resale prices at which certain of their dealers sell certain of their athletic or casual footwear products. The complaint alleges that this conduct violates Section 5 of the Federal Trade Commission Act.

Reebok and Rockport have signed a consent agreement to the proposed consent order that prohibits them from fixing, controlling or maintaining the resale prices at which any dealer may advertise, promote, offer for sale or sell any Reebok or Rockport product. The proposed order prohibits Reebok and Rockport from coercing or pressuring any dealer to maintain, adopt or adhere to any resale price, and from securing or attempting to secure commitments or assurances from any dealer concerning resale prices. The proposed consent order also for a period of ten years prohibits Reebok and Rockport from enforcing or threatening to enforce any policy, practice or plan under which Reebok or Rockport notifies a dealer in advance that the dealer is subject to partial or temporary suspension or termination if it sells or advertises any product below a resale price designated by Reebok or Rockport, and that the dealer will be subject to a greater sanction if it continues or renews selling or advertising any product below a designated resale price.

The proposed order requires Reebok and Rockport to mail a letter to their dealers which will inform them that they can sell and advertise Reebok and Rockport products at any price they choose. The proposed order also requires Reebok and Rockport, for a period of five years, to place on any material in which they suggest resale prices a statement that the dealer is free to determine the prices at which it will sell Reebok or Rockport products.

The proposed order provides that the order shall terminate 20 years after the date of its issuance by the Commission.

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 proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Roscoe B. Starek III, in the Matter of Reebok International, Ltd., File No. 921–0117

I find reason to believe that Reebok International, Ltd. (''Reebok'') has entered into agreements with retailers to restrain resale prices and has thereby violated Section 5 of the FTC Act, 15 U.S.C. § 45.[1] But I have dissented from the decision to accept the consent agreement in this matter because certain provisions of the Commission's order are not necessary to prevent unlawful conduct and may unduly restrain procompetitive activity by Reebok.

Under most circumstances, including those here, the competitive effects of RPM are ambiguous at worst and a full rule of reason analysis likely would not reveal cognizable anticompetitive effects.[2] Therefore, I would prefer that injunctive relief ordered to address RPM be strictly tailored to the per se allegations. The fencing-in restrictions in this order is related to resale price advertising (in subparagraphs II (A) and (C)) and to Reebok's ''structured termination policy'' (subparagraph II(D))—are unnecessarily broad and may enjoin efficient conduct.[3]

[FR Doc. 95–11555 Filed 5–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3027]

Third Option Laboratories, Inc., et al.; 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 require, among other things, a Muscle Shoals, Alabama company and its officers to pay $480,000 to be used either for refunds to consumers or as disgorgement to the U.S. Treasury and to send a notice to consumers advising them of the consent agreement, which settles allegations that the respondents made a number of deceptive health claims for their ''Jogging in a Jug'' beverage. In future advertisements for that beverage or similar products, the respondents would have to clearly and prominently state that there is no scientific evidence that the product provides any health benefits.

DATES: Comments must be received on or before July 10, 1995.

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

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin or Loren G. Thompson, FTC/S–4002, Washington, D.C. 20580. (202) 326–3156 or (202) 326–2049.

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)).

In the Matter of: Third Option Laboratories, Inc., a corporation, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation. File No. 942–3027.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Third Option Laboratories, Inc., a corporation, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation (''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Third Option Laboratories, Inc., by its duly authorized officer, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Third Option Laboratories, Inc. is a corporation organized, existing, and doing business

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[1] *See Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U.S. 373 (1911) (resale price maintenance (''RPM'') held unlawful upon mere proof of agreement).

[2] *See, e.g.*, Pauline Ippolito, *Resale Price Maintenance: Evidence From Litigation*, 34 J.L. & Econ. 263 (1991). *See also* Kevin J. Arquit, *Resale Price Maintenance: Friend or Foe?* 60 Antitrust L.J. 447 (1992).

[3] Even if the evidence in this case suggests that Reebok's dealer advertising and termination policies supported RPM, deleting the related fencing-in injunctions likely would be procompetitive. The order should permit Reebok to exercise its lawful dealer termination rights and to engage in any procompetitive minimum advertised price programs ''unless (this conduct) includes some agreement on price levels.'' *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 484 U.S. 717, 735–36 (1988).

under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 2806 Avalon Avenue, Muscle Shoals, Alabama 35661.

Proposed respondents William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton are owners and officers of said corporation. They formulate, direct, and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint

3. Proposed respondents waive:

(a) Any further procedural steps;

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

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

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 of 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 respondents, 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 respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This 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 § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached 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 U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they 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 in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They 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

I

It is ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug, or any substantially similar product, 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 such product:

A. Cures or alleviates heart disease or its symptoms, including arterial blockages;

B. Substantially lowers serum cholesterol or triglycerides;

C. Cures or alleviates arthritis or its symptoms;

D. Breaks down or eliminates calcium or other mineral or chemical deposits in the circulatory system;

E. Improves the condition of the circulatory system;

F. Cleans internal organs;

G. Prevents or reduces the risk of cancer, leukemia, heart disease, or arthritis;

H. Provides the same health benefits as a jogging regimen;

I. Cures or alleviates lethargy;

J. Cures or alleviates dysentery;

K. Cures or alleviates constipation;

L. Stabilizes blood sugar levels in insulin-dependent diabetics;

M. Aids in the recovery from viral diseases;

N. Cures or alleviates swelling of the legs or muscle spasms; or

O. Is approved by the United States Department of Agriculture.

II

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any food, food or dietary supplement, or drug, as ''food'' and ''drug'' are defined in sections 12 and 15 of the Federal Trade Commission Act, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding the performance, safety, benefits, or efficacy of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

For purposes of this Order, ''component and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have 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.

III

It is further ordered that respondents, Third Option Laboratories, Inc., a

corporation, its successor and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product 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, that such product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

IV

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as ''endorsement'' is defined in 16 CFR 255.0(b)) of any such product represents the typical or ordinary experience of members of the public who use such product, unless such is the fact.

V

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.

VI

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.

VII

It is further ordered that respondents, Third Option Laboratories, Inc., a corporation, its successors and assigns, and its officers, and William J. McWilliams, individually and as an officer of said corporation, Danny Bishop McWilliams, individually and as an officer of said corporation, and Susan McWilliams Bolton, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Jogging in a Jug or any substantially similar product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from employing the name ''Jogging in a Jug'' or any other name that communicates the same or similar meaning for such product; *provided, however,* that nothing in this Order shall prevent the use of such name if the material containing the name clearly and prominently contains the following disclosure:

''THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS.''

For the purposes of this Order, ''clearly and prominently'' shall mean as follows:

A. In a television or video advertisement less than fifteen (15) minutes in length, the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement, accompanying the first presentation of the name. When the first presentation of the name appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the first presentation of the name appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

B. In a video advertisement fifteen (15) minutes in length or longer, the disclosure shall be presented simultaneously in both the audio and visual potions of the advertisement, accompanying the first presentation of the name and immediately before each presentation of ordering instructions for the product. When the name that triggers the disclosure appears in the audio portion of the advertisement, the disclosure shall immediately follow the name. When the name that triggers the disclosure appears in the visual portion of the advertisement, the disclosure shall appear immediately adjacent to the name. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. *Provided that,* for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product in conjunction with the name shall be deemed a presentation of ordering instructions so as to require the presentation of the disclosure provided herein;

C. In a radio advertisement, the disclosure shall immediately follow the first presentation of the name and shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

D. In a print advertisement, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; *provided, however,* that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement;

E. On a product label, the disclosure shall be in close proximity to the largest presentation of the name, in a prominent type thickness and in a type size that is at least one-half that of the largest presentation of the name; *provided, however,* that the type size of the disclosure shall be no smaller than twelve (12) point type. The disclosure shall be of a color or shade that readily contrasts with the background of the label; and

F. On any packaging of the product shipped directly to consumers, the disclosure shall appear on each side of the packaging on which the name appears, in close proximity to the largest presentation of the name. The total area of the disclosure shall be at least half that of the name that triggers the disclosure. The disclosure shall be of a

color or shade that readily contrasts with the background of the packaging.

Nothing contrary to, inconsistent with, or in mitigation of the above-required language shall be used in any advertising or labeling.

Nothing in this part shall apply to: (1) Advertising appearing on items that are sold or given or caused to be sold or given by respondents to consumers for their personal use and that display the name ''Jogging in a Jug'' or any other name that communicates the same or similar meaning; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of respondents' letterhead, on shipping labels, or on crates provided only to purchasers for resale.

VIII

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the Federal Trade Commission and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of four hundred and eighty thousand dollars ($480,000). Respondent shall make this payment on or before the tenth day following the date of entry of this Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. The funds paid by respondents shall, in the discretion of the Federal Trade Commission, be used by the Commission to provide direct redress to purchasers of Jogging in a Jug in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Federal Trade 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. Respondent 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.

IX

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, within thirty (30) days after the date of service of this Order, send by first class mail, postage prepaid and address correction requested, to the last address known to respondents of each consumer who purchased Jogging in a Jug in any manner directly from respondents since January 1, 1993, an exact copy of the notice attached hereto as Attachment A. The mailing shall not include any other documents.

X

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall:

A. Within thirty (30) days after the date of service of this Order, send by first class certified mail, return receipt requested, to each purchaser for resale of Jogging in a Jug with which respondents have done business since January 1, 1993 an exact copy of the notice attached hereto as Attachment B. The mailing shall not include any other documents;

B. In the event that respondents receive any information that subsequent to its receipt of Attachment B any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this Order, respondents shall immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisements or promotional materials; and

C. Terminate the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use advertisements or promotional materials that contain any representation prohibited by this Order after receipt of the notice required by subparagraph B of this part.

XI

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all notification letters sent to consumers pursuant to part IX of this Order;

B. Copies of all notification letters sent to purchasers for resale pursuant to subparagraph A of part X of this Order; and

C. Copies of all communications with purchasers for resale pursuant to subparagraphs B and C of Part X of this Order.

XII

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:

A. Any advertisement making any representation covered by this order;

B. All materials that were relied upon in disseminating such representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

XIII

It is further ordered that respondents, Third Option Laboratories, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this Order, provide a copy of this Order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of seven (7) years from the date of service of this Order, provide a copy of this Order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order within three (3) days after the person assumes his or her position.

XIV

It is further ordered that respondents, William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, shall, for a period of seven (7) years after the date of service of this Order, notify the Commission within thirty (30) days of the discontinuance of

his or her present business or employment and of his or her affiliation with any new business or employment involving the manufacturing, labeling, advertising, marketing, promotion, offering for sale, sale, or distribution of any food, food or dietary supplement, or drug, as ''food'' and ''drug'' are defined in sections 12 and 15 of the Federal Trade Commission Act. 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 or her duties and responsibilities.

XV

It is further ordered that respondents, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, 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 corporation which may affect compliance obligations arising under this order.

XVI

It is further ordered that respondents 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 they have complied with this Order.

Attachment A

By First Class Mail, Postage Prepaid and Address Correction Requested

[To Be Printed on Third Option Laboratories, Inc. Letterhead]

[date]

Dear Consumer: Our records indicate that you purchased Jogging in a Jug from Third Option Laboratories, Inc. This letter is to inform you of our settlement of a civil dispute with the Federal Trade Commission (''FTC'') regarding certain claims made in our advertising for Jogging in a Jug.

The FTC alleged that advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) Heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (6) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can ''clean'' internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

Sincerely,

William J. McWilliams,

President, Third Option Laboratories, Inc.

Attachment B

By Certified Mail, Return Receipt Requested

[To Be Printed on Third Option Laboratories, Inc. letterhead]

[date]

Dear [purchaser for resale]: Third Option Laboratories, Inc. recently settled a civil dispute with the Federal Trade Commission (''FTC'') regarding certain claims for our product, Jogging in a Jug. As a part of the settlement, we are required to make sure that our distributors and wholesalers stop using or distributing advertisements or promotional materials containing those claims.

The FTC alleged that the advertisements for Jogging in a Jug have made false and unsubstantiated claims that the product can cure, treat, or prevent: (1) Heart disease (including arterial blockages); (2) arthritis; (3) cancer; (4) leukemia; (5) dysentery; (6) constipation; (7) lethargy; (8) swelling of the legs; and (9) muscle spasms. The FTC has also alleged that our claims that Jogging in a Jug can ''clean'' internal organs, break down or eliminate deposits in the circulatory system, aid in the recovery from viral diseases, lower serum cholesterol and triglyceride levels, and stabilize blood sugar levels in diabetics, are false and unsubstantiated. Finally, the FTC has alleged that we have made false and unsubstantiated claims that Jogging in a Jug provides the same health benefits as jogging.

Our settlement with the FTC prohibits us from making these or other claims for Jogging in a Jug or any other food, drug, or supplement in the future unless the claims are supported by competent and reliable scientific evidence. We deny the FTC's allegations, but have agreed to send this letter as a part of our settlement with the FTC.

We request your assistance by asking you to discontinue using, relying on or distributing any of your current Jogging in a Jug advertising or promotional material. Please also notify any of your retail or wholesale customers who may have such materials to discontinue using them. If you continue to use those materials, we are required by the FTC settlement to stop doing business with you.

Thank you very much for your assistance.

Sincerely,

William J. McWilliams,

President, Third Option Laboratories, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Third Option Laboratories, Inc. (''Third Option''), and William J. McWilliams, Danny Bishop McWilliams, and Susan McWilliams Bolton, officers of Third Option.

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.

This matter concerns Jogging in a Jug, a juice and vinegar beverage marketed by Third Option. The Commission's proposed complaint alleges that the respondents falsely represented in its advertising and promotional material that Jogging in a Jug would: (1) Cure or alleviate heart disease and its symptoms, including arterial blockages; (2) substantially lower serum cholesterol and triglycerides; (3) cure or alleviate arthritis and its symptoms; (4) break down or eliminate calcium or other mineral or chemical deposits in the circulatory system; (5) improve the condition of the circulatory system; (6) clean internal organs; (7) prevent or reduce the risk of cancer, leukemia, heart disease, and arthritis; (8) provide the same health benefits as a jogging regimen; (9) cure or alleviate lethargy; (10) cure or alleviate dysentery; (11) cure or alleviate constipation; (12) stabilize blood sugar levels in insulin-dependent diabetics; (13) aid in the recovery from viral infections; and (14) cure or alleviate swelling of the legs and muscle spasms. The proposed complaint further alleges that respondents falsely represented that they relied on a reasonable basis for these claims.

In addition, the proposed complaint alleges that respondents falsely represented that Jogging in a Jug was approved by the United States Department of Agriculture and that the testimonials or endorsements from consumers contained in the advertisements and promotional materials for Jogging in a Jug reflect the typical or ordinary experiences of members of the public who use the product. The proposed complaint further alleges that respondents falsely represented that they relied on a reasonable basis for these claims.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondents from making the

representations challenged as false in the proposed complaint for Jogging in a Jug or any substantially similar product.

Part II of the proposed order prohibits the respondents from making any representation about the performance, safety, benefits, or efficacy of any food, food or dietary supplement, or drug, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates it.

Part III of the proposed order prohibits the respondents from misrepresenting that any product has been tested, approved, or endorsed by any person, firm, organization, or government agency.

Part IV of the proposed order prohibits the respondents from misrepresenting that any endorsement for any product reflects the typical or ordinary experience of members of the public who use the product.

Parts V and VI of the order are safe harbor provisions. Part V allows representations for any drug that is permitted in the labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration (''FDA''), or under any new drug application approved by the FDA. Part VI allows representations permitted in labeling for any product by regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Part VII of the order requires that the respondents cease using the name ''Jogging in a Jug'' or any name that communicates the same or similar meaning unless the material containing such name clearly and prominently contains the disclosure ''THERE IS NO SCIENTIFIC EVIDENCE THAT JOGGING IN A JUG [OR OTHER NAME] PROVIDES ANY HEALTH BENEFITS.'' The terms of Part VII do not apply to: (1) The use of such name on items that are sold or given or caused to be sold or given to consumers for their personal use; or (2) the use of such name in a nonpromotional manner and solely for purposes of identification of the respondent corporation, including the use of such name as part of corporate letterhead, on shipping labels, or on crates provided only to purchasers for resale.

Part VIII of the order requires respondents to pay to the Commission the sum of four hundred and eighty thousand dollars ($480,000). The Commission will then determine, in its sole discretion, whether to use the payment to provide direct redress to consumers or to pay the funds to the United States Treasury if redress is not practicable.

Part IX of the order requires the respondents to send a letter describing this settlement to identifiable past purchasers of Jogging in a Jug. Part X of the order requires the respondents to send a similar letter to their purchasers for resale. Part X further requires the respondents to notify their purchasers for resale that if the purchasers for resale do not stop using promotional materials containing claims covered by the order, the respondents are required to stop doing business with them. Part XI of the order requires that the respondents maintain for five years copies of all communications with consumers and purchasers for resale pursuant to the terms of Parts IX and X.

Parts XII, XIII, XIV, XV, and XVI relate to the respondents' obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in employment or corporate structure, and file compliance reports with the Commission.

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 proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, Third Option Laboratories, Inc., File No. 942 3027

Today, the Commission accepts for public comment a consent agreement to remedy various misrepresentations concerning the purported health benefits of a drink called ''Jogging in a Jug.'' The record shows that the claims are far removed from reality, and there is ample reason to believe they violated section 5 of the FTC Act. I concur in the complaint on which the order is based except to the extent that it alleges as a violation the content of newspaper articles that are reproduced in the respondents' promotional materials and those materials accurately identify and reproduce such articles in their original format without modification. Complaint ¶ 7 and Exhibit F.

Second, I dissent from Part VII of the order. Although the complaint does not challenge as materially misleading the unadorned use of the product's name, Jogging in a Jug (nor would I, given the absence of evidence), Part VII of the order prohibits, in connection with the advertising and sale of Jogging in a Jug (or any similar product), use of the name Jogging in a Jug, or any other name communicating a similar meaning, unless the name is accompanied clearly and prominently by a disclosure stating: ''THERE IS NO SCIENTIFIC EVICENCE THAT JOGGING IN A JUG [or other name] PROVIDES ANY HEALTH BENEFITS,'' and which includes six extensive paragraphs minutely detailing what will constitute ''clearly and prominently'' for purposes of compliance with this requirement.

The Commission in the past has used this form of relief, which can substantially limit potentially lawful conduct, to remedy health claims that seem more credible than those likely to be taken by reasonable consumers here. For example, the Commission imposed a similar requirement to remedy the pain relief claim it found to have been conveyed by the name ''Aspercreme'' in *Thompson Medical Co.*, 104 F.T.C. 648 (1984). The likelihood that a consumer would except that a product named Aspercreme would contain aspirin and would rely on that claim to his or her detriment seems to me far greater than the likelihood that a consumer would rely to his or her detriment on an implied message that a product called Jogging in a Jug would provide the health benefits of jogging.

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GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

Sessions will be held at the U.S. Government Printing Office, 732 North Capitol Street, Carl Hayden Room—8th Floor, Washington, DC 20401, on Wednesday, May 24, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

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