

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of: Product Partners, LLC

Serial No.: 78/269,579

Filed: July 2, 2003 Exparte Appeal from a Specimen Refusal

For: **6 DAY EXPRESS**

Examiner: Tracy L. Fletcher

Law Office: 115

Box TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir:

APPEAL BRIEF

In response to the final Office Action dated June 28, 2004, Applicant requested reconsideration of the specimen final refusal for International Class 44 by amending the description of services for class 44 to --weight reduction; diet planning in International Class 44, and submitting additional specimens for International Class 44. The Examiner denied the request for reconsideration claiming that the specimens submitted do not support the weight reduction and diet planning services in International Class 44. Applicant respectfully disagrees and is therefore filing this appeal brief in support of the acceptability of the specimens submitted.

The definitional Section 45 of the Trademark Act states that: ... "[A] mark shall be deemed to be in use in commerce (1) on goods when (A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce; and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services..." 15 U.S.C. § 1127.

The specimens submitted for Applicant's 6 DAY EXPRESS mark show the 6 DAY EXPRESS mark being used in connection with the 6 DAY EXPRESS diet plan which illustrates the identified services of "weight reduction and diet planning." See Exhibit B. The 6 DAY EXPRESS diet plan is a quick weight loss plan. Such service mark usage is sufficient to satisfy the requirements of 15 U.S.C. § 1127.

In further support of this assertion, Applicant submitted other specimens, namely, website materials advertising and illustrating the diet plan, which includes meal plans for weight reduction, quick tips for weight loss, a workout schedule and a food chart for diet planning and weight reduction. See Exhibit A.

A service mark entails use in conjunction with the offering and providing of a service. *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 768 (Fed. Cir. 1993). Use of the mark in "sales" or "advertising" materials is sufficient service mark usage. *Id.* See also *West Florida Seafood, Inc. v. Jet Restaurants, Inc.*, 31 F.3d 1122 (Fed. Cir. 1994) (concluding that newspaper advertisements constitute acceptable specimens of use); *In re Republic of Austria Spanische*

Reitschule, 197 USPQ 494, 498 (TTAB 1977) ("A service mark application must reflect use of the mark 'in the sale or advertising of services' ... and may include advertisements, brochures, invoices, and virtually every form of printed matter").

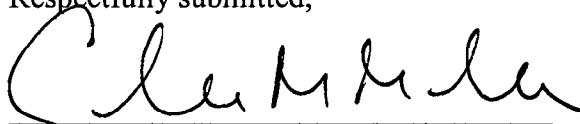
Sufficient use of a service mark in advertising even includes listing the name of the business in telephone directories. *Lloyd's Food Products*, 987 F.2d. at 768. Thus, even a showing that the mark appears in advertising, in the form of current listings in the yellow and white pages, carries the presumption that the service mark is being used in connection with the offering of the advertised services. *Id.*

Applicant's website goes well beyond this requisite threshold, and reflects use of the 6 DAY EXPRESS mark in connection with the sale and/or advertising of the 6 DAY EXPRESS diet planning and weight loss services. Applicant shows the subject mark on the same page displaying details about the service, the price of the program is clearly displayed, and information on how to order is literally just one click away. As such, the specimen submitted with the Amendment to Allege Use demonstrates acceptable use of the subject mark in connection with Applicant's diet planning and weight loss services.

Moreover, Applicant also submitted an advertisement and instructional book that explains the 6 DAY EXPRESS diet plan. For example, the 6 DAY EXPRESS specimens explain the plan, its weight loss benefits as well as its nutritional benefits. It advertises the plan and instructs people on how to lose weight safely and effectively, while using the mark 6 DAY EXPRESS. The specimens illustrate counseling services on how to diet and lose weight. As such, these specimens submitted with the Amendment to Allege Use also demonstrate acceptable use of the subject mark in connection with Applicant's diet planning and weight loss services.

In summary, a purchaser or potential purchaser can clearly identify the weight reduction and diet planning services provided under the 6 DAY EXPRESS diet plan and make a decision to purchase these types of weight reduction and diet planning services. A purchaser can easily associate the services with the term 6 DAY EXPRESS. Accordingly, Applicant requests the Board withdraw the specimen refusal and request the Examining Attorney pass the application onto publication.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Camille M. Miller', written over a horizontal line.

Camille M. Miller
cmiller@cozen.com

Date: December 22, 2004

COZEN O'CONNOR, P.C.
1900 Market Street
Philadelphia, Pa 19103
(215) 665-2000

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Choose A Product...

SLIM in 6

ABOUT SLIM IN 6 SUCCESS STORIES ACCESSORIES SUPPLEMENTS ABOUT DEBBIE SIEBERS

BUY SLIM IN 6

3 MONTHLY PAYMENTS OF **\$19.95**

PLUS \$9.95 S&H

What's included?

Money-back guarantee!

6-DAY EXPRESS™ DIET PLAN

Included with the Slim in 6 program FREE!

Need to drop a few extra pounds in UNDER A WEEK?

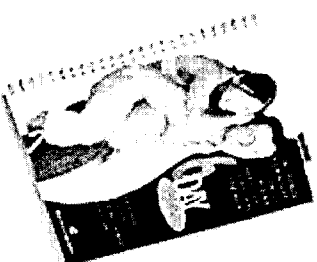
Try our new 6-Day Express Diet Plan.

This all-natural, safe, and effective diet plan can be used with Slim in 6 to accelerate your results or separately to lose weight in a pinch when time is of the essence.



Sometimes fast-approaching events, such as weddings, reunions, and vacations, call for some quick weight reduction to look and feel your best. The 6-Day Express Diet Plan was created for these very reasons. With three restrictive diet plans (and exercise options) to choose from, you can immediately address your weight loss needs and get the results you want.

Plan 1 (Get in the Zone): The most moderate of



GET THE
6-DAY EXPRESS
DIET PLAN
SOLD SEPARATELY FOR
JUST

\$19.95
PLUS \$2.95 S&H

ADD TO CART

To order 6-Day Express by
phone,
call 1 (888) 575-8410



Questions?
chat live with a customer
service representative
click here to chat now!



Powered by LivePerson™

REAL PEOPLE

BEFORE

AMANDA W. A.

AFTER

"Slim in 6
works
and I'm Proff!"

read more...

**MORE
SUCCESS STORIES...**

[CLICK HERE](#)

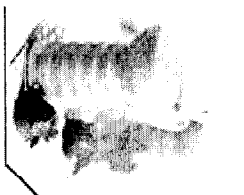
the three plans, this balanced, healthy diet is ideal for those new to dieting, but up for the quick weight loss challenge.

Plan 2 (High-Protein Express): A high-protein, very low-carbohydrate diet to force the body to use stored fat for fuel.

Plan 3 (Fit-for-a-Minute...aka The Photo Shoot Plan): The most extreme and restrictive plan. Best suited for those preparing for a photo shoot or bodybuilding competition.

Along with detailed meal plans tailored to your specific goals, you'll also receive vital information on:

- The best times to eat
- How much to eat
- When to work out
- Foods and liquids to avoid
- The importance of protein powders and shakes
- The safest and best methods to achieve successful results



The 6-Day Express Diet Plan has demonstrated remarkable results, but should be used on limited occasions when slimming down quickly is a top priority. This is not a long-term eating plan.

WARNING: Seek the advice of your doctor before beginning any fast or diet program. Not advisable for pregnant or lactating women or anyone suffering from a medical condition.

To order by phone, call: 1 (800) 310-7198

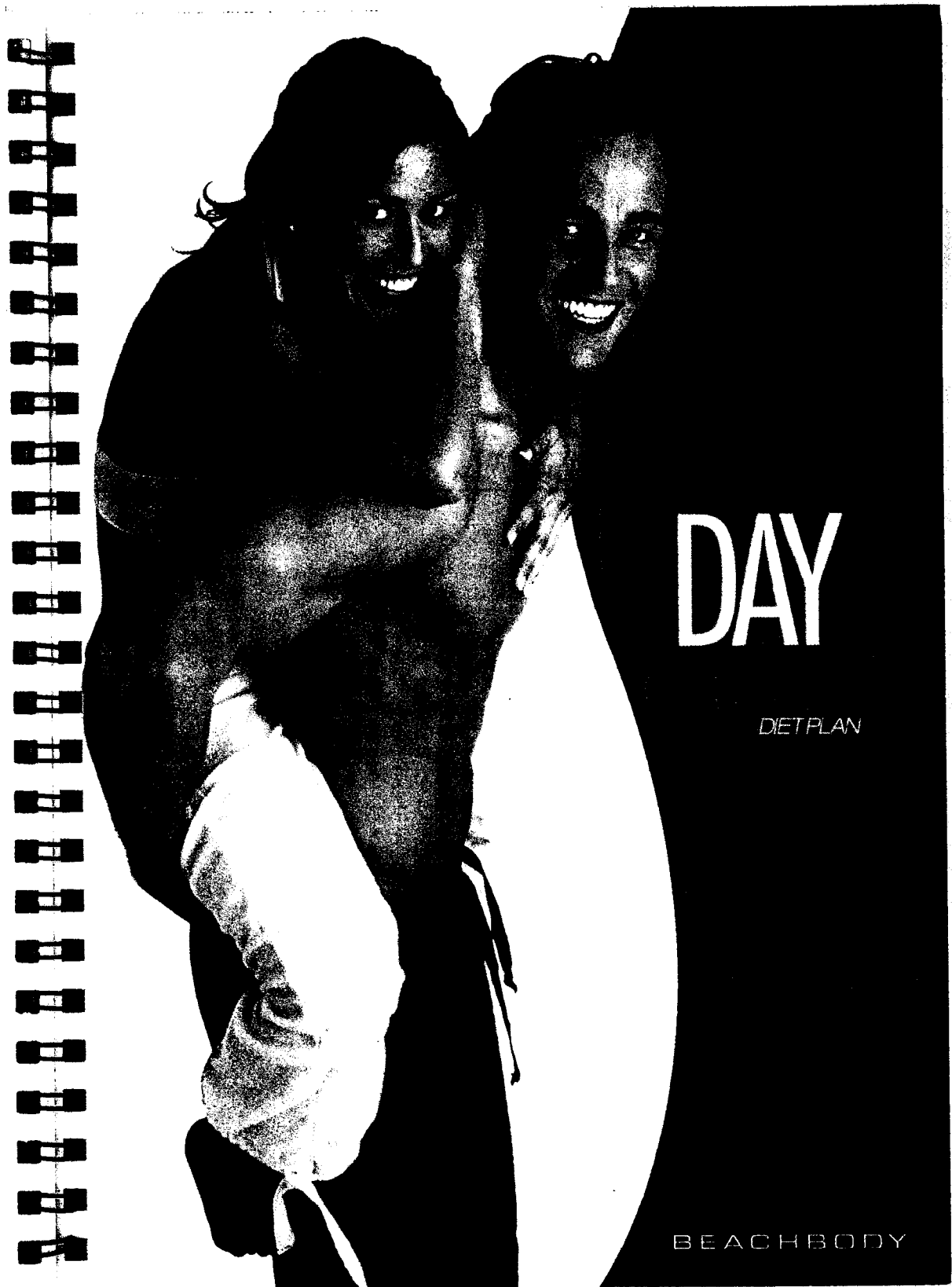
Results will vary. Weight loss may be temporary as exercise and proper diet are required to maintain long-term weight loss and muscle gain.

WHAT ARE
CUSTOMERS SAYING?
SLIM IN 6 FORUM

HOME | [ABOUT SLIM IN 6](#) | [SUCCESS STORIES](#) | [ACCESSORIES](#) | [SUPPLEMENTS](#) | [ABOUT DEBBIE SIEBERS](#)
[PRIVACY POLICY](#) | [TERMS OF USE](#) | [CUSTOMER SERVICE](#) | [BECOME AN AFFILIATE](#) | [TV SCHEDULE](#)
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RECYCLED



DAY

DIET PLAN

BEACHBODY

It's only 6 days of your life. And who can't do just about anything for only 6 days?

A lot of people, that's who. Welcome to the hardest six days of your life! It actually won't be, most likely, but you should go begin the 6-Day Express in that frame of mind. Like Chinese philosopher Lao Tsu said, "If you wish to be out front, then act as if you were behind." Starting with the feeling that this is going to be the toughest thing you've ever done is the best way to ensure you'll see it through and get the results you want. And if you can do this, you should finish with the feeling that you can do anything.

**"WHETHER YOU BELIEVE YOU CAN OR
BELIEVE YOU CAN'T, YOU ARE RIGHT."**

— Henry Ford



Only 6 days. But they're going to require commitment and you're going to need motivation. So start right now, right here, by writing down three reasons why you'd like to look better in a week than you do this minute. Don't be afraid to think big. You can't reach your highest ambitions in less than a week but it can't hurt to try. After all, the worst-case scenario still has an end result of a better you.



**"GO CONFIDENTLY IN THE DIRECTION OF YOUR
DREAMS. LIVE THE LIFE YOU HAVE IMAGINED."**

— Henry David Thoreau

MY TOP 3 REASONS TO COMPLETE THE 6-DAY EXPRESS ARE:

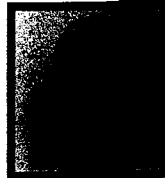
1. _____

2. _____

3. _____

**"THAT WHICH WE ARE, WE ARE...
AND IF WE ARE EVER TO BE ANY BETTER,
NOW IS THE TIME TO BEGIN."**

— Alfred Lord Tennyson





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Accelerate your Slim in 6™
results or get a quick weight
loss tune-up with
Beachbody's™ exclusive 6-Day
Express™ weight loss plan.

We've all done it – put off losing weight
before a wedding, vacation, or other special
event until we're forced to do something

drastic. That big day is quickly approaching, and
suddenly you realize time is almost up for you to slim down.

That's why we created this program. We know this scenario happens all the
time, so we wanted to provide some guidelines to fulfilling the need to shed
fat and inches in one week, without jeopardizing your healthy lifestyle
gains along the way.

That's right, in less than one week you can shed some serious weight by
simply following this 6-Day Express™ Plan. And best of all, this plan is
totally natural – NO dangerous heart-pounding pills, magic potions, or
fly-by-night fads. In some respects, this plan may appear to be
almost a fast, which can be a great way to cleanse the body, so long
as you don't overdo it. Ever. That's why you need to limit the length
of time you follow the program. It is extreme, for short-term
extreme results.

Unfortunately, many people desperate for fast results make the
mistake of doing anything it takes to lose weight. If "anything" to
you means eating just 3 grapes while jogging from Cleveland to
Miami, then weight is not the only thing you're going to lose. You'll
sacrifice your health, hurt your metabolism, and probably just lose a
lot of water. Now don't get us wrong, you will have to make
sacrifices if you plan on shedding fat and inches in less than a week,
but there is a preferred way to do it for both short-term benefit and
avoiding long-term harm. **The key is to follow a formula that is
severe enough to get fast, optimal results, while at the same time
allowing you to maintain your health and function at normal capacity.**
By following the 6-Day Express Plan, this balance can be achieved!

SO WHAT IS IT ALL ABOUT?

The 6-Day Express Plan consists of three very restricted diet and exercise options to put your results on the fast track. Since each person has their own needs, limitations, and goals, we offer options of varying intensity. No matter which option you choose, it's important to note that this is an EXPRESS PLAN and not an EATING PLAN TO LIVE BY. Do not follow any of these plans longer than 6 days in any six week cycle!

HERE WE GO!

▶ PLAN 1 – GET IN THE ZONE

This is the most moderate of the three plans. Plan 1 is a balanced, healthy diet that is recommended for anyone that is new to dieting and exercise, but is still up for the challenge of the 6-Day Express.

▶ PLAN 2 – THE HIGH-PROTEIN EXPRESS

This plan adds protein and restricts carbohydrates to the bare minimum, similar to what bodybuilders do in order to prepare for competitions. Keep in mind that we don't recommend a diet this high in protein for long term health. You are better off eating more complex carbs, your body's preferred fuel source. For 6 days, however, Plan 2 will force your body to use stored body fat for fuel at the same time it ramps up your metabolism. A good short term strategy!



▶ PLAN 3 – FIT-FOR-A-MINUTE... AKA THE PHOTO SHOOT PLAN

The most extreme plan, which is similar to what bodybuilders and others that need to "look" their best will go through when getting ready for a competition or photoshoot. This plan is very restrictive and difficult to follow. It also does not maximize your body's ability to perform. It is an extreme diet for when you absolutely, positively, have to look your best for one special occasion.

QUICK TIPS FOR BEST RESULTS

WHEN TO EAT: 5 – 6 TIMES A DAY

Each plan spells it out for you, giving you six slots per day for eating. Essentially, you should get into the habit of eating every 3 hours or so while you're awake. During each plan of the 6-Day Express, you will usually wake up with a glass of water and then do some type of exercise before breakfast, so at times you might need to eat again in 2 hours. Given the size of many of the "meals," you probably won't have a problem with this. Finally, chewing food thoroughly will help "jumpstart" digestion, making it easier on your GI system.

SIZE MATTERS

It's obvious that a person who weighs 300 pounds has different calorie and nutritional needs than a person who weighs 120 pounds, but weight is not the only factor. Differences in body composition (fat to muscle ratio) and metabolic rate means that there is no simple answer that works for everyone. Some people say a healthy body can survive at least 6 days with no food whatsoever. The point, however, isn't to "survive," but to tune-up your body while maximizing its fat burning mode in order to fast track your results for 6 days with minimal consequence. You will be able to do the diet plans exactly as laid out, but you might benefit by altering it to suit your individual needs (i.e., body composition, size, activity level, etc.).

IS THIS ENOUGH FOOD FOR ME? HERE'S A WAY TO TELL:

1. Estimate your body fat percentage. There are many ways to do this and most aren't perfectly accurate. Outside of having your body fat percentage medically tested by your doctor or fitness professional, one of the most accurate measuring devices is also the cheapest: body fat calipers (available at Beachbody.com and many sporting goods stores). But any body fat calculator can be used to give you an approximate figure to work from. These 6-day diets were designed for men who are over 15% body fat or women over 20% body fat. The reason is that you must have ample body fat stored to supply the balance of calories your body needs for energy while you are not feeding it as many calories as before. Keep in mind that "should" means just that. If you really feel like you need to eat more because your energy is too low, by all means do so.



2. If you are below the 15% for men and 20% for women percentages, you will probably want to add calories in order to keep your workouts intense without your body feeding on its own muscle to support the demand for energy. Use the scale below to add the appropriate number of calories per day. The asterisk (*) foods in each plan are the ideal source for those additional calories.

Under 140 lbs.	add 100 cals per day
141-150 lbs.	add 200 cals per day
151-160 lbs.	add 300 cals per day
161-170 lbs.	add 400 cals per day
171-180 lbs.	add 500 cals per day
181-190 lbs.	add 600 cals per day
191-200 lbs.	add 700 cals per day
200+ lbs.	add 700 cals plus another 100 cals for each 10 lbs. over 200 lbs.

WHEN TO WORK OUT:

We recommend that you do some cardio in the morning before you eat breakfast, and do your main, most intense workout later in the day. We do suggest specific workout times in each plan, but the bottom line is you should do your most challenging workout at whatever time of day you feel the strongest/most energetic. While there are advantages to working out at different times of the day, these advantages are far superseded by your personal ability to push hard. When you are exercising just once a day, you should never compromise intensity just to get the workout done at a specific time. If you are exercising twice a day as we outline in the first two plans, we recommend that your toughest workout be later in the day when you've got more blood glycogen (sugar in the bloodstream) stored up. But again, the ultimate way to decide when to work out is based on when you can keep your intensity at its highest!

WHAT TYPES OF WORKOUTS TO FOLLOW:

While the 6-Day Express is designed around Slim in 6, it can be done with almost any exercise routine. (Note: Training for a marathon on this type of express diet would not work well – so try to make sure the intensity of the routine you pick does not push you out of your capabilities at this time.)





This is the most moderate of the three plans. Plan 1 is a balanced, healthy diet recommended for anyone that is new to dieting and exercise but is still up for the challenge and results of the 6-Day Express.

FOOD SUGGESTIONS ARE LISTED IN APPENDIX 2.

RECOMMENDATIONS ARE LISTED IN THE TABLE UNDER "FRUIT ONE," "FAT ONE," AND SO ON.

PLAN 1 SCHEDULE:

WAKE-UP WATER

Have an 8–12 oz glass of plain water to hydrate you when you wake up and before you begin your AM workout.

AM WORKOUT (CARDIO)

1. Follow 20–60 minutes of easy to moderate intensity cardio before breakfast. If you are using Slim in 6, the cardio section of either the *Start It Up!* or *Ramp It Up!* routines are perfect. (In your morning workout, you will want to skip the resistance work/exercise band section, which starts 20 minutes into *Ramp It Up!*, for instance.)

2. Have breakfast within one hour of finishing your workout.

PRE-BREAKFAST WATER & SUPPLEMENTS

- At least one 8 oz glass of water with 2 Slimming Formula tablets after you complete your AM workout, anytime prior to breakfast



PLAN 1

DIET PLAN 1.

Daily Calorie Count: Approximately 1,200 calories per day (115 grams carbohydrates, 92 grams protein, 40 grams fat).

BREAKFAST

Eat breakfast within one hour of finishing your AM workout. Approximately 325 calories (32 grams carbohydrates, 24 grams protein, 10 grams fat).

▲ OPTION 1

- Smoothie, with 1-scoop Beachbody Whey Protein,* one serving FRUIT ONE,* 1 tablespoon FAT ONE, all in either 4 oz of water, or 4 oz of soy or skim milk.* Mix in blender with a scoop of ice.

▲ OPTION 2

- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- One serving FRUIT ONE*
- 1 tablespoon FAT ONE*
- 4 oz soy or skim milk*

▲ OPTION 3

- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- One serving GRAIN
- One serving FRUIT ONE
- One serving FAT ONE

PRE-SNACK WATER

- At least one 8 oz glass of water with (optional) lime or lemon added

AM SNACK

Eat AM snack 1-2 hours after breakfast.

Approximately 75 calories (18 grams carbohydrates).

- One serving FRUIT TWO

PRE-LUNCH WATER & SUPPLEMENTS

- At least one 8 oz glass of water with 2 Slimming Formula tablets and 1 Activit tablet anytime before lunch



LUNCH

Eat lunch 1-2 hours after AM snack. Approximately 270 calories (14 grams carbohydrates, 23 grams protein, 16 grams fat).

■ Salad

- One cup SALAD with 1/4 cup SALAD INGREDIENT ONE* and one cup SALAD INGREDIENT TWO,* with 1 tablespoon balsamic vinaigrette (or equivalent dressing - no ranch, blue cheese, etc.)
- 4 oz of MEAT (or MEAT SUBSTITUTE) grilled without oil*

POST-LUNCH WATER

- At least one 8 oz glass of water anytime after lunch

PM WORKOUT

Cardio plus strength training. High intensity 30–60 minute workout preferably with both cardio and resistance (weight training) work at higher intensity than morning workout.

SLIM IN 6 OPTION:

Either Ramp It Up! or Burn It Up!

Note: Do the PM workout 2-3 hours after you've eaten, and if you have another meal left in the day, eat again within one hour of finishing the PM workout. If you do this workout before bed, then make sure you have a glass of water after finishing. Without enough water, you risk getting dehydrated while sleeping, which is when you are recovering and getting stronger. Your evening cup of tea before bed may aid your ability to get to sleep easily post workout.

PRE-SNACK WATER

- At least one 8 oz glass of water with (optional) lime or lemon added anytime before PM snack

PM SNACK

Eat PM snack 1-3 hours after lunch. Approximately 230 calories (26 grams carbohydrates, 21 grams protein, 4 grams fat).

▲ OPTION 1

- Beachbody Meal Replacement Shake (or equivalent) with 8 oz soy or skim milk

▲ OPTION 2

- 130 calories of whole grain cereal (read nutrition panel as cereals vary) with 8 oz soy or skim milk

▲ **OPTION 3**

- 40/30/30 bar (up to 230 calories)

▲ **OPTION 4**

- 1/3 cup almonds, peanuts, walnuts, pumpkin, sunflower or sesame seeds (raw)

▲ **OPTION 5**

- 8 oz vanilla or plain yogurt, non-fat or soy yogurt

▲ **OPTION 6**

- 1/2 cup non-fat cottage cheese
- One serving FRUIT ONE or FRUIT TWO

▲ **OPTION 7**

- 1 serving GRAIN
- One serving FAT TWO

▲ **OPTION 8**

- 3 cups air popped corn
- 1 cup soy or skim milk

PRE-DINNER WATER

- At least one 8 oz glass of water with 2 Slimming Formula tablets and 1 Activit tablet anytime before dinner

DINNER

Eat dinner 1-2 hours after your PM snack, or earlier, so you are done eating for the day within 3 hours of going to sleep! Approximately 280 calories (25 grams carbohydrates, 24 grams protein, 10 grams fat).

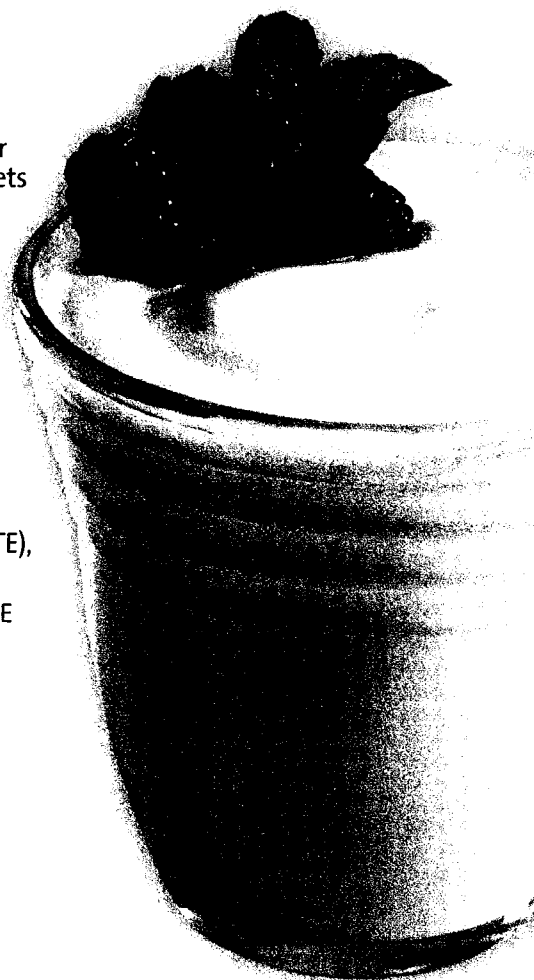
- 4 oz MEAT (or MEAT SUBSTITUTE), grilled without oil
- 2 cups LEAFY GREEN VEGETABLE (steamed)
- 2 oz mustard
- One serving FRUIT ONE*

LATE SNACK

Approximately 0 calories.

- One cup herb tea

*Add quantities if necessary.



PLAN 2

EXPRESS

In Plan 2, you consume mostly protein and restrict carbohydrates to a minimum, similar to what bodybuilders do in order to prepare for competitions. Keep in mind that we don't recommend a diet this high in protein for long-term health. In the short-term, however, Plan 2 will force your body to use its stored body fat for fuel and also ramp up your metabolism.

FOOD SUGGESTIONS ARE LISTED IN APPENDIX 2.

RECOMMENDATIONS ARE LISTED IN THE TABLE UNDER "FRUIT ONE," "FAT ONE," AND SO ON.

PLAN 2 SCHEDULE:

WAKE-UP WATER

Have an 8-12 oz glass of plain water to hydrate you when you wake up and before you begin your AM workout.

AM WORKOUT (CARDIO)

1. Follow 20-60 minutes of easy to moderate intensity cardio before breakfast. If you are using Slim in 6, the cardio section of either the *Start It Up!* or *Ramp It Up!* routines are perfect. (In your morning workout, you will want to skip the resistance work/exercise band section, which starts 20 minutes into *Ramp It Up!*, for instance.)

2. Have breakfast within one hour of finishing your workout.

PRE-BREAKFAST WATER & SUPPLEMENTS

- At least one 8 oz glass of water with 2 Slimming Formula tablets after you complete your AM workout, anytime prior to breakfast



PLAN 2

DIET PLAN 2.

Daily Calorie Count: Approximately 1,200 (80 grams carbohydrates, 133 grams protein, 40 grams fat).

BREAKFAST

Eat breakfast within one hour of finishing your AM workout. Approximately 325 calories (32 grams carbohydrates, 24 grams protein, 10 grams fat).

▲ OPTION 1

- Smoothie, with 1-scoop Beachbody Whey Protein,* one serving FRUIT ONE,* 1 tablespoon FAT ONE, in either 4 oz of water or 4 oz of soy or skim milk.* Mix in blender with a scoop of ice.

▲ OPTION 2

- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- One serving FRUIT ONE*
- 1 tablespoon FAT ONE*
- 4 oz soy or skim milk*

PRE-SNACK WATER

- At least one 8 oz glass of water with (optional) lime or lemon added

AM SNACK

Eat AM snack 1-2 hours after breakfast. Approximately 175 calories (12 grams carbohydrates, 22 grams protein, 3.5 grams fat).

▲ OPTION 1

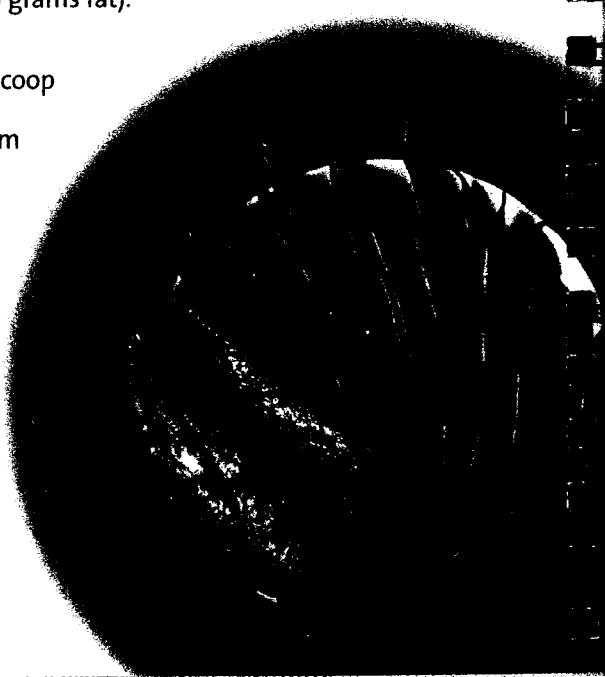
- Small protein shake with 1-scoop Beachbody Whey Protein (or equivalent) in 4 oz soy or skim milk*

▲ OPTION 2

- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- 4 oz soy or skim milk

PRE-LUNCH WATER & SUPPLEMENTS

- At least one 8 oz glass of water with 2 Slimming Formula tablets and 1 Activit tablet anytime before lunch



LUNCH

Eat lunch 1-2 hours after AM snack. Approximately 270 calories (14 grams carbohydrates, 23 grams protein, 16 grams fat).

- Salad
 - One cup SALAD with 1/4 cup SALAD INGREDIENT ONE* and one cup SALAD INGREDIENT TWO* with 1 tablespoon balsamic vinaigrette (or equivalent dressing – no ranch, blue cheese, etc.)
- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*

POST-LUNCH WATER

- At least one 8 oz glass of water anytime after lunch

PM WORKOUT

Cardio plus strength training. Do a 30–60 minute workout preferably with both cardio and resistance work (weight training) at high intensity.

SLIM IN 6 OPTION:

Either *Ramp It Up!* or *Burn It Up!*

Note: Do the PM workout 2-3 hours after you've eaten, and if you have another meal left in the day, eat again within one hour of finishing the PM workout. If you do this workout before bed, then make sure you have a glass of water after finishing. Without enough water, you risk getting dehydrated while sleeping, which is when you are recovering and getting stronger. Your evening cup of tea before bed may aid your ability to get to sleep easily post workout.

PRE-SNACK WATER

- At least one 8 oz glass of water with (optional) lime or lemon added anytime before PM snack

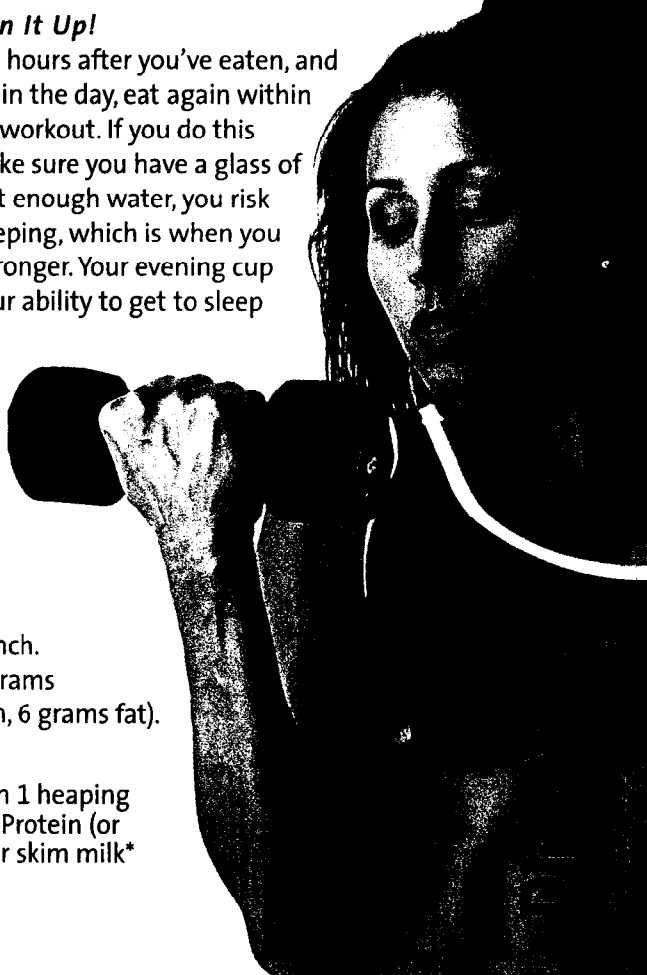
PM SNACK

Eat PM snack 1-2 hours after lunch.

Approximately 200 calories (6 grams carbohydrates, 26 grams protein, 6 grams fat).

▲ OPTION 1

- Small protein shake with 1 heaping scoop Beachbody Whey Protein (or equivalent) in 5 oz soy or skim milk*





▲ OPTION 2

- 5 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- 5 oz soy or skim milk

▲ OPTION 3

- 1/2 cup almonds, peanuts, walnuts, pumpkin, sunflower or sesame seeds (raw)

PRE-DINNER WATER

- At least one 8 oz glass of water with 2 Slimming Formula tablets and 1 Activit tablet anytime before dinner

DINNER

Eat dinner 1-2 hours after your PM snack, or earlier, so you are done eating for the day within 3 hours of going to sleep! Approximately 230 calories (14 grams carbohydrates, 23 grams protein, 9 grams fat).

- 4 oz MEAT (or MEAT SUBSTITUTE) grilled without oil*
- 2 cups LEAFY GREEN VEGETABLE (steamed)*
- 2 oz mustard

LATE SNACK

Approximately 0 calories.

- One cup herb tea

*Add quantities if necessary.

PLAN 3

FIT-FOR-A-MINUTE...

This is the most extreme plan, which is similar to what bodybuilders and others that want to "look" their best on a very specific day will go through when getting ready for a competition or photo shoot. This plan is very restrictive and difficult to follow. It does not maximize your body's

ability to perform. It is an extreme diet for when you absolutely, positively, have to look "shredded." But please understand, it's not healthy. It's not good for you. It's not something to do often.

Warning: Do not attempt this plan unless you are in very good health. Under no circumstances should you undertake this if you have high blood pressure or a heart ailment of any kind!

The plan is two-tiered. First you start with a 3-day cleanse in order to rid your body of unwanted, undigested food and toxins. Next are 3 days designed to "wring-out your body" by eating only protein, with very little fat, carbs, and even very little water. Like we said – it's not healthy, but if you need that one shredded, ripped day, this is what the pros do.

FOOD SUGGESTIONS ARE LISTED IN APPENDIX 2.

RECOMMENDATIONS ARE LISTED IN THE TABLE UNDER "FRUIT ONE," "FAT ONE," AND SO ON.



PLAN 3

Part 1 — The Cleanse (FIRST 3 DAYS)

A slightly modified veggie fast, where you'll mainly be eating raw foods: plants and grains, in order to cleanse your system. Extra water is fine for these three days. Exercise may be a struggle, so back off if you need to.

WAKE-UP WATER

Have one 8-12 oz glass of plain water to hydrate you when you wake up and before you begin your AM workout.

AM WORKOUT (OPTIONAL IN PLAN 3)

1. If you want to exercise, do 20-30 minutes of low-intensity yoga, cardio, or stretching. Make sure to warm-up thoroughly before doing any difficult movements.
2. Have breakfast within one hour of finishing your workout.

PRE-BREAKFAST WATER & SUPPLEMENTS

- At least one 8 oz glass of water after you complete your AM workout, anytime prior to breakfast

Diet Plan 3 Part One

BREAKFAST

Eat breakfast within one hour of waking up or exercising.

▲ OPTION 1

- Protein Shake with 1-scoop Beachbody Whey Protein in 4 oz water*

▲ OPTION 2

- 1/2 cup fruit juice (no sugar added and freshly squeezed if possible) or 1/2 cup vegetable juice (fresh if possible – low sodium if purchased)

PRE-SNACK WATER

At least one 8 oz glass of water with (optional) lime or lemon added.

AM SNACK

Eat AM snack 1-2 hours after breakfast.

▲ OPTION 1

- 1-scoop Beachbody Meal Replacement in 8 oz water*

▲ OPTION 2

- 1/2 cup fruit juice (no sugar added and



freshly squeezed if possible) or 1/2 cup vegetable juice
(fresh if possible – low sodium if purchased)

PRE-LUNCH WATER & SUPPLEMENTS

- At least one 8 oz glass of water and 1 Activit tablet anytime before lunch

LUNCH

Eat lunch 1-2 hours after AM snack.

- Salad
 - One cup SALAD,* one cup SALAD INGREDIENT ONE* and one cup SALAD INGREDIENT TWO* with spices and balsamic vinegar
 - 1 tablespoon raw seeds or nuts
- One cup wild rice (cooked, no additives) or one cup cooked oatmeal*

POST-LUNCH WATER

- At least one 8 oz glass of water anytime after lunch

PM WORKOUT

At moderate intensity, do a 20–60 minute workout that has both cardio and resistance work. Start 2-3 hours after your most recent meal and eat again within one hour of finishing.

SLIM IN 6 OPTION:

Start It Up!, Ramp It Up! or Keep It Up!

PRE-SNACK WATER

- At least one 8 oz glass of water with (optional) lime or lemon added anytime before PM snack

PM SNACK

- One cup SALAD INGREDIENT ONE or SALAD INGREDIENT TWO, raw*
- 1 tablespoon raw seeds or nuts
- 1/2 cup fruit juice (no sugar added and freshly squeezed if possible) or 1/2 cup vegetable juice (fresh if possible – low sodium if purchased)

PRE-DINNER WATER

- At least one 8 oz glass of water and 1 Activit tablet anytime before dinner



PLAN 3

DINNER

Eat dinner 1-2 hours after your PM snack, or earlier, so you are done eating for the day within 3 hours of going to sleep!

- 2 cups LEAFY GREEN VEGETABLES (steamed)*
- 1/2 cup wild/brown rice or oatmeal (cooked)

LATE PM SNACK

- 1 cup herb tea
- One 8 oz glass of water
- Suck on ice
- Breathe in steam for ten minutes
- Suck on sponge (if you don't think this is a joke, you'd better make it a very clean sponge!)

Part II — GET RIPPED!

High protein and low everything else, INCLUDING WATER, will shed unsightly fat and wring the water out of your system in order to show more definition. Definitely should not be pushed outside of 3 days as your body cannot live long on this diet. We doubt you'll want to. After 3 days, that damp sponge will no doubt seem appealing. On this diet, YOU MAY NOT EAT OR DRINK ANYTHING ELSE, INCLUDING WATER, except 2 cups per day of coffee or tea (as they are diuretics—but no additives)! However, based on your size, you may vary the portion size.

You must purchase a POTASSIUM supplement, which can be found at any market and should only cost a few dollars. Potassium supplementation will ensure that your electrolyte balance doesn't get too far out-of-whack and will also help you shed excess sodium from your system that can make you look bloated. Do not add any salt to your food during this time.

During your last 24 hours, do not drink any water. If you are parched, just have enough to moisten you mouth. Sucking on ice (seriously) can help you if you're feeling very thirsty.

Also, try and keep your veggie intake to those with lower water contents.

HERE IS A LIST OF RECOMMENDED VEGGIES:

GREEN BEANS	BRUSSEL SPROUTS
BROCCOLI	CAULIFLOWER
PEAS	

AND HERE ARE A FEW TO AVOID (UNLESS YOU WANT TO CHEAT):

SQUASH	SPINACH
TOMATOES	ZUCCHINI
BOK CHOY	LETTUCE (ALL TYPES)

Feel like this is crazy? Here are some inspiring words from someone who's gone through it many times, bodybuilder Patricia Beyeler:

"By now, you can't add muscle if you are not already there, but you can make sure your sodium level is extremely low and your potassium is higher at this time. Only potassium pills can help (no bananas). Eat protein only in the form of lean meat, egg whites, and protein shakes with water only, no protein bars. Tanning is great the night before (I do this even with my nice brown skin – LOL!). Tanning sucks out the excess water somewhat like a diuretic would. Eat only a palm-sized portion of brown rice prior to the shoot, and only if you are going to show various routines or exercises so you need more energy. No water over the last 24 hours, just enough to wet your whistle. Sorry, but this is extreme."

WAKE-UP WATER

Have a glass of water when you wake up. Remember, though, none on the last day, but you can rinse out your mouth after brushing your teeth.

AM WORKOUT

Optional in Plan 3.

- You can't add much at this stage of the game. If you want to do something to feel good, make it low intensity.

Diet Plan 3 Part Two:

BREAKFAST

Eat breakfast within one hour of waking up or exercising.

▲ OPTION 1

- Protein Shake with 1-scoop Beachbody Whey Protein, in 4 oz water* with 200 mg of potassium

▲ OPTION 2

- 6 egg whites with herbs (absolutely no salt added)*

AM SNACK

Eat AM snack 1-2 hours after breakfast.

▲ OPTION 1

- Protein Shake with 1-scoop Beachbody Whey Protein, in 4 oz water*

▲ OPTION 2

- 6 egg whites with herbs (absolutely no salt added)*

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PLAN 3

AM WATER

At least one 8 oz glass of water anytime before lunch with 200 mg potassium. On the last day, drink only enough to get the pills down.

LUNCH:

Eat lunch 1-2 hours after AM snack.

- 4-8 oz MEAT ONE (or MEAT SUBSTITUTE) grilled without oil
- 1 cup LEAFY GREEN VEGETABLE
- WORKOUT OPTION. If you are doing a hard afternoon workout, add one cup wild rice (cooked, no additives) or one cup cooked oatmeal*

PM WORKOUT

At moderate intensity, 20-60 minute workout that has both cardio and resistance work. Start 2-3 hours after your most recent meal and eat again within one hour of finishing.

SLIM IN 6 OPTION:

Start It Up!, Ramp It Up! or Keep It Up!

PRE-SNACK WATER

- At least one 8 oz glass of water anytime after lunch with 200 mg potassium. On the last day, drink only enough to get the pills down.

PM SNACK

Skip during last 24 hours.

- 4 oz MEAT ONE (or MEAT SUBSTITUTE) grilled without oil
- 1 cup LEAFY GREEN VEGETABLE

PRE-DINNER WATER

- At least one 8 oz glass of water anytime after lunch with 200 mg potassium. On the last day, drink only enough to get the pills down.

DINNER

Eat dinner 1-2 hours after your PM snack, or earlier, so you are done eating for the day within 3 hours of going to sleep!

- 4-8 oz MEAT ONE (or MEAT SUBSTITUTE) grilled without oil
- 1 cup LEAFY GREEN VEGETABLE

LATE PM SNACK

- Suck on ice (and you thought we were kidding, huh?)

* Add quantities if necessary.



PLAN 3

APPENDIX 1

6-DAY EXPRESS NOTES

WATER – There are water guidelines in the plans, but you are able to add water as necessary (except during the Get Ripped phase of Plan 3). Some carbonated water is okay, but make most of your water flat as a steady diet of carbonated water will upset your body's phosphorus levels. Do not drink less water than what is advised.

COFFEE AND TEA – These beverages have no calories unless you add things to them. So you can drink them, but only without the added calories. Keep in mind that both promote some amount of dehydration, so extra water should be consumed throughout the day if you drink coffee or tea (except during the Get Ripped phase of Plan 3). Also note on Plan 3 you'll find that caffeine has a heightened effect due to the types of foods you are eating (or lack thereof). You should consider cutting your caffeine way down, if not out, while doing Plan 3, or at least switching to green tea.

SPORTS DRINKS AND JUICES – These are not allowed and will interfere with your results. They certainly have a place in a sound long-term nutrition and fitness program, but are superfluous calories during the 6-Day Express Plan and should be avoided.

ALCOHOL – Stock up, 'cause you're gonna need it—wait a sec—you can't have any at all.

SOFT DRINKS – C'mon, whataya a comedian? Nice try. Even diet soft drinks are off, as they contain zero food value and are loaded with controversial ingredients.

FRUIT JUICE – Should be 1/2 cup fruit juice (no sugar added and freshly squeezed if possible) diluted with 1/2 cup of water.

VEGETABLE JUICE – 1 cup fresh if possible (low sodium if purchased).

GRAINS – Grains can be soothing on the digestive system and are sometimes used during fasts.

FLAX AND HEMP SEED – Each plan is going to require a trip to the market. Two items you may not be used to are flax and hemp seed. Flax seed provides your body with essential fatty acids and raw seeds (as opposed to flax seed oil), are a great source of fiber as well. You can eat the seeds whole, but most people prefer to grind them up and add them to a shake. Either way is fine. You can grind your flax seeds in a standard coffee grinder or sprinkle them on your salad. Certain stores now sell ground flax seed as well. Using flax, fish, or any omega-3 oil is an appropriate (and easier) substitute, whether in capsule or liquid form. Keep in mind you'll be missing out on some fiber. You can replace this with a spoonful of psyllium husk if you choose.

PROTEIN POWDER AND MEAL REPLACEMENT SHAKES – We also recommend Beachbody Whey Protein and Beachbody Meal Replacement Shakes, but you don't have to use our products. There are many products on the market, so feel free to substitute whatever is convenient. We just happen to know the content and quality of our products, which is why we recommend them with the 6-Day Express Plan.

6-DAY EXPRESS NOTES

POTASSIUM – In supplement form, potassium is only needed for the last 3 days of Plan 3. Potassium, a mineral, assists in muscle contraction and in maintaining fluid and electrolyte balance in body cells. Potassium is important in sending nerve impulses as well as releasing energy from protein, fat, and carbohydrates during metabolism. During the Get Ripped phase of Plan 3, you have an increased need for potassium because you are forcing your body to excrete excess water. Potassium is necessary for water balance and is found inside every cell in your body. The potassium inside the cells balances the sodium outside the cells to maintain pressure and water balance in the body. A higher sodium intake increases fluid retention outside your cells. Increasing your potassium intake will cause that extra sodium to be excreted.

CAN I DO IT LONGER THAN 6 DAYS? – We do not recommend using the 6-Day Express Plan longer than 6 days. For one, it could be dangerous and, two, you run the risk of slowing your metabolism because you're under-eating, which could reverse your results. You can, however, keep eating in this fashion by adding more calories from similar types of foods.

CAN I DO FAST START? – The Fast Start option is suggested to kick off Plans 1 & 2, but not Plan 3, since Plan 3 is a cleansing diet and similar to a fast anyway. For cleansing purposes, it is possible to add **FAST START** to the end of Plan's 1 & 2 as well. We highly recommend that you stop (or at least reduce) exercising if you do **FAST START**, as well as schedule this fast over two days when you don't have much to do, since you won't have much energy. [For more information on **FAST START**, see the pamphlet that came with Slim in 6 or check it out online at Beachbody.com.]

Keep in mind this 6-Day Express Plan was designed to allow for maximum weight loss in a short period of time. Deviating from any of the suggestions provided will more than likely have a negative effect on your results.

We never said it was going to be a cake walk (sorry, probably wrong choice of words). But we do say that you will rapidly accelerate the weight-loss process if you stick to one of these 6-day plans. Chances are you're here because you need to lose weight fast, and you want to do it in the healthiest possible way. With that in mind, take comfort in knowing that our fitness and diet experts have spent countless hours creating safe and effective plans that **WILL GET THE FAST RESULTS YOU NEED**.

APPENDIX 2

FOOD LIST

FRUIT ONE:

Banana, 1/2
Raspberries, one cup
Blueberries, 3/4 cup

Strawberries, sliced, one cup
Blackberries, 3/4 cup
Boysenberries, one cup

GR

FRUIT TWO:

Apple, one medium
Pear, one medium
Nectarine, one medium
Grapes, one cup
Melon, one cup
Tangerines, 2 small
Papaya, 1/2 small

Orange, one medium
Kiwi, one medium
Peach, one medium
Pineapple, one cup
Grapefruit, 1/2 large
Mango, 1/2 small
Plums, 2 small

ME

ME

SALAD:

Spinach
Endive

Lettuce (any except iceberg)

SALAD INGREDIENT ONE:

Chopped Green Onions
Celery
Arugula

Cucumber
Parsley

FAT

SALAD INGREDIENT TWO:

Bell Pepper
Broccoli
Green String Beans
Radish

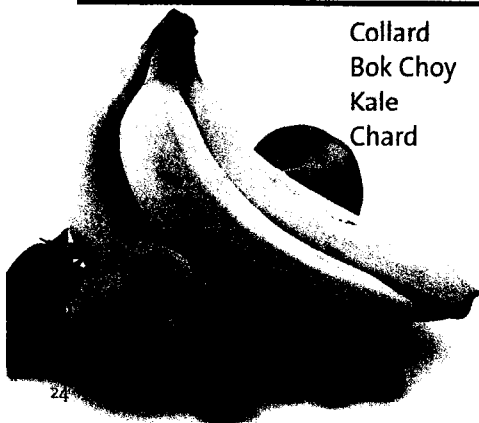
Mushrooms
Cauliflower
Carrot

FAT

LEAFY GREEN VEGETABLE:

Collard
Bok Choy
Kale
Chard

Cabbage
Brussel Sprouts
Asparagus



FOOD LIST

GRAIN

Cereal (less than 7 grams of sugar per serving), 3/4 cup
Cooked Oatmeal, 1/2 cup
Whole Grain Bread (no enriched flour), 1 slice
Flourless Bread, 1 slice

MEAT ONE:

Chicken Breast (skinless)	Lean Steak
Fish	Lean Lamb
Turkey	Pork Tenderloin

MEAT SUBSTITUTE:

Tofu	Tempeh
Seitan	Cottage Cheese (non-fat), 1/2 cup
Soy Cheese, 3 slices	Egg Whites, 6
Egg Substitute (plain), 3/4 cup	Hummus, 1/4 cup
Plain Yogurt (non fat), 1 cup	Soy Yogurt, 1 cup
Beans/Lentils/Soybeans (cooked), 3/4 cup	
Soy Burger (less than 5 grams of fat per serving)	

FAT ONE:

Ground Flax Seed (recommended), 1 tablespoon
Flax Seed Oil (capsule okay), 1 tablespoon
Fish Oil (capsule okay)
Any Omega-3 Supplement
Olive or Canola Oil, 1 tablespoon
Safflower, Borage, Flax, Evening Primrose, Sunflower,
and Hemp Oils, 1 tablespoon

FAT TWO:

Olives, (16)
Avocado, 1/4
Peanut or Almond Butter, 1 tablespoon
Almonds, Peanuts, or Walnuts, 2 tablespoons (1/8 cup, raw)
Sunflower, Sesame, or Pumpkin seeds, 2 tablespoons (1/8 cup, raw)

APPENDIX 3

JOURNAL DAY 1:

Goals/Resolutions for the next 6 days:

DIET PLAN NUMBER:

Wake-Up Water:

AM Workout (Cardio):

Pre-Breakfast Water & Supplements:

Breakfast:

Pre-Snack Water:

AM Snack:

Pre-Lunch Water & Supplements:

Lunch:

Post-Lunch Water:

PM Workout (Cardio plus Strength Training):

Pre-Snack Water:

PM Snack:

Pre-Dinner Water:

Dinner:

Late Snack:

Comments:

JOURNAL DAY 2:

Goals/Resolutions for the day: _____

Wake-Up Water: _____

AM Workout (Cardio): _____

Pre-Breakfast Water & Supplements: _____

Breakfast: _____

Pre-Snack Water: _____

AM Snack: _____

Pre-Lunch Water & Supplements: _____

Lunch: _____

Post-Lunch Water: _____

PM Workout (Cardio plus Strength Training): _____

Pre-Snack Water: _____

PM Snack: _____

Pre-Dinner Water: _____

Dinner: _____

Late Snack: _____

Comments: _____

JOURNAL DAY 3:

Goals/Resolutions for the day: _____

Wake-Up Water: _____

AM Workout (Cardio): _____

Pre-Breakfast Water & Supplements: _____

Breakfast: _____

Pre-Snack Water: _____

AM Snack: _____

Pre-Lunch Water & Supplements: _____

Lunch: _____

Post-Lunch Water: _____

PM Workout (Cardio plus Strength Training): _____

Pre-Snack Water: _____

PM Snack: _____

Pre-Dinner Water: _____

Dinner: _____

Late Snack: _____

Comments: _____

JOURNAL DAY 4:

Goals/Resolutions for the day: _____

Wake-Up Water: _____

AM Workout (Cardio): _____

Pre-Breakfast Water & Supplements: _____

Breakfast: _____

Pre-Snack Water: _____

AM Snack: _____

Pre-Lunch Water & Supplements: _____

Lunch: _____

Post-Lunch Water: _____

PM Workout (Cardio plus Strength Training): _____

Pre-Snack Water: _____

PM Snack: _____

Pre-Dinner Water: _____

Dinner: _____

Late Snack: _____

Comments: _____

JOURNAL DAY 5:

Goals/Resolutions for the day: _____

Wake-Up Water: _____

AM Workout (Cardio): _____

Pre-Breakfast Water & Supplements: _____

Breakfast: _____

Pre-Snack Water: _____

AM Snack: _____

Pre-Lunch Water & Supplements: _____

Lunch: _____

Post-Lunch Water: _____

PM Workout (Cardio plus Strength Training): _____

Pre-Snack Water: _____

PM Snack: _____

Pre-Dinner Water: _____

Dinner: _____

Late Snack: _____

Comments: _____

APPENDIX 4

BEFORE AND AFTER STATS

BEFORE

DATE: _____

WEIGHT: _____

CHEST: _____"

WAIST: _____"

HIPS: _____"

RIGHT
MID-THIGH: _____"

LEFT
MID-THIGH: _____"

RIGHT
UPPER ARM: _____"
(FLEXED, MEASURED AT THE PEAK OF THE BICEP)

LEFT
UPPER ARM: _____"
(FLEXED, MEASURED AT THE PEAK OF THE BICEP)

AFTER

DATE: _____

WEIGHT: _____

CHEST: _____"

WAIST: _____"

HIPS: _____"

RIGHT
MID-THIGH: _____"

LEFT
MID-THIGH: _____"

RIGHT
UPPER ARM: _____"

LEFT
UPPER ARM: _____"

GET ON THE FAST TRACK TO A SLIMMER BODY



Beachbody's 6-Day Express weight loss plans offer ideal solutions for those looking to shed some extra pounds in a short period of time. Choose the one that's right for you, and get the slimming results you need in just 6 days.

PLAN

THE ZONE

PLAN 1 – GET IN THE ZONE

A balanced, healthy diet that is recommended for anyone that is new to dieting and exercise, but is still up for the challenge of the 6-Day Express. A week of Plan 1 will not only shed a few pounds, but also change your eating habits for the better.

PLAN

EXPRESS

PLAN 2 – THE HIGH-PROTEIN EXPRESS

With loads of protein, restricted carbohydrates, and just enough essential fat, Plan 2 will get your metabolism steamrolling again.

PLAN

FIT FOR
A-MINUTE...

PLAN 3 – FIT-FOR-A-MINUTE AKA THE PHOTO SHOOT PLAN

The most extreme plan, which is similar to what bodybuilders and others that need to "look" their best will do right before a competition or photoshoot. It is an extreme diet for when you absolutely, positively, have to look your best for one special occasion.



BEACHBODY

Beverly Hills, CA (888) 575-8410
07/03



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of: Product Partners, LLC

Serial No.: 78/269,579

Filed: July 2, 2003

Exparte Appeal from a Specimen Refusal

For: **6 DAY EXPRESS**

Examiner: Tracy L. Fletcher

Law Office: 115

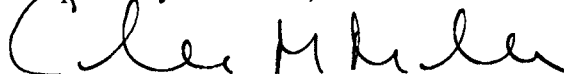
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Dear Sir:

TRANSMITTAL

Enclosed herewith is an Appeal Brief filed in support of the acceptability of the specimens submitted. Please charge any deficiencies to our deposit account no. 50-3111.

Respectfully submitted,



Camille M. Miller
cmiller@cozen.com

Date: December 22, 2004

COZEN O'CONNOR, P.C.
1900 Market Street
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EV 146599725 in an envelope addressed to Box TTAB, NO FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on **December 22, 2004.**



Camille M. Miller