium and cellulose as adjuncts to a prudent diet in the treatment of hypercholesterolemia. Arch Intern Med. 150: 1822-1827, 1990)

#### BETA SITOSTEROL

Experimental Study: A diet containing .5% cholesterol plus .5% sitosterol, resulted in a significant decrease of liver cholesterol, showing the inhibitory effect of sitosterol on cholesterol absorption [sic]. (Ikeda, I. et al. J. Nutr. Sci. Vitaminol 35:361-369, 1989)

#### QUINONES

Quinones are natural antioxidants that help control and minimize free radical reactions to help lower cholesterol.

#### Calcium Carbonate

Although the mechanism of action is unknown, calcium has been shown to decrease cholesterol. One physician, a former medical editor for a national magazine, has advanced his "hard water" theory as a possible answer.  $\text{CaCO}_3$  is the most common substance in hard water. According to the doctor, just as body oils and detergents mix with  $\text{CaCO}_3$  to form an insoluble "bathtub ring", it can also inhibit the intestinal absorption of fat and cholesterol.

**Magnesium Stearate**

Magnesium stearate is a by product of stearic acid. Scientific data has shown, that when stearic acid is used in place of other fats in the diet, there is a significant reduction of plasma levels of cholesterol and LDL cholesterol (total cholesterol decreased by an average of 14%).

NOTE: No statement contained in this publication shall be construed as a claim or representation that any product is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any disease. This report is intended for professional use only. Certain persons considered experts may disagree with one or more of the statements and/or conclusions found in this report. Notwithstanding the above, this information is of current nutritional interest and is based upon sound and reliable authority. (Exhibit I).

PAR. 13. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph twelve, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits G-I, respondents have represented, directly or by implication, that:

- (a) Vancol 5000 significantly reduces serum cholesterol.
- (b) Vancol 5000 significantly reduces serum cholesterol without changes in diet or eating habits.

PAR. 14. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph twelve, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits G-I, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 15. In truth and in fact, at the time they made the representations set forth in paragraph thirteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. Through the use of the statements contained in the advertisements and promotional materials set forth in paragraph twelve, including but not necessarily limited to the promotional materials attached as Exhibit I, respondents have represented, directly or by implication, that scientific studies of certain ingredients

contained in Vancol 5000 demonstrate that Vancol 5000 significantly reduces serum cholesterol.

PAR. 17. In truth and in fact, scientific studies of certain ingredients contained in Vancol 5000 do not demonstrate that Vancol 5000 significantly reduces serum cholesterol. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. Through the use of the statements contained in the advertisements set forth in paragraphs four and twelve, including but not necessarily limited to the advertisements attached as Exhibits A, F, G, J and L, respondents have represented, directly or by implication, that testimonials from consumers appearing in advertisements for Food Source One and Vancol 5000 reflect the typical or ordinary experience of members of the public who have used the products.

PAR. 19. Through the use of the statements contained in the advertisements set forth in paragraphs four and twelve, including but not necessarily limited to the advertisements attached as Exhibits A, F, G, J and L, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph eighteen, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 20. In truth and in fact, at the time they made the representation set forth in paragraph eighteen, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. 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.

Complaint

EXHIBIT A

November 14, 1990

EXHIBIT A

### Weight Loss Surprises Researchers

WASHINGTON — A nutrition organization was hopeful that a nutritionally complete "nutraceutical" would help erase world hunger problems until a study revealed that one of the ingredients could cause significant weight loss without dieting. Researchers in Europe found that an ingredient in the aptly named product Food Source One actually caused people to lose weight even though specifically instructed not to alter normal eating patterns according to one study published in the prestigious British Journal of Nutrition. Researchers in an earlier study had speculated that the weight loss was due to a decrease in the intestinal absorption of calories. While the development of Food Source One, a project of National Dietary Research, would not be used to successfully fulfill its original goal, the discovery has been a windfall for

overweight people. A Daytona Beach, Florida woman fighting a weight battle for 12 years used the product on the recommendation of her physician and lost 20 pounds in six weeks. "Not only have I lost 20 pounds but my cholesterol has dropped for 232 to 143. I have two closets full of clothes which have not fit me in two years that I can now wear." In a separate report, a telephone interview revealed that a Wilmington, North Carolina pharmacist lost 14 pounds in 15 days on the product and was never hungry. Food Source One is available through physicians and pharmacies without a prescription because it is not a drug and contains only natural ingredients already known to be safe. Copies of the referenced study are available free from National Dietary Research, Suite 553, 1377 K St., Washington, DC 20008, however please include \$2 postage & handling for each request.

#### ASK YOUR PHARMACIST

Food Source One is available at a pharmacy near you:

- |  |   |   |
|--|---|---|
| <b>Bridley Drug Co.</b><br>604 Hwy. 100<br>357-1122                        | <b>Bradshaw Drugs</b><br>4041 Hillsboro Rd.<br>385-3828   | <b>Brooks Pharmacy</b><br>6701 Transdale Dr.<br>832-1647                |
| <b>Drug Mart</b><br>2614 Old Lebanon Rd.<br>833-8518                       | <b>Health Care Plus</b><br>1613 Hillsboro Rd.<br>385-3861   | <b>Hickory Park Pharmacy</b><br>2834 Old Lebanon Road<br>833-8813       |
| <b>Mayfield Drug Co.</b><br>3302 Nolanville Rd. + Antioch Pike<br>832-1790 | <b>Malone Drug Co.</b><br>2762 Lebanon Rd.<br>883-3298  | <b>Marshallburg Rd.</b><br>2648 Marshallburg Rd.<br>385-4687            |
| <b>Green Hills Prescription Shoppe</b><br>3900 Hillsboro Rd.<br>297-4086   | <b>The Medicine Shoppe</b><br>1910 Church St.<br>329-2211   | <b>Todd's Drug Store</b><br>2319 Dickerson Rd.<br>262-1911              |
| <b>601 Gallean Rd.</b><br>1113 Murfreesboro Rd.<br>Sewards Ferry Pike      | <b>J.P. Brown Drug Store</b><br>227-1101<br>361-5700<br>883-0131  | <b>3109 Dickerson Rd.</b><br>228-3531<br>3637 Dickerson Rd.<br>865-0287 |
| <b>Elders Pharmacy</b><br>210 Goodlettsville Plaza<br>856-1331             | <b>McGee's Prescription Shoppe</b><br>842 Union Street<br>684-7936  | <b>Portland Prescription Shoppe</b><br>105 Broadway<br>325-4161         |
| <b>P &amp; P Drugs</b><br>811 W. Main St.<br>824-1215                      | <b>Esperville Drug Center</b><br>Highway 41-A<br>274-4866   | <b>Woodbury Drug Center</b><br>223 W. Main St.<br>363-2332              |
| <b>Martin Retail Drugs</b><br>On The Square<br>973-7286                    | <b>Murfreesboro Drug Center</b><br>1703 Bradyville Rd.<br>1004 N. Highland<br>1115 Memorial Blvd.<br>893-6023<br>893-7413<br>896-9161 |   |
| <b>Pugh's Pharmacy Inc.</b><br>511 Gallean Rd. #9<br>866-3432              | <b>The Medicine Shoppe</b><br>232 S. 4th Ave. N.<br>794-3070  | <b>Memphis Drug</b><br>S. N. Water Ave.<br>482-3434                     |

Complaint

120 F.T.C.

EXHIBIT B

**WEIGHT LOSS  
MYSTERY  
BAFFLES  
SCIENTISTS**

WASHINGTON—Scientists are baffled by a natural food ingredient that causes people to lose weight even though they don't change the way they normally eat.

A study published in *The British Journal of Nutrition* says that the ingredient, often used to thicken ice cream, can cause significant weight loss without dieting. Although several explanations for the weight loss are suggested, the most likely according to scientists in a Finnish study, is that the ingredient seems to decrease the intestinal absorption of calories.

National Dietary Research, an organization committed to the research and development of nutritional solutions to world-wide health problems, along with consulting scientists, have successfully isolated and incorporated the ingredient into an improved method that greatly enhances the potential for weight loss over the ingredient alone. Called Food Source One, the significant breakthrough in nutritional weight control provides a sure-way scientifically designed method to help prevent calorie absorption.

The mechanism by which Food Source One works to decrease body weight is a complicated process called nutrient-bonding. When chewed and swallowed immediately before meals, high calorie fats are replaced with low-calorie nutrients, thereby providing optimum nutrition and a minimum number of fat calories as explained in an instruction sheet that accompanies the tablets. The instruction sheet should be followed for optimum results.

Food Source One is unlike any other product on the market and is available immediately because it is not a drug and only contains natural ingredients already known to be safe. Physicians and pharmacists are praising Food Source One as a natural, drug free alternative for the treatment of obesity.

© 1990 Omnicor International  
Food Source One is available at:  
M Prescription Pharmacy  
23 12th Avenue NW 223-0671  
(Advertisement)

Ardmoreite  
Ardmore, OK  
December 9, 1990

19081

EXHIBIT C

EXHIBIT C Page One

QUESTIONS & ANSWERS ABOUT

**FOOD SOURCE ONE**

with **FIBERSPAN™**

**Concentrated Food Tablets**

**WHAT IS A FOOD TABLET?**

A food tablet is not just a vitamin tablet, because it packs the balanced nutrition of a meal into a compact tablet. Just as we get our required calories from food, a food tablet can provide the calories your body needs to function without the excess calories you would get from an average meal.

The concept for a food tablet probably began when the time space travel became a reality. The need for nutrition in outer space, yet in a convenient compact form led scientists in search of a solution. A food tablet packs optimum nutrition into the smallest possible form.

**WHAT IS FOOD SOURCE ONE WITH FIBERSPAN?**

Food Source One with Fiberspan, commonly referred to as FS-1, is a nutritionally concentrated food tablet with a high fiber content. FS-1 functions just like real food but without all the calories. When chewed, swallowed and followed with water, FS-1 expands in the stomach like a sponge as it soaks up water. The nutritional components of the tablet are then released in the stomach so that they are available for absorption.

**HOW DOES FS-1 CONTROL THE APPETITE?**

The same way eating a six course meal would kill the appetite, with food. First, the fiber creates a temporary full feeling, then the nutritional portion of the tablet gives a gentle rise in blood sugar levels for prolonged appetite suppression, just like a meal.

**DOES FS-1 HAVE SIDE EFFECTS?**

FS-1 is food and not a drug, so side effects are limited to those that might be experienced when one overeats. For example, some people become full after consuming a small amount of food whereas others require more food to become full. Therefore, some people will be satisfied with fewer FS-1 tablets, while others will require more tablets to become full. If you become "bloating" or experience an upset stomach when taking FS-1, reducing the number of tablets for the first few days will alleviate this feeling.

**HOW MUCH DOES FS-1 COST?**

The price of FS-1 is about 75 cents per serving which is easily offset by the reduction in food one would ordinarily consume. On a serving per serving basis, FS-1 is about the same price as the leading liquid weight loss formula.

**CAN I EAT EVERYTHING I WANT WHEN TAKING FS-1?**

Dieters often get discouraged when they are deprived of their favorite foods. Modest use of the FS-1 will help you feel satisfied with less, but don't ruin a good thing.

**FOOD SOURCE ONE WITH FIBERSPAN**

Research and development by:  
**NATIONAL DIETARY RESEARCH**  
 SUITE 553, 1377 K STREET  
 WASHINGTON, DC 20005

Distributed world wide by:  
**OMICRON INTERNATIONAL**  
 P.O. Box 270665  
 Tampa, FL 33688

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 ALL RIGHTS RESERVED

Complaint

120 F.T.C.

## EXHIBIT C

patterns. The appetite reducing effects of the fiber cannot justify this, the respondent. Thus, scientists speculate that the fiber reduces the nutritional absorption of a portion of the calories you consume, leading to weight loss. The calories are trapped when the fiber forms a gel and are eliminated.

#### IS FS-1 MORE EFFECTIVE FOR WEIGHT LOSS THAN THE FIBER ALONE?

FS-1 provides a three way scientifically designed process for improved weight loss that fiber alone cannot provide. The human appetite is completely satisfied for any length of time by the placement of a non-nutritive substance in the stomach. This is why the nutritional portion of FS-1 is so important.

#### WHAT IS NUTRI-BONDING?

Nutri bonding is the process that makes the FS-1 tablet so unique. The nutritional portion of the tablet is bound to the fiber portion. When the tablet is consumed, the nutrients are released from the fiber so they can be absorbed into the body. Without nutri bonding the nutrients would be absorbed by the fiber and eliminated from the body without being absorbed.

#### IS CHEWING THE TABLETS IMPORTANT?

Yes, chewing the tablets is important but not absolutely essential. First, chewing retards the rate of caloric ingestion and secondly, chewing satisfies a psychological need for chewing often absent or decreased in persons on a weight reduction program. National Dietary Research, however, has formulated several dehydrated milk shake recipes using FS-1 as a base. These milk shakes are also effective in weight reduction. A powder form of FS-1 used with skim milk is also available. The powder form of FS-1 is also very popular.

#### IS FS-1 A DRUG?

No! FS-1 is a natural food substance with all ingredients previously recognized as safe by the FDA. Just as regular supermarket food is inspected, FS-1 is federally inspected by the FDA.

#### HOW DOES THIS HELP ONE LOSE WEIGHT?

Think of a six course meal which would contain many calories. FS-1 only contains a few calories per tablet. FS-1 satisfies your desire to eat, but with a minimum number of calories.

#### WHAT IS FIBERSPAN?

Fiber span is the trade name for a special formulation of soluble type fiber shown to be effective for weight loss.

#### WHAT IS SOLUBLE FIBER?

Fiber is the residue from plants that resists digestion in the gastrointestinal tract. Fiber is not absorbed and does not supply calories in the diet. Although there are five types of dietary fiber, generally fiber is classified as either soluble or insoluble. Soluble fiber is derived from various plant sources and when ingested takes on water to form a gel. Insoluble fiber is found mostly in cereal grains, and bran and does not take on water.

#### IS INSOLUBLE FIBER HELPFUL FOR WEIGHT LOSS?

No, only soluble type fiber has been shown to help in weight loss. Insoluble fiber's effect is generally limited to its ability to act as a laxative by increasing fecal bulk. Bran and grain fibers are being promoted by some companies for weight loss, however one should be cautioned that these fibers are virtually useless for weight loss.

#### HOW DOES SOLUBLE FIBER HELP ONE LOSE WEIGHT?

Studies published in respected scientific journals including the American Journal of Clinical Nutrition and the British Journal of Nutrition found that soluble fiber caused patients to lose weight. Part of the reason for weight loss, according to scientists, is probably due to the appetite reduction properties. However, some studies have found that patients consuming soluble fiber lost weight without altering their normal eating

EXHIBIT C Page 240

EXHIBIT D

EXHIBIT D

Page One

NEW IMPROVED FORMULA - LESS FAT - FEWER CALORIES

NATURAL NUTRITIONAL

★ ★ ★ WEIGHT LOSS ★ ★ ★

with

FOOD SOURCE ONE

With

Fiberspan™

Concentrated Food Tablets

THE NO DIET DIET - Chew 1 to 3 FS-1 tablets, followed by an 8 oz. glass of water, 30 minutes before each meal. FS-1 will reduce hunger so you will be satisfied with less food. You still enjoy all your favorite foods, but you will eat less.

BUSINESSMAN'S DIET OR SALESMAN'S DELIGHT - This plan is designed for those people who must entertain clients for lunch. Substitute an FS-1 milkshake in place of breakfast and dinner. For lunch, chew 2 or 3 FS-1 tablets, followed by 8 oz. of water. 30 minutes before you eat, then enjoy your usual meal.

SNACKER'S DELIGHT - This plan is the answer for those individuals who don't eat a lot at mealtimes, but are continually hungry and satisfied by that hunger by nibbling. In place of candy bars, potato chips and other snack food, substitute 2 or 3 FS-1 tablets followed by an 8 oz. glass of water to satisfy hunger.

FASTING - For one or two days each week, eliminate all regular food and drink one FS-1 milkshake 3 times a day.

FAST START - For the first 3 days of your diet, eliminate all regular food in place of food, substitute one FS-1 milkshake 3 times a day. At the end of 3 days, continue by selecting one of the plans above.

Remember, when dieting be sure to drink 8 glasses of water or fluid daily. Restrictive diets containing less than 1,000 calories per day should not be continued for more than 6 consecutive weeks without a 2 week rest period. Food Source One is not intended to be the sole source of nutrition for more than 3 consecutive days or 3 days per week.

Research and development by:  
NATIONAL DIETARY RESEARCH  
Suite 553, 1377 K Street  
Washington, DC 20005

Distributed world-wide by:  
OMICRON INTERNATIONAL  
P.O. Box 270465 Tampa, FL 33688

Food Source One with Fiberspan is a wholesome and nutritionally balanced dietary regimen in a pleasant tasting compact chewable tablet. Food Source One has the proper balance of the essential vitamins, minerals, protein, carbohydrates, fatty acids and fiber that would be contained in a well balanced meal, but with a minimum number of fat calories. Food Source One also contains a unique blend of natural food fiber called Fiberspan. Fiberspan expands in the stomach to many times its own size to help reduce hunger. Furthermore, scientists say that the fiber in Fiberspan helps you lose weight by preventing the absorption of a portion of the calories you consume from food.

The Food Source One program is truly a nutritional breakthrough for weight control. Scientifically designed, Food Source One nutritionally satisfies your whole body for a healthy, active life.

Complaint

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EXHIBIT D

EXHIBIT D Page Two

**DINNER TIME** - Substitute an FS-1 milk shake twice daily in place of breakfast and lunch. In the evening, chew 2 to 3 FS-1 tablets followed by an 8 oz. glass of water 30 minutes before enjoying your usual dinner meal.

**DINNER TIME (MODIFIED)** - Same as above, but in place of your usual evening meal create your dinner by selecting one item from each column. For dessert you may have one serving of flavored low calorie gelatin. You may also have diet sodas, coffee, tea, and artificial sweetener. Steak sauce, ketchup, lemon juice, vinegar and mustard should be used sparingly.

1	2	3	4	5
1 small baked whole chicken with 1 tbsp. low fat dressing	8 oz. skim milk	3/4 oz. broiled or baked fish	1 cup of any of the following: spinach, broccoli, cabbage, beets, brocol sprouts, onions, spinach	1 roll or pie crust with 1 pat low calorie margarine
1 small baked whole chicken with 1 tbsp. low fat dressing	8 oz. low fat yogurt	3/4 oz. broiled ground round or chuck	2 cups cauliflower	1 1/2 cups cooked pasta
2 raw carrots	4 oz. low fat fruit yogurt	3/4 oz. chicken or turkey (skin removed)	2 cups cauliflower	1 cup vegetable or chicken noodle soup
1 8 oz. glass tomato juice		3/4 oz. shrimp, lobster or crab	12 asparagus spears	1/2 cup cooked rice
1/2 cup apple sauce		3/4 oz. tuna (packed in water)		1 small fat of corn with 1 pat low calorie margarine

HOW TO USE FS-1

Here are 8 methods for living weight naturally and safely with FS-1, however always remember that you should be checked by a physician before starting any weight loss program to make sure you are in otherwise good physical condition. FS-1 level tablets can be taken before meals to reduce hunger and caloric intake or transformed into delicious milk shakes (see separate recipe brochure) as a meal replacement.

**BREAKFAST CLUB** - Studies indicate that individuals who consume two thirds of their daily calories before noon are less likely to be obese. Chew 2 or 3 FS-1 tablets 30 minutes before breakfast, followed by an 8 oz. glass of water. Then create and build your choice of breakfast by selecting one item from each column listed below. Drink an FS-1 milk shake in place of your other two meals. You may also have diet soft drinks, coffee, tea, and artificial sweeteners.

1	2	3	4
1 medium apple	8 oz. skim milk	1 oz. broiled salmon	2 slices whole wheat toast
1 medium orange	8 oz. low fat yogurt	1 oz. smoked ham (fat removed)	1 small bagel
6 oz. orange juice	4 oz. low fat fruit yogurt	1 oz. broiled ground round	1 small English muffin
1 large tomatoe		1 oz. chicken or turkey (skin removed) baked or steamed	2 biscuits
1/2 large grapefruit		3 oz. broiled or baked fish	2 plain donuts
4 banana		1/2 cup low fat cottage cheese	1 pancake or waffle with 1 tsp. hot syrup
10 grapes		1 egg scrambled with 2 tsp. whites (use no oil and 1 serving of one of the items above)	1 cup corn flakes
1 wedge cantaloupe			

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Complaint

EXHIBIT E

EXHIBIT E

Oakland Tribune  
September 20, 1992

ADVERTISEMENT      ADVERTISEMENT

### Accidental discovery may end obesity

WASHINGTON — Researchers may have discovered a way to end obesity — by accident.

In a study with a potential cholesterol lowering agent, scientists noted an unusual side effect. Instead of lower cholesterol levels, patients receiving a natural plant colloid lost weight while body weight in a control group remained constant.

The scientists say the mechanism behind the weight loss is not clear, but suggest it is partially due to a decrease in the intestinal absorption of calories. Scientists in another study published in the *British Journal of Nutrition*, found that patients consuming the same colloid lost weight in spite of being instructed not to alter normal eating patterns. Despite this evidence, other scientists may not agree on the weight loss benefits of colloids. Someday, pending further study, there could be universal agreement that colloids are helpful in confronting the problem of obesity.

National Dietary Research, whose research topics have been the subject of articles published in recent medical and nutritional journals, has successfully incorporated a series of colloids into a chewable food tablet called FS-1. When used as directed, FS-1 replaces high calorie fats with lower calorie nutrients, thus providing optimum nutrition with a minimum number of fat calories. According to an article published in the *American Journal of Clinical Nutrition*, consciously limiting the amount of food one consumes is not necessary to lose weight, provided you limit the fat.

A Florida company has obtained exclusive distribution rights to FS-1, which is available through pharmacies and other health care professionals.

©1992 Quilora International  
Food Source One is available at:  
LINCOLN SQUARE PHARMACY  
4100 Redwood Road 531-0602  
MONTCLAIR PHARMACY  
6123 Lasalle Ave 339-9393

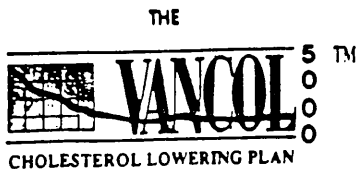




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120 F.T.C.

EXHIBIT H



# GUARANTEE

A blood cholesterol level over 270 puts you at a high risk for heart disease. Have your cholesterol checked. If you need to lower your cholesterol, use Vancol 5000 as directed for 30 days. After 30 days, have it checked again. If your cholesterol has not been lowered significantly, bring your test results and empty bottle back for a **FULL REFUND!**

**LOWER YOUR CHOLESTEROL IN 30 DAYS  
OR YOUR MONEY BACK!**



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Complaint

EXHIBIT I

Technical Sheet

Research & Development by  
**NATIONAL DIETARY RESEARCH**  
 1377 K Street, Suite 553  
 Washington, DC 20005

**VANCOL 5000**

Mini Flavored Chewable  
 Tablets with Cholesterol  
 Lowering Plan

**Cholesterol Lowering Formula**

Each Chewable Tablet Supplies:  
 Beta Sitosterol . . . . . 10 mg  
 Psyllium . . . . . 200 mg  
 Chromium from picolinate . . . . . 50 mcg  
 with Natural quinone antioxidants in a base of  
 Calcium carbonate & Magnesium stearate

**VANCOL 5000 is composed of nutrients which research has shown to decrease LDL cholesterol levels. VANCOL 5000 is available in chewable tablet form and intended to be used with a cholesterol lowering diet as a drug free alternative for the problem of elevated blood cholesterol levels.**

Recent scientific data suggests that the ingredients contained in Vancol 5000 have a beneficial effect on lowering total blood cholesterol levels, LDL cholesterol and may even increase HDL cholesterol. The Vancol 5000 Plan and the nutrients contained in the Vancol 5000 tablet were developed to lower cholesterol levels, improve overall health status and an individual's quality of life.

Beta Sitosterol has been shown experimentally to decrease elevated plasma cholesterol by interfering with the intestinal absorption of cholesterol.

Researchers have found that patients with coronary heart disease had lower concentrations of chromium in the blood than healthy patients. Picolinic acid is a natural chelating agent, which aids in trace mineral absorption. Chromium picolinate supplementation has been shown to decrease LDL and total cholesterol levels and is effective in the treat-

ment of hyperlipidemia.

Psyllium has been studied as a cholesterol reducing agent because it binds to bile acids in the gut preventing reabsorption. Psyllium decreases absorption of cholesterol and lipids in the small intestines and causes the formation of short chain fatty acids, which are rapidly absorbed and may inhibit cholesterol synthesis.

Calcium carbonate and magnesium stearate have been found to decrease cholesterol as explained in further detail on the following page. While quinones may lower cholesterol levels, they are natural antioxidants that prevent oxygen from combining with cholesterol to form plaque on arterial walls.

**RECOMMENDATIONS:** Chew 2 tablets with each meal.

**Package Size:** 180 tablets

Distributed by:

**OMICRON  
 INTERNATIONAL**  
1377 K Street, Suite 553  
 Washington, DC 20005

1-800-634-2348

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## EXHIBIT I

EXHIBIT I page two

## VANCOL 5000

**Elevated Cholesterol Levels and Dietary Supplementation****Chromium picolinate**

**Experimental study:** Supplementation with 50-200 mcg of chromium daily, improved blood cholesterol and triglyceride levels. The decrease was due to chromiums function in fat metabolism and sugar metabolism. (Anderson, Richard A. Agricultural Research, 10: 14-16, 1990)

**Experimental Double-blind Crossover Study:** During a 42 day period, 28 subjects were given chromium picolinate (200 mcg) or a placebo daily. The subjects ingesting chromium had a significant decrease in total cholesterol, LDL cholesterol (10.5% decrease) and serum apolipoprotein B, (the principal protein of LDL cholesterol fraction) decreased. HDL cholesterol and apolipoprotein A increased. Subjects ingesting the placebo had elevated apolipoprotein B levels. (Press Rl et al. The effect of chromium picolinate on serum cholesterol and apolipoprotein fractions in human subjects. West J. Med. 1990 Jan; 152:41-45)

**Psyllium**

**Double-blind Placebo Controlled Study:** 26 hypercholesterolemic men were treated with psyllium or a placebo for 8 weeks. The psyllium group showed a 14% decrease in total cholesterol, 14.8% decrease in LDL/HDL cholesterol ratio and 20% decrease in LDL cholesterol. The placebo group showed no significant changes. (Anderson, JW et al. Cholesterol lowering effect of psyllium for hypercholesterolemic men. Arch Intern Med. 148:292-296)

**Double-blind Study:** 96 subjects with hypercholesterolemia were given 5.1 grams of psyllium or a placebo twice daily for 16 weeks, while following a prudent diet. Psyllium decreased total cholesterol by 5.6% and LDL cholesterol by 8.6%. The levels in the placebo group were unchanged. (Levin, EG et al. Comparison of psyllium and cellulose as adjuncts to a prudent diet in the treatment of hypercholesterolemia. Arch Intern Med. 150: 1822-1827, 1990)

**BETA SITOSTEROL**

**Experimental Study:** A diet containing .5% cholesterol plus .5% sitosterol, resulted in a significant decrease of liver cholesterol, showing the inhibitory effect of sitosterol on cholesterol absorption. (Ikeda J et al. J. Nutr. Sci. Vitaminol 35:361-369, 1989)

**QUINONES**

Quinones are natural antioxidants that help control and minimize free radical reactions to help lower cholesterol.

**Calcium Carbonate**

Although the mechanism of action is unknown, calcium has been shown to decrease cholesterol. One physician, a former medical editor for a national magazine, has advanced his "hard water" theory as a possible answer. CaCO<sub>3</sub> is the most common substance in hard water. According to the doctor, just as body oils and detergents mix with CaCO<sub>3</sub> to form an insoluble "bathtub ring", it can also inhibit the intestinal absorption of fat and cholesterol.

**Magnesium Stearate**

Magnesium stearate is a by product of stearic acid. Scientific data has shown, that when stearic acid is used in place of other fats in the diet, there is a significant reduction of plasma levels of cholesterol and LDL cholesterol (total cholesterol decreased by an average of 14%).

**NOTE:** No statement contained in this publication shall be construed as a claim or representation that any product is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any disease. This report is intended for professional use only. Certain persons considered experts may disagree with one or more of the statements and/or conclusions found in this report. Notwithstanding the above, this information is of current nutritional interest and is based upon sound and reliable authority.



Complaint

120 F.T.C.

EXHIBIT K

...the report had indicated that the...  
 ...the report had indicated that the...  
 ...the report had indicated that the...

**INDIANA COUNTY MAPS IN STATE BOOK**  
 A new complete set of Indiana county maps is available...  
 ...the report had indicated that the...  
 ...the report had indicated that the...

**WEIGHT LOSS MYSTERY BAFFLES SCIENTISTS**  
 WASHINGTON - Scientists are baffled by a natural food ingredient that causes people to lose weight...  
 ...the report had indicated that the...  
 ...the report had indicated that the...

882-8181

People Are Saying Good Things About Their Visit To Snider Chiropractic

Don't put off scheduling an appointment as a special checkup. Snider Chiropractic makes a easy and convenient to schedule a physical exam. It's a reasonable cost. Call us and start taking better care of yourself today.

882-1241

Genuine concern from Doctor and Staff

The therapy is helping - and it's better than taking pills

Dr. Snider is gentle & takes the time to listen

**Sirloin Stockade Weekday Specials!**

EVERY MONDAY & THURSDAY

Chopped Steak \$2.99

EVERY TUESDAY

Club Steak \$2.99

EVERY WEDNESDAY

Chicken Fried Steak \$2.99

DINNERS INCLUDE: Baked Potato or French Fries & Stockade Toast

1626 Willow Vincennes

A special workshop November 13, 1990 Vincennes University for farmers and family members who are interested in transferring the farm planning for the future spouse and their children in preparing their will.

Please answer the following questions...

YES NO

Do you know the elementary concepts of documents effective?

Do you know how to write your own will?

Do you know what steps must be taken to create a trust?

Do you know what the responsibilities of a trustee are?

Do you know what a living trust is?

Do you know if there are pros and cons to trusts?

Do you know what an irrevocable trust agreement is?

Do you know what an irrevocable insurance trust agreement is?

Do you know what a marital deduction trust is?

If you've answered no to any of the above you have an opportunity to gain more insight into how to keep the family farm in the family.

**ESTATE PLANNING FOR FARMERS**  
 NOVEMBER 13, 1990  
 6:30 p.m. to 9:00 p.m.  
 Shake Learning Resource Center - located at 2nd Street and Indianapolis Ave. (V.I.)

**COST OF THIS SPECIAL WORKSHOP:**  
 \$25 per couple - space will be limited - Call your reservations in early. 885-4344

**AMERICAN NATIONAL BANK**  
 FDIC

Co-sponsored by SBA

EXHIBIT K  
 Vincennes, Indiana Jan. 1990  
 November 13, 1990

1988F



## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent National Dietary Research, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1377 K Street, N.W., Suite 553, in the District of Columbia.

2. Respondent The William H. Morris Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2804 Smmitter Road, in the City of Tampa, State of Florida.

3. Respondent William H. Morris is an officer of said corporations. He formulates, directs, and controls the policies, acts, and practices of said corporations. His home address is at 2906 Smmitter Road, in the City of Tampa, State of Florida.

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

#### ORDER

##### I.

*It is ordered,* That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that the product or program

- a. Provides any weight loss benefit;
- b. Is an effective treatment for obesity;
- c. Reduces hunger or is an effective appetite suppressant;
- d. Decreases the intestinal absorption of calories;
- e. Reduces, can reduce or helps reduce serum cholesterol;
- f. Provides, can provide or helps provide any other health benefit; or
- g. Has any effect on cellulite or on the user's body measurements,

unless, at the time they make such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, 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.

## II.

*It is further ordered,* That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as an officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication,

a. The existence, contents, validity, results, conclusions, or interpretations of any test or study;

b. The amount of fiber or any other nutrient or dietary constituent contained in or provided by the product or program, whether described in quantitative or qualitative terms;

c. That the product or program contains or provides a high, rich, excellent or superior source of fiber or any other nutrient or dietary constituent using those words or words of similar meaning; or

d. The research activities or other activities of National Dietary Research or any other organization affiliated with respondents.

## III.

*It is further ordered,* That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating any advertisement that

misrepresents, in any manner, directly or by implication, that it is not a paid advertisement.

#### IV.

*It is further ordered,* That respondents National Dietary Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, The William H. Morris Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, and William H. Morris, individually and as officer of the corporate respondents, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of a product or program represents the typical or ordinary experience of members of the public who use the product or program, unless at the time of making such representation, the representation is true, and respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation, provided, however, respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly and prominently and in close proximity to the endorsement what the generally expected performance would be in the depicted circumstances or 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.

#### V.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

## VI.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

## VII.

*It is further ordered,* That no later than the date that this order becomes final, respondents National Dietary Research, Inc., a corporation, its successors and assigns, The William H. Morris Company, a corporation, its successors and assigns, and William H. Morris, individually and as officer of the corporate respondents, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of one hundred thousand dollars (\$100,000).

The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Food Source One in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return

of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

### VIII.

*It is further ordered,* That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

### IX.

*It is further ordered,* That the corporate respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporations such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising under this order.

### X.

*It is further ordered,* That the corporate respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

## XI.

*It is further ordered,* That the individual respondent shall, for a period of five (5) years from the date of issuance of this order, notify the Commission within thirty (30) days in the event of the discontinuance of his present business or employment, the activities of which include the advertising, offering for sale, sale, or distribution of consumer products, and of his affiliation with any new business or employment involving such activities. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

## XII.

This order will terminate on November 7, 2015, or twenty 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 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.

## XIII.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order upon them 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 they have complied or intend to comply with this order.

Set Aside Order

120 F.T.C.

IN THE MATTER OF

NATIONAL DAIRY PRODUCTS CORP.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION  
OF SEC. 2 OF THE CLAYTON ACT*Docket 8548. Consent Order, June 28, 1967--Set Aside Order, Nov. 8, 1995*

This order reopens a 1967 consent order--which prohibited National Dairy Products Corp. and subsequently its successor, Kraft Foods, Inc., from engaging in territorial price discrimination in the sale of its jellies, preserves and other food products--and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING  
AND SETTING ASIDE ORDER

On July 13, 1995, Kraft Foods, Inc. ("Kraft"), as respondent and successor to National Dairy Product Corp., filed its Petition To Reopen and Set Aside ("Petition") in this matter. Kraft request that the Commission set aside the 1969 order, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Commission's Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition Kraft affirmatively states that it has complied with the requirements of the order. The Petition was placed on the public record for thirty days, and no comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."<sup>1</sup> The Commission's cease and desist order in Docket No. 8548, issued on June 28, 1967, affirmed as modified by the United States Court of Appeals for the Seventh Circuit on June 20,

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<sup>1</sup> Sunset Policy Statement, 59 Fed. Reg. at 45,289.

1969, and modified in accordance with the direction of the court on October 2, 1969, has been in effect for more than twenty-five years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 8548.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

*It is further ordered*, That the Commission's order in Docket No. 8548 be, and it hereby is, set aside, as of the effective date of this order.

Chairman Pitofsky recused.

Complaint

120 F.T.C.

IN THE MATTER OF

## SILICON GRAPHICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3626. Complaint, Nov. 14, 1995--Decision, Nov. 14, 1995*

This consent order, among other things, permits the California-based corporation to acquire two entertainment graphics software firms, and requires the respondent to take certain steps, such as requiring that the respondent enter into a Commission-approved porting agreement with a Commission-approved porting partner in order to ensure that other companies that develop and sell entertainment graphics software and hardware can compete.

*Appearances*

For the Commission: *Howard Morse, Rhett R. Krulla and Eric D. Rohlck.*

For the respondent: *Wayne D. Collins, Jessica Skapof and Jill Ross, Shearman & Sterling, New York, N.Y.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Silicon Graphics, Inc., a corporation, has agreed to acquire Alias Research Inc. and Wavefront Technologies, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. RESPONDENT

1. Respondent Silicon Graphics, Inc. ("SGI") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 2011 North Shoreline Boulevard, Mountain View, California. SGI, which had total revenues of approximately \$1.4 billion in 1994, designs and supplies a family of workstation, server and supercomputer systems. SGI develops and markets, among other things, computer hardware incorporating interactive three-dimensional ("3D") graphics, digital media and multiprocessor supercomputing technologies.

## II. ACQUIRED PARTIES

2. Alias Research Inc. ("Alias"), which had sales of approximately \$38 million in 1994, is a leading producer of workstation-based 3D and two-dimensional ("2D") computer graphics software for professional entertainment and industrial customers. Users of Alias' products in the entertainment industry create 3D computer graphic special effects, which may be output to a variety of media, including film and video for use in movies, television, interactive computer games, and other forms of presentation. Alias 3D products for the entertainment industry include Animator™ and PowerAnimator™.

3. Wavefront Technologies, Inc. ("Wavefront"), which had sales of approximately \$27.6 million in 1994, is a full-line producer of workstation-based 3D and 2D computer graphics software for professional entertainment and industrial customers. Users of Wavefront's products in the entertainment industry create 3D computer graphic special effects, which may be output to a variety of media, including film and video for use in movies, television, interactive computer games, and other forms of presentation. Wavefront's 3D products for the entertainment industry include, among others, Explore™, Kinemation™, and Dynamation™.

## III. JURISDICTION

4. SGI is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in

or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

#### IV. THE PROPOSED ACQUISITIONS

5. SGI and Alias, and SGI and Wavefront, entered into agreements on or about February 6, 1995, pursuant to which SGI intends to acquire essentially all of the stock of Alias and Wavefront in exchange for SGI stock. At that time, the value of the Alias acquisition was approximately \$367 million, and the value of the Wavefront acquisition was approximately \$130 million. Each transaction is conditioned upon the closing of the other transaction.

#### V. THE RELEVANT MARKETS

6. One relevant line of commerce in which to analyze the effects of the proposed acquisitions is the development, production and sale of entertainment graphics workstations. Entertainment graphics workstations generally are UNIX-based computers with high-speed graphic capability and suitable for use with entertainment graphics software. Personal computers, including Intel-based PCs and Apple MacIntosh computers, are not adequate substitutes for entertainment graphics workstations as platforms for running entertainment graphics software.

7. Another relevant line of commerce in which to analyze the effects of the proposed acquisitions is the development, production and sale of entertainment graphics software. Entertainment graphics software consists of compatible modelling, animation, rendering, compositing and painting software tools for use on entertainment graphics workstations in the production of high-resolution, 2D and 3D digital images for film, video, electronic games, interactive programming, or other entertainment or educational, graphic media.

8. Two relevant geographic areas within which to analyze the likely effects of the Alias and Wavefront acquisitions are the United States and the world. There are no significant impediments to the import into the United States, or to the export from the United States, of entertainment graphics software.

## VI. MARKET STRUCTURE

9. The entertainment graphics workstation market is extremely concentrated. SGI is the dominant provider of entertainment graphics workstations, with over 90% of the market. Although various other companies manufacture workstations, most entertainment graphics software was developed for use on SGI workstations and is available only for SGI workstations.

10. The entertainment graphics software market is highly concentrated and rapidly growing. Alias and Wavefront are two of the three leading developers and sellers of entertainment graphics software. Alias and Wavefront compete principally with SoftImage Inc., a subsidiary of Microsoft Corp. Other developers and producers of entertainment graphics software produce particular software tools that are used largely as complements rather than substitutes for the product suites offered by Alias, Wavefront and SoftImage, or produce software suites that have found limited customer acceptance relative to the entertainment graphics software offered by Alias, Wavefront and SoftImage.

11. Alias, Wavefront, and SoftImage compete for sales to sophisticated 3D graphics and animation professionals. Although other software developers make entertainment graphics software, Alias, Wavefront and SoftImage are the industry standards, and the ability to run Alias, Wavefront, or SoftImage entertainment graphics software is considered critical for any computer workstation manufacturer to compete successfully in the entertainment graphics workstation market.

12. Prior to the agreements described in paragraph five, Alias negotiated with manufacturers of workstations other than SGI to port its entertainment graphics software products to those manufacturers' workstation platforms. The effect of such agreements, if consummated, would be to enable such workstation manufacturers to compete in the entertainment graphics workstation market.

13. Prior to the acquisitions described in paragraph five, SGI maintained an open software interface for its entertainment graphics workstations, sponsored independent software developer programs, and shared with developers of entertainment graphics software advance information concerning new SGI products to facilitate and promote competitive development of entertainment graphics software.

## VII. ENTRY CONDITIONS

14. Entry into the entertainment graphics workstation market would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisitions in the entertainment graphics workstation market. Other manufacturers of computer workstations have graphic engines for their computers that are technically capable of running entertainment graphics software provided a version of the software is written for use with the workstation and its graphic engine. However, without the possibility of having Alias or Wavefront entertainment graphics software developed for those workstations, entry would be unlikely. Marketing a technically comparable or even an improved combination of non-SGI workstations with entertainment graphics software other than that of Alias or Wavefront would be difficult, time consuming and not likely to occur because of the extensive installed user base of SGI workstations with Alias, Wavefront and SoftImage entertainment graphics software.

15. Entry into the market for the development and sale of entertainment graphics software would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisitions in the entertainment graphics software market. Developing an entertainment graphics software suite similar to those of Alias and Wavefront is time consuming and unlikely to occur because of extensive installed user bases trained on and using the Alias and Wavefront software programs on SGI entertainment graphics workstations. Combining smaller software developers' niche programs or making smaller producers of entertainment graphics software significant competitors to Alias and Wavefront would be difficult, time consuming and not likely to occur because of the extensive installed user base of SGI workstations with Alias, Wavefront and SoftImage entertainment graphics software.

## VIII. COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITIONS

16. The acquisitions described in paragraph five, if consummated, may, individually or in combination, substantially lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

