

## IN THE MATTER OF

ZYGON INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3686. Complaint, Sept. 24, 1996--Decision, Sept. 24, 1996*

This consent order prohibits, among other things, a Washington-based company and its owner, that manufacture and advertise learning accelerating, memory enhancing, weight loss, and vision improving products and devices, from making any claims concerning the performance, benefits, efficacy, or safety of any product or service they market, unless they possess competent and reliable evidence to substantiate such claims, and requires the respondents to pay \$195,000 into escrow accounts for consumer redress programs.

*Appearances*

For the Commission: *Dean C. Forbes* and *Lesley Anne Fair*.

For the respondents: *Margaret Feinstein* and *Peter Kadzik, Dickstein, Shapirro & Morin*, Washington, D.C.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Zygon International, Inc., a corporation, and Dane Spotts, individually and as an officer of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Zygon International, Inc. is a Washington corporation, with its principal office or place of business at 18368 Redmond Way, Redmond, WA.

Respondent Dane Spotts is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

PAR. 2. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed consumer products through radio and print advertisements, the Zygon International "SuperLife"

mail-order catalog, and the Internet's World Wide Web. These products include, but are not limited to the "Learning Machine" and the "SuperMind," devices that purportedly accelerate learning; the "SuperBrain Nutrient Program," pills that purportedly enhance memory, intelligence, attention, and concentration levels; "Fat Burner" pills, which purportedly induce weight loss; and "Day and Night Eyes," purported vision improvement pills.

The Learning Machine, SuperMind, SuperBrain Nutrient Program, Fat Burner pills, and Day and Night Eyes pills are "foods," "drugs," or "devices" 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.

#### LEARNING MACHINE

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for the Learning Machine, including, but not necessarily limited to, the attached Exhibits A through E. These advertisements contain the following statements:

A. "Amazing Digital Headset Teaches You Foreign Languages Overnight" [Exhibit A: Zygon's SuperLife catalog]

B. "Knowledge really is power. But learning using traditional study methods is slow and boring. Imagine putting on a digital headset hooked up to an ordinary CD player. When you push play it fires a programmed sequence of light and sound, opening a window into your mind. Then like magic it downloads new information directly onto your brain cells. No, it's not science fiction. High-tech learning is now science fact. It's called the Learning Machine™. A profound breakthrough that will revolutionize how you learn and acquire new skills." [Exhibit A: Zygon's SuperLife catalog]

C. "Plus you can try the Learning Machine risk free for 30 days. During your risk free trial, you'll be able to learn 4 languages, triple your reading speed, boost your vocabulary, improve your memory, and reprogram one or two bad habits." [Exhibit A: Zygon's SuperLife catalog]

D. "Let's say . . . you'd like to quit smoking or lose weight. Pop in an Inner-Mind™ Programming Disc. The sensory stimulation matrix opens a window into your unconscious mind. Then by infusing your 'inner mind' with positive programming, you can rescript negative, self-defeating attitudes." [Exhibit B: USA Today, January 23, 1995]

E. "Let's say you want to learn a foreign language, quadruple your reading speed, or increase your math skills. Or give your children a powerful edge in school, learning 300%-500% faster than their peers. You select a specially programmed Learning Disc™ in the area you want to study. Plug it into any



ordinary CD player. Then attach your Learning Machine digital headset into the headphone jack. Push play and a few moments later your mind is launched into a pre-programmed learning session. In a fun, almost effortless way, the Learning Disc lesson plan unfolds its program and transfers the knowledge into your mind." [Exhibit A: Zygon's SuperLife catalog; Exhibit C: US AIR magazine, July 1994; and Exhibit D: Longevity magazine, August 1994]

F. "The Learning Machine goes beyond virtual reality. It's the most advanced accelerated learning tool in the world! Absolutely mind blowing! What if you could flip a switch inside your mind to instantly activate your imagination? Speak foreign languages. Expand your mental skills . . . And pour into your mind the genius of an Einstein or a Socrates. Find out how the Learning Machine boosts mental powers . . . Get a Photographic Mind, Instant Motivation, Speak Foreign Languages, and More!" [Exhibit E: The Learning Machine Home Page, World Wide Web, January 18, 1996]

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondents have represented, directly or by implication, that the Learning Machine:

- A. Enables users to learn foreign languages overnight.
- B. Enables users to quadruple their reading speed.
- C. Enables users to improve their math skills.
- D. Enables children to learn at a rate of 300% to 500% faster than their peers.
- E. Enables users to lose weight.
- F. Enables users to quit smoking.
- G. Substantially improves users' ability to learn and retain information.
- H. Enables users to learn four languages, triple their reading speed, improve their vocabulary, and improve their memory in thirty days.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through E, 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.

#### SUPERMIND

PAR. 8. Respondents have disseminated or have caused to be disseminated advertisements for the SuperMind, including, but not necessarily limited to, the attached Exhibits F and G. These advertisements contains the following statements:

A. "Based on hard scientific evidence which associates states of consciousness with dominant brainwave activity, this machine coaxes your brain into an Alpha/Theta pattern (brainwaves in the 4-10 Hz range), which is associated with deep meditation and mental imagery. . . . Developed by the Mind Research Laboratory, now anyone can enter profound mental states at the push of a button. . . . I take it with me on business trips to beat stress and jet lag. A 20-minute session gives me the equivalent of 8-hours sleep and helps reset my biological clock.

#### Boost Brainpower

Listen: Training your brain to generate Theta activity for even a few minutes each day has enormous benefits, including boosting the immune system, enhancing creativity, I.Q., and psychic abilities, along with increasing feelings of psychological well-being.

For a little black box to do all that to your brain in 20 minutes is amazing enough, but it's only part of the story. Because this machine can also be used to accelerate learning and modify negative self-defeating behavior.

#### Automatic Hypnosis

Let's say you wanted to quit smoking, enhance your self-esteem, lose weight, or play a better game of golf. . . . [B]y plugging into the SuperMind™, you could induce a hypnotic trance in a matter of seconds. Then, while your subconscious is primed for psychological programming, you play prerecorded behavioral mindscripts, and these new success patterns become transferred onto your brain." [Exhibit F: Longevity magazine, July 1993]

#### B. "Instant Speed Learning

Plus, you can use this machine for speed learning. Tests at the University of California have revealed the effects of Theta frequencies on learning. During their study a group of 20 students learned 1,800 words of Bulgarian in 120 hours while using Theta stimulation programs. In about 1/3 the normal time they spoke and wrote the new language." [Exhibit F: Longevity magazine, July 1993]

#### C. "Speak French, Spanish, German, & Italian Overnight

Using the amazing accelerated language learning system, these four Instant Language courses are also bundled with your SuperMind™ computer. Each course



works with software built into your SuperMind™ to imprint a super-fast working knowledge of these languages into your memory. Edited to accelerate learning time, words and phrases for speaking in each country are imprinted directly onto your brain cells. No verbs to conjugate or grammar to learn." [Exhibit F: Longevity magazine, July 1993]

E. "Speak four languages almost overnight. Instant French. Instant Spanish. Instant German & Instant Italian use the SuperMind computer to stimulate the optimum brain-state for learning. Each language soundtrack imprints new words and phrases directly onto your brain cells. A second tape included with each course uses a special reinforcement system to lock the language session into permanent memory. There are no verbs to conjugate or grammar to learn." [Exhibit G: Omni magazine, January 1994]

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph eight, including but not necessarily limited to the advertisements attached as Exhibits F and G, respondents have represented, directly or by implication, that the SuperMind:

- A. Effectively treats users' stress.
- B. Effectively treats users' jet lag.
- C. Gives users the equivalent of eight hours of sleep after twenty minutes of use.
- D. Enables users to lose weight.
- E. Enables users to quit smoking.
- F. Enabled 20 students to learn 1800 words of Bulgarian in 120 hours in tests at the University of California.
- G. Improves the functioning of users' immune system.
- H. Increases users' I.Q.
- I. When used in conjunction with the Instant Language courses, enables users to learn foreign languages overnight.
- J. Substantially improves users' ability to learn and retain information.

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph eight, including but not necessarily limited to the advertisements attached as Exhibits F and G, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph nine, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time they made the representations set forth in paragraph nine, respondents did not

possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph eight, including but not necessarily limited to the advertisement attached as Exhibit F, respondents have represented, directly or by implication, that the SuperMind has been proven in tests conducted at the University of California to teach users to speak and write foreign languages in about one-third the time of traditional methods of study.

PAR. 13. In truth and in fact, tests conducted at the University of California have not proven that the SuperMind teaches users to speak and write foreign languages in about one-third the time of traditional methods of study. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

#### SUPERBRAIN NUTRIENT PROGRAM

PAR. 14. Respondents have disseminated or have caused to be disseminated advertisements for the SuperBrain Nutrient Program, including, but not necessarily limited to, the attached Exhibit H. This advertisement contains the following statements:

A. "Recently I received a news clipping about a Florida medical doctor who takes a daily dose of 'smart pills' to increase memory, improve intelligence, and energize his brain. The article went on to tell of his incredible claim that these super pills not only made him smarter, but his 4-year-old son was turned into a genius because his wife took the pills when she was pregnant." [Exhibit H: Zygon's SuperLife catalog]

B. "I...started taking them myself. Instantly I was zooming....In other words, my brain was thinking at warp speed.

#### Smart Pill Breakthrough

So how can a 'pill' enhance cognition? Several ways. By increasing blood supply and oxygen to the brain. Enhancing brain cell metabolism. Inhibiting free radical damage to brain cells. And stimulating neuro-transmitter hormones. My goal was to design a powerful brain formula made entirely of natural substances.

#### Waking Up Your Brain

We hired the hottest pharmaceutical research lab in the country. The result is the Brain Cognition Formula. Twenty-six ingredients each tested for maximum purity and potency are loaded into a gelatin capsule.



Look: Popping a few pills won't make you an Einstein, but if your experiences are like mine, you'll notice an improvement in attention, focus, concentration, and mental energy. Because subtle or even major improvements in cognitive functioning often go unnoticed, it's important to have some way of measuring your progress.

So included in your package will be a special report called The Mental Boost that shows you how to measure your mental progress. You'll be instructed how to look for changes in alertness, mental energy, concentration, memorization, productivity, organization and planning, verbal skills, problem solving ability, mood, sexual desire, and overall health." [Exhibit H: Zygion's SuperLife catalog]

PAR. 15. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit H, respondents have represented, directly or by implication, that the SuperBrain Nutrient Program:

- A. Enables users to improve their memory.
- B. Enables users to improve their intelligence.
- C. When taken by pregnant women, will cause their children to have enhanced intelligence.
- D. Enhances cognition, increases blood supply and oxygen to the brain, enhances brain cell metabolism, inhibits free radical damage to brain cells, and stimulates neuro-transmitter hormones of users.
- E. Enables users to improve their cognitive and mental functions, including attention and concentration levels, problem solving abilities, and verbal skills.

PAR. 16. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit H, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph fifteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 17. In truth and in fact, at the time they made the representations set forth in paragraph fifteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

## FAT BURNER PILLS

PAR. 18. Respondents have disseminated or have caused to be disseminated advertisements for Fat Burner pills, including, but not necessarily limited to, the attached Exhibit I. This advertisement contains the following statements:

## A. "Fat Burner Pills

Not only is *Fat Burner* the fastest selling product in its class, but it contains an incredible 500 mg of pure L-Carnitine (a special amino acid used in metabolism) per serving. . . . [Y]ou'll be on your way to a trimmer, firmer, leaner body. Try this supplement with any of the other weight control products in this catalog for a super combined effect that will enhance your weight control program. A special blend of Lipotropics plus 500 mg of L-Carnitine enhances the body's ability to burn fat." [Exhibit I: Zygon's SuperLife catalog]

PAR. 19. Through the use of the statements contained in the advertisements referred to in paragraph eighteen, including but not necessarily limited to the advertisement attached as Exhibit I, respondents have represented, directly or by implication, that Fat Burner pills:

- A. Enhance the body's ability to burn fat.
- B. Enable users to have a trimmer, firmer, and leaner body.
- C. Enable users to lose weight.

PAR. 20. Through the use of the statements contained in the advertisements referred to in paragraph eighteen, including but not necessarily limited to the advertisement attached as Exhibit I, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph nineteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 21. In truth and in fact, at the time they made the representations set forth in paragraph nineteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twenty was, and is, false and misleading.

## DAY AND NIGHT EYES PILLS

PAR. 22. Respondents have disseminated or have caused to be disseminated advertisements for Day and Night Eyes pills, including,



but not necessarily limited to, the attached Exhibit J. This advertisement contains the following statements:

A. "Focus on Healthy Eyes

Eye Improvement Supplement

If you suffer from night blindness (or want clearer vision during the day), *Day and Night Eyes* may be the remedy for you. This all-natural supplement gives your eyes the essential nutrients that must be present in your diet for proper eyesight function. Ingredients include Beta Carotene, Calcium, Vitamin D, Riboflavin (B-2), Zinc, Eyebright, and Anthocyanocide-rich Blueberry Leaf. Recommended dosage is one tablet every morning and evening." [Exhibit J: Zygon's SuperLife catalog]

PAR. 23. Through the use of the statements contained in the advertisements referred to in paragraph twenty-two, including but not necessarily limited to the advertisement attached as Exhibit J, respondents have represented, directly or by implication, that Day and Night Eyes pills:

A. Improve the night blindness of users.

B. Give users clearer vision during the day.

PAR. 24. Through the use of the statements contained in the advertisements referred to in paragraph twenty-two, including but not necessarily limited to the advertisement attached as Exhibit J, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph twenty-three, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 25. In truth and in fact, at the time they made the representations set forth in paragraph twenty-three, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twenty-four was, and is, false and misleading.

THIRTY-DAY MONEY-BACK GUARANTEE

PAR. 26. Respondents have disseminated or have caused to be disseminated advertisements for products, including, but not necessarily limited to, the attached Exhibits B, E, and K. These advertisements contains the following statements:

A. "Try the Learning Machine for 30 days risk free. Take your mind on an incredible journey. If for any reason you're not totally blown away by the experience, send your kit back to me for a full refund." [Exhibit B: USA Today, January 23, 1995]

B. "Try the Learning Machine for 30 days RISK FREE." [Exhibit E: The Learning Machine Home Page, World Wide Web, January 16, 1996]

C. "Our Return Policy We are committed to providing you with products that will improve your life. But if within 30 days you are not completely satisfied with your order, simply call a Customer Service Representative at 1-800-526-2177 to receive return instructions." [Exhibit K: Zygon's SuperLife catalog]

PAR. 27. Through the use of the statements contained in the advertisements referred to in paragraph twenty-six, including but not limited to the advertisements attached as Exhibit B, E, and K, respondents have represented, directly or by implication, that products ordered from respondents carry a thirty-day money-back guarantee, and that consumers who returned the product to respondents within thirty days after receipt would receive a full refund within a reasonable period of time.

PAR. 28. In truth and in fact, in numerous instances, consumers returned products to respondents within thirty days after receipt and did not receive a full refund within a reasonable period of time, or at all. Therefore, the representation set forth in paragraph twenty-seven was, and is, false and misleading.

PAR. 29. 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.