Formu-3 of Northern Ohio, Inc., and Formu-3 of Southern Ohio, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) Their diet program's success in helping customers achieve and maintain weight loss; (2) the rate at which customers will lose weight; (3) the time frame within which consumers will achieve their desired weight loss goals; (4) the purchase price of the Formu-3 program; (5) the benefits to dieters of the food products Formu-3 sells; and (6) the qualifications and expertise of counselors employed at Formu-3 weight loss centers. The complaint also alleges that Formu-3 engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

## Success

The complaint against Formu-3 alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Formu-3 represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Formu-3 diet program long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because Formu-3, at the time it made the claims, did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of

evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) all participants who have entered the program, where the representation relates to such persons; 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) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents'

maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall 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 to constitute a reasonable basis 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.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(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, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—e.g., "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the

general participant population for the program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage of actual numbers of participants—e.g. "Participants on maintenance—30% of our customerskept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Form-You-3 Weight Loss Centers makes no claim that this result is representative of all participants in the Form-You-3 Weight Loss Centers program.'

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Formu-3, in lieu of making the factual disclosures required for such claims by

Part I.C:

(1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and

(2) Provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C, which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refused to sign or accept a copy of such document, respondent shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relieve Formu-3 of the obligation to substantiate any maintenance success claim, in accordance with Part I.A of the order, and it "takes back" the exception from full quantitative disclosures in short broadcasting advertising if Formu-3 makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Formu-3 in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Formu-3 diet program participants generally achieve, the order (Part I.E.) requires that Formu-3 disclose either what the generally expected success would be for Formu-3 customers, or one of several alternative statements, such as "This result is not typical. You may be less successful," which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use