Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the draft complaint and the Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "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 relevant profession or science to yield accurate and reliable results;

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A "broadcast medium" shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made "clearly and prominently" or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is small than twelve point type. For any Orderrequired disclosure given orally in a broadcast medium to be made "clearly and prominently" or in a "clear and prominent manner", the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. A "short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is Ordered that respondents, Formu–3 International, Inc., a corporation, Formu–3 of Northern Ohio, Inc., a corporation, and Formu–3 of Southern Ohio, Inc., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

1. Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

a. All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

b. All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

2. Any weight loss is maintained longterm, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

3. Any weight loss is maintained permanently said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

a. Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

b. Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; provided, further that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

1. The Average percentage of weight loss maintained by those participants;

2. The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

3. If the participant population referred to is not representative of the general participant population for respondents' programs:

a. The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

b. The statement: "Form-You-3 Weight Loss Centers makes no claim that this [these] result[s] is [are] representative of all participants in the Form-You-3 Weight Loss Centers program.";

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation