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It is further ordered that for three (3) years following the dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, copies of:

A. All materials that were relied upon in disseminating such advertisement; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, including complaints from consumers.

XI

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

XII

It is further ordered that respondent shall distribute a copy of this Order to each of its current distributors; *provided* that respondent may satisfy the requirements of this section with respect to current distributors by publishing the full text of this Order clearly and prominently in any periodical which is published by respondent and which is distributed to all of its distributors.

XIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

#### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Body Wise International, Inc. ("Body Wise" or "respondent"). The agreement would settle a proposed complaint by the Federal Trade Commission that respondent has engaged in unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for 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 the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

#### *The Proposed Complaint*

The administrative complaint which the Commission proposed to issue would charge that respondent markets a number of nutritional supplements, for which it makes deceptive representations concerning their efficacy in promoting weight loss and weight management and in the reduction of serum cholesterol levels. The complaint also charges Body Wise with using testimonials from physicians and consumers, when the experiences described in the testimonials are not typical of the likely experiences of Body Wise customers, and without disclosing that the endorsers have a financial interest in promoting the sale of Body Wise products. Finally, the complaint alleges that Body Wise has encouraged the use of physicians and other health professionals as references without disclosing to consumers that they have a direct financial interest in promoting the sale of Body Wise products.

The definition section of the proposed order defines certain terms used throughout the order.

Section I of the proposed order bars Body Wise from making claims that its nutritional supplements can cause or contribute to achieving or maintaining weight loss without a reduction in caloric intake or an increase in exercise and or that its supplements contain any ingredients that have that effect. Section II of the order bars unsubstantiated weight loss, weight management and cholesterol reduction claims. It also contains fencing-in relief that applies the same substantiation standard to any claims regarding the health benefits of its nutritional supplements. Section III bars Body Wise from misrepresenting tests or studies. Section IV bars Body Wise from using testimonials to represent the typical experience of Body Wise's customers unless it can substantiate that such claims are in fact typical or it clearly discloses that the endorser's experience is not typical. Section V requires the affirmative disclosure of any material connection between Body Wise and any endorser.

Section VI requires Body Wise, in any advertisement that contains any reference to physicians or other health professionals, to disclose that health care professionals who endorse Body Wise products or act as references may be distributors and have a financial

interest in promoting the sale of Body Wise products. This section addresses Body Wise's use of physicians as references to support the sales activities of other Body Wise distributors.

Sections VII and VIII harmonize the requirements of the order with the requirements of the Nutrition Labeling and Education Act of 1990 and with Food and Drug Administration procedures. The remaining sections are standard reporting, record-keeping and notice provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

**Donald S. Clark,**

*Secretary.*

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[Dkt. C-3578]

#### **Felson Builders, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, three California firms and an officer to comply with the full disclosure requirements of the Truth in Lending Act and Regulation Z, its implementing regulation, in advertising credit terms, and requires the respondents to make full written disclosure of the true costs and terms of the financing prior to consummation of credit agreements.

**DATES:** Complaint and Order issued May 15, 1995.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** On Tuesday, February 28, 1995, there was published in the **Federal Register**, 60 FR 10861, a proposed consent agreement with analysis in the Matter of Felson Builders, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*; 12 CFR 226)

**Donald S. Clark,**  
*Secretary.*

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[File No. 932-3144]

**Good News Products, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Hamilton, Michigan company from misrepresenting the nutrient content of eggs or products containing egg yolks, and from making health claims about such products without scientific evidence to substantiate the claims.

**DATES:** Comments must be received on or before September 5, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, Massachusetts 02114-4719. (617) 424-5960.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying

at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Good News Products, Inc., a corporation, and it now appearing that Good News Products, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Good News Products, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Good News Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its office and principal place of business located at East Washington & M-40, Hamilton, Michigan 49419.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondent waives:

(a) Any procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or

of violations of law as alleged in the draft complaint.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service.

The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*I.*

It is ordered that respondent Good News Products, Inc., a corporation, its successors and assigns, and its officers; and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or