

Complaint

123 F.T.C.

IN THE MATTER OF

CIBA-GEIGY LIMITED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3725. Complaint, March 24, 1997--Decision, March 24, 1997

This consent order requires, among other things, the licensing of specified gene therapy technology and patent rights to Rhone-Poulenc Rorer, Inc., to put Rhone-Poulenc in a position to compete against the combined firm. The consent order also requires divestiture of the Sandoz U.S. and Canadian corn herbicide assets to BASF and its flea control business to Central Garden & Pet Company or another Commission-approved buyer.

Appearances

For the Commission: *William Baer, Howard Morse and Morris Bloom.*

For the respondents: *Kenneth Prince, Shearman & Sterling, New York, N.Y. and Michael Malina, Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondents Ciba-Geigy Ltd., a corporation including its wholly-owned subsidiary, Ciba-Geigy Corporation, (collectively, "Ciba"), and Sandoz Ltd., a corporation, including its wholly-owned subsidiary, Sandoz Corporation, (collectively, "Sandoz"), corporations subject to the jurisdiction of the Commission, have agreed to merge into Novartis Ltd. ("Novartis"), a corporation, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Ciba-Geigy Limited is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Klybeckstrasse 141, CH-4002 Basel, Switzerland. Ciba operates in the United States through its wholly-owned subsidiary, Ciba-Geigy Corporation, and is engaged in the discovery, development, manufacture and sale of agricultural crop protection chemicals, proprietary and generic pharmaceutical products, and animal health products. Ciba participates in the field of gene therapy in the United States through the Chiron Corporation.

2. Respondent Ciba-Geigy Corporation, a wholly-owned subsidiary of Ciba-Geigy Limited, is a corporation organized, existing, and doing business under and by virtue of the laws of New York with its office and principal place of business located at 520 White Plains Road, Tarrytown, New York.

3. Respondent Sandoz Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002 Basel, Switzerland. Sandoz operates in the United States through its wholly-owned subsidiary, Sandoz Corporation, and is engaged in the discovery, development, manufacture and sale of agricultural crop protection chemicals, proprietary and generic pharmaceutical products, and animal health products. Sandoz participates in the field of gene therapy in the United States through its wholly-owned subsidiary, Sandoz Pharmaceuticals Corporation, headquartered in New Jersey, and through its wholly-owned subsidiary, Genetic Therapy, Inc., headquartered in Maryland.

4. Respondent Sandoz Corporation, a wholly-owned subsidiary of Sandoz Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of New York with its office and principal place of business located at 608 Fifth Avenue, New York, New York.

5. Respondent Chiron Corporation ("Chiron") is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 4560 Horton Street, Emeryville, California. Ciba-Geigy Limited, together with its subsidiaries, is the largest shareholder of Chiron, holding, not solely for investment, approximately 46.5% of the Chiron capital stock as of September 30, 1996. Chiron is engaged

in the discovery, development, manufacture and sale of proprietary and generic pharmaceutical products, including gene therapy products. Ciba has agreed to fund research at Chiron and guarantee its debt, and has the right to appoint members of its board of directors and to veto specified actions of the company.

6. Respondent Novartis AG, is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located at Centralbahnstrasse 7, CH-4010 Basel, Switzerland.

II. JURISDICTION

7. Ciba, Sandoz, Chiron, and Novartis are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE PROPOSED MERGER

8. On or about March 6, 1996, Ciba and Sandoz signed a merger agreement providing that both companies will merge with Novartis Ltd., a Swiss company jointly formed by Ciba and Sandoz to effectuate the merger of their businesses. The total value of the stock involved in the transaction is in excess of \$63 billion. The merged entity, Novartis, will control worldwide assets valued at approximately \$80 billion.

IV. THE RELEVANT MARKETS

9. One relevant line of commerce in which to analyze the effects of the proposed merger is gene therapy technology and research and development of gene therapies, including *ex vivo* and *in vivo* gene therapy. Specific gene therapy product markets, in which the effects of the proposed merger may be analyzed include the research, development, manufacture and sale of:

- (a) Herpes simplex virus-thymidine kinase ("HSV-tk") gene therapy for the treatment of cancer;
- (b) HSV-tk gene therapy for the treatment of graft versus host disease;

- (c) Gene therapy for the treatment of hemophilia; and
- (d) Chemoresistance gene therapy.

Gene therapy is a therapeutic intervention in humans based on modification of the genetic material of living cells. Cells may be modified *ex vivo* for subsequent administration or altered *in vivo* by gene therapy products given directly to the patient.

10. While no gene therapy product has yet been approved by the FDA, gene therapy treatments now in clinical trials offer patients the prospect of significant medical improvements or cures for diseases, particularly in oncology, transplantation and central nervous system diseases. The first regulatory approvals for commercial sales of gene therapy products, expected by the year 2000, will most likely be in the area of oncology. These oncology gene therapy products are anticipated to have sales exceeding \$600 million by 2002 and will likely use the HSV-tk gene with viral vectors, the means of delivering the gene. Sales of all gene therapy products are projected to reach \$45 billion by 2010, resulting from approvals for additional gene therapies using the HSV-tk gene and other gene therapies. HSV-tk gene therapy is expected to be used, *inter alia*, to treat graft versus host disease, an acute, chronic and sometimes fatal complication occurring in approximately 70 percent of all bone marrow transplantations. Gene therapy treatments for hemophilia are likely to be used prophylactically, other than in cases of trauma in which instance gene therapy products would likely be used in combination with recombinant and purified Factor VIII proteins. Cancer patients could benefit significantly from gene therapy for chemoresistance that could provide protection to patients' blood systems and allow higher, more effective doses of cancer chemotherapy to be administered. If chemoresistance gene therapy research is successful, sales are projected to exceed \$1 billion by 2004. There are no economic substitutes for gene therapy products.

11. Another relevant line of commerce in which to analyze the effects of the proposed merger is the research, development, manufacture and sale of corn herbicide. Corn herbicides are chemical products designed to kill or control weeds that interfere with corn production. Separate markets for corn herbicides are distinguished by the types of weeds, *i.e.*, broadleaf or grass, against which the herbicide is economically effective and the stage of growth of the corn crop or weed, *i.e.*, pre-emergent or post emergent, at which the

herbicide is both safe for use on the corn crop and economically effective against the weeds to be controlled. Corn herbicides are essential to economic production of corn. There are no economic substitutes for corn herbicide for pre-emergent control of grasses or for corn herbicides for post emergent control of broadleaf weeds.

12. Another relevant line of commerce in which to analyze the effects of the proposed merger is the research, development, manufacture and sale of flea control products. Flea control products are chemical products designed to treat and prevent flea infestation in cats and dogs. Flea control products are sold in various forms including pills, collars, shampoos, sprays, and foggers, and are sold through various channels of distribution including veterinarians, pet specialty stores, lawn and garden centers, mass merchandisers, and grocery stores. There are no economic substitutes for flea control products for the treatment and prevention of flea infestation in cats and dogs.

13. The United States is a relevant geographic area in which to analyze the effects of the merger. U.S. Environmental Protection Agency ("EPA") and Food and Drug Administration ("FDA") regulations impose substantial barriers on the introduction of products which do not meet those agencies' regulations.

V. STRUCTURE OF THE MARKETS

Gene Therapy

14. The market for the research and development of gene therapy is highly concentrated. Ciba and Chiron together, and Sandoz, are two of only a few entities capable of commercially developing gene therapy products. Only Ciba together with Chiron, and Sandoz control the substantial proprietary rights necessary to commercialize gene therapy products and possess the technological, manufacturing, clinical, regulatory expertise and manufacturing capability to commercially develop gene therapy products. Each is either in clinical development or near clinical development for the treatment of human diseases for which there are large unmet medical needs.

15. Ciba and Chiron together, and Sandoz are the two leading commercial developers of gene therapy technologies and control critical gene therapy proprietary portfolios, including patents, patent applications, and know-how.

16. The market for the research and development of HSV-tk gene therapy for the treatment of cancer is highly concentrated. Only two companies are capable of commercially developing HSV-tk gene therapy products with viral vectors and are either in clinical development or near clinical development to treat cancer. Sandoz and Chiron are the leading commercial developers of these gene therapy technologies and control critical proprietary intellectual property portfolios, including patents, patent applications, and know-how.

17. The market for the research and development of HSV-tk gene therapy for the treatment of graft versus host disease is also highly concentrated. Only two companies are capable of commercially developing HSV-tk gene therapy products with viral vectors, and are either in clinical development or near clinical development to treat graft versus host disease. Chiron and Sandoz are the leading commercial developers of these gene therapy technologies and/or control critical proprietary intellectual property portfolios, including patents, patent applications, and know-how.

18. The market for the research and development of gene therapy for the treatment of hemophilia is highly concentrated. Only two companies are capable of commercially developing gene therapy products for the treatment of hemophilia using the Factor VIII gene with viral vectors. Chiron and Sandoz are the leading commercial developers of these gene therapy technologies and control critical proprietary intellectual property portfolios, including patents, patent applications, and know-how.

19. The market for the research and development of chemoresistance gene therapy is highly concentrated. Only three companies are capable of commercially developing gene therapy products for the treatment of chemoresistance using the MDR-1 gene and only two companies are capable of commercially developing gene therapy products for the treatment of chemoresistance using the MRP gene. Chiron and Sandoz are the leading commercial developers of these gene therapy technologies and/or control critical proprietary intellectual property portfolios, including patents, patent applications, and know-how.

Corn Herbicides

20. The market for corn herbicide, and the relevant markets included therein, herbicide for pre-emergent control of grasses and herbicide for post-emergent control of broadleaf weeds, are each

highly concentrated, as measured by the Herfindahl-Hirschmann Index ("HHI") and other measures of concentration. Ciba is the leading developer, manufacturer and seller of corn herbicide in the United States with a share of over 35 percent of sales and over 40 percent of treated acres. Sandoz has approximately a 10 percent share by either measure. United States sales of corn herbicide totaled \$1.4 billion in 1995. The proposed merger would increase concentration, as measured by the HHI, by approximately 700 points for dollar sales, and by approximately 1000 points for treated acres, to approximately 3000 for sales and approximately 3300 for treated acres.

21. Ciba's metholachlor herbicides, sold under the brands Dual[®] and Bicep[®], are the leading corn herbicides for pre-emergent control of grasses in the United States. Ciba products accounted for over 40 percent of pre-emergent treatment of corn acres for grasses in 1995. In 1996, Sandoz doubled its sales of its recently introduced dimethenamid herbicides, sold under the brands Frontier[®] and Guardsman[®], which accounted for approximately 3 percent of pre-emergent treatment of corn acres for grasses in 1995. Based on 1995 treated acres, the proposed merger would increase concentration, as measured by the HHI, by approximately 300 points to approximately 3400.

22. Sandoz's dicamba herbicides, sold under the brands Banvel[®], Marksman[®], and Clarity[®], are the leading corn herbicides for post-emergent control of broadleaf weeds in the United States. Sandoz products accounted for over 30 percent of post emergent treatment of corn acres for broadleaf weeds in 1995. In 1996, Ciba tripled its sales of its recently introduced sulfonyl urea herbicide, sold under the brand Exceed[®], which accounted for approximately 5 percent of post emergent treatment of corn acres for broadleaf weeds in 1995. Based on 1995 post emergent broadleaf treated acres, the proposed merger would increase concentration, as measured by the HHI, by approximately 1900 points to over 4000. Moreover, Ciba and Sandoz recognize that current users of Sandoz's dicamba herbicides are the principal target for expected market share gain by Ciba's Exceed[®] herbicide.

23. Prior to the merger described in paragraph eight, Ciba and Sandoz each cooperated and coordinated with other producers of corn herbicide through supply agreements for corn herbicide active ingredients and through joint development and promotion of corn herbicide formulations. Ciba is the dominant supplier of atrazine, a

broadleaf weed control product that is widely used as a component in premixed herbicide formulations, including Marksman[®], Guardsman[®] and Bicep[®], as well as in pre-emergent and post-emergent herbicides sold by competitors of Ciba and Sandoz. Supply agreements, joint product development agreements, and joint marketing agreements among producers of corn herbicides increase coordinated interaction and the recognition of mutual interdependence among competitors in each of the relevant markets for corn herbicide.

Flea Control Products

24. The flea control products market is very highly concentrated as measured by the HHI and other measures of concentration. Sales of flea control products in the U.S. amounted to approximately \$400 million in 1995. Ciba is the leading developer, manufacturer and seller of flea control products with a share of approximately 50 percent. Ciba's Program[®] has a dominant share of the flea control products market. Sandoz ranks second in flea control products sales from sales of Vetkem[®] and Zodiac[®] flea control products and sales of base active methoprene. The proposed merger would increase concentration as measured by the HHI by approximately 3050 points to a level of approximately 6600. Moreover, prior to the merger described in paragraph eight, Sandoz and Ciba were developing additional flea control products, which likely would be direct and substantial competitors.

VI. ENTRY CONDITIONS

25. Entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the merger. Regulations by the Food and Drug Administration ("FDA") covering gene therapy products and systemic flea control products and by the Environmental Protection Agency ("EPA") covering corn herbicides and externally applied flea control products create long lead times for the introduction of new products. Additionally, patents and other intellectual property create large and potentially insurmountable barriers to entry.

Gene Therapy

26. Entry into the gene therapy markets requires lengthy clinical trials, data collection and analysis, and expenditures of significant resources over many years to qualify manufacturing facilities with the FDA. Entry into each gene therapy market can extend up to and beyond 10 to 12 years. The most significant barriers to entry include technical, regulatory, patent, clinical and production barriers. The FDA must approve all phases of gene therapy development, including extensive preclinical and clinical work. No company may reach advanced stages of development in the relevant gene therapy markets without: (1) clinical gene therapy expertise; (2) scientific research that requires years to complete; (3) patent rights to all the necessary proprietary inputs into the gene therapy product sufficient to provide the company with reasonable assurances of freedom to operate; and (4) clinical grade product manufacturing expertise, regulatory approvals and capacity to complete clinical development. The necessary proprietary inputs include genes, vectors and vector manufacturing technology, and cytokines, proteins necessary for many gene therapy applications.

Corn Herbicides

27. Despite the expiration of United States patents on dicamba and metolachlor, post-patent strategies pursued by Ciba and Sandoz, including product reformulation, distribution agreements, purchase and supply contracts with manufacturers, and joint product development agreements, have limited entry of generic competition to Ciba's leading pre-emergent grass herbicides and Sandoz's leading post emergent broadleaf herbicides.

28. Entry into the corn herbicide markets requires over a decade for chemical synthesis; laboratory and greenhouse testing; formulation; process development; pilot production; pilot trials; field trials; testing for acute, subchronic and chronic toxicity, carcinogenic and genetic effects, and incidence of birth defects that may be associated with the product; environmental toxicology testing; measurement of plant, animal, soil, water and air residues and testing of degradation of plant, animal, soil, and water environment; data collection; product registration and EPA review; construction of production facilities; and use optimization. Once a product is introduced to the market, several years are often required to gain

customer acceptance through demonstrated safety, performance and reliability, over a variety of weather conditions.

Flea Control Products

29. Entry into the flea control products market requires over a decade for chemical synthesis, lengthy clinical trials, data collection and analysis, and expenditures of significant resources over many years as well as qualified manufacturing facilities in order to achieve the required EPA or FDA approvals for commercial sale of these products. Once a product is introduced to the market, extensive sunk costs must be incurred for advertising and promotion to gain significant customer and pet owner acceptance.

30. Despite the expiration of United States patents on methoprene, the base active ingredient used in Sandoz's second generation flea control products, the EPA registrations and proprietary technology involved in the production of methoprene, have prevented entry of generic competition to Sandoz's flea control products.

VII. EFFECTS OF THE PROPOSED MERGER

31. The effects of the merger, if consummated, may be substantially to lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45. Specifically the merger will:

a. Eliminate Ciba and Sandoz as substantial, independent competitors; eliminate actual, direct, and substantial competition between Ciba and Sandoz, including the reduction in, delay of or redirection of research and development projects; and increase the level of concentration in the relevant markets;

b. Eliminate actual potential and perceived potential competition in the relevant markets;

c. Increase barriers to entry into the relevant markets;

Gene Therapy

d. Combine alternative technologies, and reduce innovation competition among researchers and developers of gene therapy products, including reduction in, delay of or redirection of research and development tracks;

e. Increase the merged firm's ability to exercise market power, either unilaterally or through coordinated interaction with Chiron, in the gene therapy markets, because the merged firm will have both complete ownership of the Sandoz gene therapy research and development and a 46.5% stock ownership interest in Chiron, the only other firm in a position to commercialize work in gene therapy;

f. Heighten barriers to entry by combining portfolios of patents and patent applications of uncertain breadth and validity, requiring potential entrants to invent around or declare invalid a greater array of patents;

g. Create a disincentive in the merged firm to license intellectual property rights to or collaborate with other companies as compared to premerger incentives;

Corn Herbicides

h. Eliminate the potential for increased actual, direct and substantial price competition and cause consumers to pay higher prices for corn herbicides;

i. Increase the merged firm's ability unilaterally to exercise market power in the market for corn herbicide for post-emergent control of broadleaf weeds, by combining the two closest substitutes in the market;

j. Increase the likelihood and degree of coordinated interaction between or among competitors in the market for corn herbicide for pre-emergent control of grasses;

Flea Control Products

k. Increase the merged firm's ability unilaterally to exercise market power in the flea control products market by combining the two closest substitutes in the market;

l. Increase the likelihood and degree of coordinated interaction between or among competitors in the flea control products market; and

m. Eliminate the potential for actual, direct and substantial price competition and cause consumers to pay higher prices for flea control products, as well as reduce innovation competition among producers of flea control products by eliminating, delaying or redirecting the introduction of new products under development.

VIII. VIOLATIONS CHARGED

32. The merger agreement described in paragraph eight constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45.

33. The merger, if consummated, would constitute a violation of Section 5 of the FTC Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed merger between respondent Ciba-Geigy Limited, including its wholly-owned subsidiary Ciba-Geigy Corporation, and respondent Sandoz Ltd., including its wholly-owned subsidiary, Sandoz Corporation, into respondent Novartis AG, and respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Ciba-Geigy Limited is a corporation organized, existing and doing business under and by virtue of the laws of

Switzerland with its office and principal place of business located at Klybeckstrasse 141, CH-4002 Basel, Switzerland.

2. Respondent Ciba-Geigy Corporation, a wholly-owned subsidiary of Ciba-Geigy Limited, is a corporation organized, existing, and doing business under and by virtue of the laws of New York with its office and principal place of business located at 520 White Plains Road, Tarrytown, New York.

3. Respondent Chiron Corporation, in whom Ciba-Geigy Limited, together with its subsidiaries, is the largest shareholder, holding as of September 30, 1996, not solely as an investment, approximately 46.5% of the Chiron capital stock, is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 4560 Horton Street, Emeryville, California.

4. Respondent Sandoz Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located at Lichtstrasse 35, CH-4002 Basel, Switzerland.

5. Respondent Sandoz Corporation, a wholly-owned subsidiary of Sandoz Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of New York with its office and principal place of business located at 608 Fifth Avenue, New York, New York.

6. Respondent Novartis AG, is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its office and principal place of business located at Centralbahnstrasse 7, CH-4010 Basel, Switzerland.

7. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Ciba*" means Ciba-Geigy Limited, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled,

directly or indirectly, by Ciba-Geigy Limited, including, but not limited to, Ciba-Geigy Corporation, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Chiron*" means Chiron Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled, directly or indirectly, by Chiron, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Sandoz*" means Sandoz Ltd., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled, directly or indirectly, by Sandoz Ltd., including, but not limited to, Genetic Therapy, Inc. and Sandoz Corporation, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

D. "*Novartis*" means Novartis AG, a company jointly formed by Ciba and Sandoz to effectuate the merger of Ciba and Sandoz through the acquisition of Ciba and Sandoz by Novartis. Novartis includes Ciba and Sandoz; all of Novartis's directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled, directly or indirectly, by Novartis AG; and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

E. "*BASF*" means BASF Aktiengesellschaft, a company organized under the laws of Germany with its principal office and principal place of business located at Ludwigshafen, Germany.

F. "*Commission*" means the Federal Trade Commission.

G. "*EPA*" means the United States Environmental Protection Agency.

H. "*FDA*" means the Food and Drug Administration of the United States Department of Health and Human Services.

I. "*Respondents*" means Ciba, Sandoz, or Novartis, respectively, and in paragraphs IX.A, IX.B, IX.F, IX.G, X, XIV, XV, XVI, and XVII, Chiron, or any combination thereof.

J. "*Agricultural chemical active ingredient*" means a chemical that alone or in combination with other chemicals imparts or

demonstrates herbicidal, insecticidal, fungicidal, or other pesticidal properties.

K. "*Agricultural chemical formulation*" means a formulation or pre-mix containing one or more agricultural chemical active ingredients.

L. "*Agricultural chemical acquirer*" means the entity or entities to whom respondents shall divest either the Sandoz Corn Herbicide Business or the Sandoz Agricultural Chemical Business required to be divested pursuant to this order.

M. "*Agricultural chemical*" means any corn herbicides and other herbicides, insecticides, fungicides, and other pesticides developed, manufactured or sold by Sandoz in the United States or Canada or developed by Sandoz outside the United States and Canada for production or sale in the United States or Canada, other than products manufactured and sold by the Sandoz Animal Health Business.

N. "*Base active flea ingredient*" means any final or intermediate form of any chemical, that alone or in combination with other chemicals is registered or under development as a flea control product, including, but not limited to, methoprene.

O. "*Core data package*" means data and information required by regulatory authorities in the United States and Canada to register flea control products, other Dallas products, and ingredients for both.

P. "*Corn herbicides*" means all agricultural chemical active ingredients and agricultural chemical formulations used, or suitable for use, on corn crops to control weeds, including, but not limited to, dimethenamid, dicamba, and pyridate.

Q. "*Cost*" means the manufacturer's average direct per unit cost of manufacturing exclusive of any overhead expenses.

R. "*Dicamba*" means technical concentrate of dicamba, chemical name 3,6-dichloro-o-anisic acid, and salts of dicamba, e.g., dimethylamine, diglycolamine, potassium, sodium, isopropylamine, DPL, and APM salts of dicamba, and any agricultural chemical formulation containing dicamba.

S. "*Dimethenamid*" means technical concentrate of dimethenamid, chemical name 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide or (1RS, aRS)-2-chloro-N-(2,4-dimethyl-3-thienyl)-N-(2-methoxy-1-methylethyl)-acetamide, and any agricultural chemical formulation containing dimethenamid.

T. "*FIFRA*" means the Federal Insecticide, Fungicide, and Rodenticide Act and all statutory amendments, modifications or replacements thereof.

U. "*Flea control products*" means all products used or intended to be used to treat or prevent ectoparasitic (flea) infestation in connection with canines or felines and all research and development projects to develop products to be used to treat or control ectoparasitic infestation in connection with canines and felines.

V. "*Merger*" means the merger of Ciba and Sandoz into Novartis.

W. "*Methoprene*" means (S)-Methoprene, chemical name Isopropyl (2E, 4E, 7S)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate, and (RS)-Methoprene, chemical name Isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate.

X. "*Other Dallas products*" means products, other than flea control products, that are manufactured or produced at the Sandoz facility located in Dallas, Texas and are sold in the United States or Canada.

Y. "*Pyridate*" means technical concentrate of pyridate, chemical name O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, and includes any agricultural chemical formulation containing pyridate.

Z. "*Registration data*" means all data relating to the applicable agricultural chemical active ingredient or agricultural chemical formulation that has been, or will be, submitted to the EPA, under FIFRA, or to any state or foreign regulatory agency for purposes of obtaining or maintaining any registration or authorizations for any product containing such agricultural chemical active ingredient or agricultural chemical formulation.

AA. "*Sandoz Corn Herbicide Business*" means all physical assets, properties and business located in the United States or Canada and all goodwill, tangible and intangible assets, used by Sandoz in the research, development, manufacture, formulation, registration, distribution or sale of corn herbicides (other than pyridate) in the United States or Canada, all as specified in the Asset Purchase Agreement dated as of September 26, 1996, between Sandoz and BASF.

BB. "*Sandoz Agricultural Chemical Business*" means all physical assets, properties and business located in the United States or Canada and all goodwill, tangible and intangible assets, used by Sandoz in the research, development, manufacture, formulation, registration,

distribution or sale of agricultural chemicals in the United States or Canada, or for production or sale in the United States or Canada, excluding the Sandoz Animal Health Business, including, without limitation, the following:

1. All owned or leased production facilities used in the manufacture of agricultural chemical active ingredients or agricultural chemical formulations, including, but not limited to, the following:

- (a) The Dimethenamid plant and assets at Beaumont, Texas; and
- (b) The Dicamba plant and assets at Beaumont, Texas;

2. All EPA, state and foreign registrations and approvals relating to the manufacture or sale of agricultural chemical active ingredients and agricultural chemical formulations in North America, including, but not limited to, EPA registrations 55947-1 (Banvel), 55947-24 (Weedmaster), 55947-28 (Banvel SGF), 55947-39 (Marksman), 55947-46 (Clarity), 55947-47 (dicamba, isopropylamine salt), 55947-140 (Frontier), 55947-141 (dimethenamid 96% technical), 55947-149 (dicamba, potassium salt), 55947-150 (Guardsman), 55947-155 (dicamba WG/70.0% wettable granule), 55947-159 (Frontier 6.0), 55947-160 (sodium dicambate technical 85% wettable granule), 55947-161 (Tough 3.75 EC), Tough 5 EC (56% EC), 55947-162 (Tough 45% WP), 55947-164 (Banvel 10G), 55947-165 (dicamba, diglycolamine salt), and 55947-166 (66% sodium salt of dicamba + 10% metribuzin);

3. All registration data, submissions and supporting data and documents, including, without limitation, all labels, label extensions, or planned or pending label extensions for any application;

4. All intellectual property located, generated, obtained, or used in the United States and Canada, including, but not limited to, trade secrets, test data, technology and know-how, and all United States and Canadian patents, patent applications, patent rights and licenses;

5. A paid-up, non-exclusive right to develop, manufacture and sell any agricultural chemical active ingredient or agricultural chemical formulation anywhere in the world under all foreign patents, patent applications, licenses, registrations, submissions and approvals and to use all other intellectual property located, generated, obtained, or used outside the United States and Canada, including a copy of all trade secrets, test data, technology and know-how;

6. All trademarks and trade names for agricultural chemical active ingredients and agricultural chemical formulations, including, without limitation, exclusive world rights to the trademarks or trade names Frontier, Guardsman, Century, Banvel, Clarity, Marksman, Dycleer, Vanquish, Weedmaster, Tough, Lentagran and Phoenix;

7. All contracts and agreements relating to formulating and packaging, including, without limitation, all toll supply agreements;

8. All owned or leased facilities, equipment, real property and other assets used in research, development, technical support, testing, or product registration in the United States and Canada, including, but not limited to, the Gilroy Research Center, the Palo Alto Research Center, the Greenville Field Station, and facilities at Des Plaines, Illinois;

9. All tangible and intangible assets associated with research and development projects, process improvement projects, production projects, and label extension projects; and all registrations, submissions and approvals, registration data, supporting data and documents, patents, patent applications, and other intellectual property relating to each such project;

10. All owned or leased offices, distribution facilities, real property and other assets used in sales or technical service of Sandoz agricultural chemicals, including, but not limited to, offices and facilities located in Englewood, Colorado, Des Plaines, Illinois and Palo Alto, California;

11. All books, records and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, specifications, designs, drawings, processes and quality control data;

12. All interest in and to contracts and agreements with customers, joint venturers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and rights under warranties and guarantees, express or implied; and

13. Rights to make or sell pyridate in the United States and Canada and to make or sell, or license others to make or sell, in the United States and Canada, agricultural chemical formulations containing pyridate.

CC. "*Sandoz Animal Health Business*" means the business units of Sandoz that are engaged in the research, development, manufacture and production of flea control products and other Dallas products at the Sandoz facility in Dallas, Texas which products are distributed and sold in the United States and Canada, excluding the Sandoz Agricultural Chemical Business, and all assets, properties, business and goodwill, tangible and intangible, trademarks and trade names used, in whole or in part, in the research, development, manufacture, and production of flea control products and other Dallas products at the Sandoz facility located in Dallas, Texas which products are distributed and sold in the United States and Canada, including, but not limited to, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. Inventory and storage capacity;
4. All rights, titles and interests in and to owned or leased real property at the Sandoz facility located at 12200 Denton Drive, Dallas, Texas, together with appurtenances, licenses and permits;
5. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
6. All rights, titles and interests in and to development projects;
7. All rights under warranties and guarantees, express or implied;
8. All books, records, and files;
9. All rights, titles and interests in registrations or other governmental approvals for manufacture and sale of any flea control products and other Dallas products or research and development efforts for flea control products and other Dallas products; provided, however, respondents shall retain rights of referral to the core data package for uses outside the United States and Canada;

10. A non-exclusive license to develop, manufacture and sell any flea control products and other Dallas products, including research and development efforts for flea control products and other Dallas products, anywhere in the world under all foreign patents, patent applications, and licenses, and to use all other intellectual property (exclusive of any trademarks and trade names) located, generated, obtained, or used anywhere in the world, including all trade secrets, test data, technology and know-how; and

11. All items of prepaid expense.

Notwithstanding the foregoing, Sandoz Animal Health Business shall exclude the production facility located at Muttenz, Switzerland, operated by Sandoz to produce Methoprene and other materials, flea control products and other Dallas products that are sold outside of the United States and Canada, and assets that were part of Ciba prior to the Merger.

DD. "*Sandoz Animal Health Business Acquirer*" means the entity or entities to whom respondents shall divest the Sandoz Animal Health Business required to be divested pursuant to this order.

EE. "*Sandoz flea control products*" means all flea control products that as of November 22, 1996, are: (1) being manufactured, distributed and sold by Sandoz in the United States and Canada; and (2) all projects in research and development by Sandoz in the United States and Canada that relate to improving existing, or developing new, flea control products or base active flea ingredients therefor.

FF. "*Strategic plan*" means a detailed plan that sets forth *inter alia* the means by which the Sandoz Animal Health Business Acquirer will begin the manufacture and sale of Methoprene, including dates by which the Sandoz Animal Health Business Acquirer plans to have received necessary governmental approvals to manufacture and sell Methoprene in the United States and Canada.

GG. "*Anderson Patent*" means US Patent Number 5,399,346 issued March 21, 1995, and any pending divisionals, continuations, continuations in part, extensions or reissues of said original US patent application number 07/365,567.

HH. "*Anderson Patent License*" means a non-exclusive license obtained by any person under the Anderson Patent for any gene therapy product or process.

II. "*Anderson Patent Licensee*" means a person that obtains an Anderson Patent License.

JJ. "*Cytokine License*" means, as to each respondent, a non-exclusive license or sublicense under such respondent's Cytokine Patent Rights for use in any Cytokine Licensed Product as follows: (a) as to respondent Chiron, with respect to IL-2, the right to use IL-2 sold by respondent Chiron in a Cytokine Licensed Product, or if respondent Chiron ceases offering IL-2 for sale, then the right to manufacture and use IL-2 in a Cytokine Licensed Product; and (b) as to respondent Novartis with respect to IL-3 and IL-6, the right to manufacture and use IL-3 and/or IL-6 in a Cytokine Licensed Product.

KK. "*Cytokine Licensed Product*" means any research protocol or commercial product and/or service incorporating or to be used with cells that have been expanded, mobilized or cultured *ex vivo* with IL-2, IL-3 and/or IL-6 proteins.

LL. "*Cytokine Licensee*" means each and every person that requests and obtains a Cytokine License.

MM. "*Cytokine Patent Rights*" means with respect to each respondent, all worldwide patents and patent applications, issued or pending, which, as of the date this order becomes final, are owned or controlled by such respondent or licensed by a third party to such respondent with the right to sublicense, which, in the case of respondent Chiron, are directed to the manufacture, use, or sale of IL-2 in Cytokine Licensed Products, and, in the case of respondent Novartis, are directed to the manufacture, use, or sale of IL-3 and/or IL-6 in Cytokine Licensed Products. Additionally, at the option of the Cytokine Licensee, the Cytokine Patent Rights shall also include a cross-reference right to the licensing respondent's respective drug regulatory files at the FDA with respect to IL-2 in the case of respondent Chiron, and with respect to IL-3 and/or IL-6 in the case of respondent Novartis.

NN. "*Gene Therapy*" means a therapeutic intervention in humans based on modification of the genetic material of autologous, allogeneic, or xenogeneic living cells. Cells may be modified *ex vivo* for subsequent administration or altered *in vivo* by gene therapy products given directly to the patient.

OO. "*Gene Therapy License*" means any and all of the HSV-tk License, Cytokine License, Anderson Patent License, and Hemophilia License.

PP. "*Hemophilia License*" means one (1) non-exclusive license under patents and/or patent applications to which Sandoz held rights,

as of October 1, 1996, to develop a gene therapy product using the beta-domain deleted Factor VIII gene for the treatment of hemophilia, including, at the option of RPR or the Subsequent Hemophilia Licensee, all technical information, know-how or materials owned or controlled by Sandoz, as of the date on which this order becomes final, necessary for the development and manufacture of such product, including, but not limited to, hemophilia gene therapy vectors.

QQ. "*HSV-tk Gene Therapy*" means the introduction of the HSV-tk gene into a patient by *in vivo* and/or *ex vivo* transduction for the treatment of human disease.

RR. "*HSV-tk License*" means, as to each respondent, the license or sublicense granted to RPR or the HSV-tk Licensee under such respondent's HSV-tk Patent Rights, to make, use, or sell an HSV-tk Licensed Product, including, at the option of RPR or the HSV-tk Licensee, the right to sublicense in fields that are not being developed by RPR or the HSV-tk Licensee.

SS. "*HSV-tk Licensee*" means a pharmaceutical company, other than RPR, with the demonstrated plan and ability to commercialize the HSV-tk Licensed Product, including vector production facilities and clinical gene therapy experience.

TT. "*HSV-tk Licensed Product*" means an HSV-tk Gene Therapy product in development or to be developed by RPR or the HSV-tk Licensee.

UU. "*HSV-tk Patent Rights*" means the following:

1. With respect to respondent Novartis, all claims in issued U.S. and foreign patents and all claims in the pending patent applications, respectively, to make, have made, use and sell HSV-tk Licensed Products, owned by or under the control of respondent Novartis as of the date this order becomes final, including divisionals, continuations, extensions and reissues of such patents or pending patent applications, and including those which respondent Novartis has licensed from a third party as of said date and has a right to sublicense, all to the extent that such patents or patent applications are directed to the use of the HSV-tk gene in the development of any and all HSV-tk Licensed Products. The HSV-tk Patent Rights owned by or under the control of respondent Novartis are referenced in Part 1 of non-public Appendix A. Respondent Novartis HSV-tk Patent Rights shall include any and all rights obtained in the future to the

patents and patent applications listed in Part 3 of non-public Appendix A under exclusive license with the right to sublicense. Respondent Novartis' HSV-tk Patent Rights may also include, at the option of RPR or the HSV-tk Licensee, all technical information, know-how or materials, owned or controlled by respondent Novartis as of the date on which this order becomes final, necessary to enable RPR or the HSV-tk Licensee to adequately and fully research and develop any and all HSV-tk Licensed Products; and

2. With respect to respondent Chiron, all claims in the issued U.S. and foreign patents which are issued from patent applications corresponding to, derived from or equivalent to those United States patent applications listed in Part 2 of non-public Appendix A, and divisionals, continuations, extensions and reissues thereof, which claims are directed specifically to the use of the HSV-tk gene in HSV-tk Gene Therapy, or would otherwise dominate such use of the HSV-tk gene. Respondent Chiron's HSV-tk Patent Rights do not include claims to proprietary manufacturing methods, methods of administration, vector constructs, packaging or producer cells lines, genes, or other compositions, methods or processes that may be useful in making, using, or selling HSV-tk Licensed Products, but which do not dominate the use of the HSV-tk gene in HSV-tk Gene Therapy. Respondent Chiron's HSV-tk Patent Rights also do not include technical information, know-how or materials. Respondent Chiron's HSV-tk Patent Rights shall include any and all rights obtained in the future to the claims in patents and patent applications listed in Part 3 of non-public Appendix A under exclusive license with the right to sublicense, which claims are directed specifically to the use of the HSV-tk gene in HSV-tk Gene Therapy, or would otherwise dominate such use of the HSV-tk gene.

VV. "*HSV-tk Business*" means all the assets utilized by respondent Sandoz in the research and development of HSV-tk Gene Therapy products, or at the option of all respondents in the event that the requirements of paragraph IX.A have not been satisfied, all the assets utilized by respondent Chiron in the research and development of HSV-tk Gene Therapy products.

WW. "*HSV-tk Sublicensee*" means any person that receives a sublicense under the HSV-tk Patent Rights from RPR or the HSV-tk Licensee in fields not being developed by RPR or the HSV-tk Licensee.

XX. "*MDR-1*" means the multiple drug resistance-1 gene.

YY. "*MRP*" means the multiple resistance protein gene.

ZZ. "*Net sales price*" means the total amount received from the sale of royalty bearing products and/or services, less transportation charges and insurance, sales taxes, use taxes, excise taxes, value added taxes, customs duties or other imposts, normal and customary quantity and cash discounts, rebates (to the extent actually made) and disallowed reimbursements and allowances and credit on account of rejection or return of royalty bearing products or services. Royalty bearing products or services shall be considered "sold" when billed out or invoiced. The total amount received by Cytokine Licensee from the sale of Cytokine Licensed Products and/or by Anderson Patent Licensee from the sale of gene therapy products covered by the Anderson Patent Rights may or may not incorporate hospital and/or physician costs relating to the *ex vivo* gene therapy treatment (e.g., physician charges related to the removal and readministration of cells).

AAA. "*Other Cytokines*" means all cytokines, other than IL-2, IL-3, and IL-6, including but not limited to, stem cell factors, interferons, colony stimulating factors, tumor necrosis factors and erythropoetins.

BBB. "*Person*" means any natural person, corporate entity, partnership, association, joint venture, non-profit organization, university, government entity, or trust.

CCC. "*RPR*" means Rhone Poulenc Rorer, Inc., 500 Arcola Road, Collegeville, PA.

DDD. "*Subsequent Hemophilia Licensee*" means any person, other than RPR, that may obtain a Hemophilia License from Novartis, or from Genetics Institute, Inc. if Novartis converts its exclusive license from Genetics Institute, Inc. to a non-exclusive license.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, as an ongoing business, the Sandoz Corn Herbicide Business to BASF pursuant to the agreement between Sandoz and BASF dated as of September 26, 1996, no later than ten (10) days after the date on which this order becomes final; or, in the event that BASF breaches that agreement, respondents shall divest, absolutely and in good faith, as an ongoing business, the Sandoz Corn Herbicide Business, at no

minimum price, within sixty (60) days of the date on which this order becomes final, to an agricultural chemical acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, and shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the independence, viability and competitiveness of the Sandoz Corn Herbicide Business.

B. The purpose of the divestiture of the Sandoz Corn Herbicide Business is to ensure the continuation of the Sandoz Corn Herbicide Business as an ongoing, viable enterprise engaged in the research, development, manufacture, distribution and sale of corn herbicides independent of Ciba, Sandoz, and Novartis and able to compete with Ciba, Sandoz and Novartis and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the Sandoz Corn Herbicide Business, respondents shall take such actions as are necessary to maintain the viability and marketability of the Sandoz Corn Herbicide Business and the Sandoz Agricultural Chemical Business and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of the Sandoz Corn Herbicide Business or of the Sandoz Agricultural Chemical Business, except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, as an ongoing business, within the time periods specified in paragraph III.B below, the Sandoz Animal Health Business. Respondents shall also enter into, and fulfill the terms of, a Contract Manufacturing Agreement ("CMA"), as specified in paragraph V below, and effect such arrangements as are necessary to assure the marketability, independence, viability and competitiveness of the Sandoz Animal Health Business.

B. Respondents shall divest the Sandoz Animal Health Business to Central Garden and Pet Company and/or its affiliates pursuant to the Asset Purchase Agreement dated as of October 11, 1996, among Sandoz Ltd., Central Garden and Pet Company, and Centic Acquisition Corp., as amended to conform to the terms of this order

in a manner that receives the prior approval of the Commission, within thirty (30) days of the date on which this order becomes final; or, respondents shall divest the Sandoz Animal Health Business, at no minimum price, within ninety (90) days of the date on which this order becomes final, to a Sandoz Animal Health Business Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Sandoz Animal Health Business is to ensure the continued use of the assets of the Sandoz Animal Health Business in the same business in which the assets of the Sandoz Animal Health Business are engaged at the time of the proposed divestiture and to remedy the lessening of competition from the proposed merger of Ciba and Sandoz as alleged in the Commission's complaint.

C. Pending divestiture of the Sandoz Animal Health Business, respondents shall take such actions as are necessary to maintain the viability and marketability of the Sandoz Animal Health Business and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of the Sandoz Animal Health Business, except in the ordinary course of business and except for ordinary wear and tear. Respondents shall maintain research and development of all current research and development projects at the levels planned by Sandoz for such projects as of June 4, 1996.

D. The contract of divestiture shall provide that, at the option of respondent Novartis, the Sandoz Animal Health Business Acquirer shall enter into a transitional toll manufacturing agreement of up to two year's duration to produce for respondents products currently produced at Dallas, but not subject to the divestiture pursuant to this paragraph, for sale by respondents outside the United States and Canada, all at a price equal to the Sandoz Animal Health Business Acquirer's cost plus twenty percent (20%) mark-up.

IV.

It is further ordered, That:

Upon reasonable notice and request to respondents from the Sandoz Animal Health Business Acquirer, respondents shall provide information, assistance and advice with respect to the Sandoz Animal Health Business divested pursuant to this order such that the Sandoz Animal Health Business Acquirer or its designee will be capable of:

(1) Manufacturing all products currently produced by the Sandoz Animal Health Business divested pursuant to this order; and

(2) Manufacturing and/or obtaining all necessary ingredients, other than Methoprene, for products of the Sandoz Animal Health Business divested pursuant to this order,

in substantially the same manner and quality employed, achieved or planned by the respondents prior to divestiture. Such information, assistance and advice shall include reasonable consultation with knowledgeable employees of respondents for a period of time sufficient to satisfy the Sandoz Animal Health Business Acquirer's management that its personnel are appropriately trained in the research, development, manufacture, distribution and sale of the products and research and development projects of the Sandoz Animal Health Business divested pursuant to this order. Respondents shall convey all know-how necessary to manufacture or have manufactured, distribute, sell and obtain all necessary governmental approvals, including EPA approvals, and licenses to research, develop, manufacture or have manufactured, distribute and sell in the United States and Canada the products of the Sandoz Animal Health Business divested pursuant to this order. Respondents shall provide such information, assistance and advice for one (1) year from the date respondents divest the Sandoz Animal Health Business divested pursuant to this order. Respondents may charge the Sandoz Animal Health Business Acquirer at a rate no greater than respondents' cost for providing such technical assistance.

V.

It is further ordered, That:

Respondents shall enter into a Contract Manufacturing Agreement ("CMA") with the Sandoz Animal Health Business Acquirer to contract manufacture and deliver to the Sandoz Animal Health Business Acquirer, in a timely manner, Methoprene in the volumes requested by the Sandoz Animal Health Business Acquirer. The CMA shall be effective for the shorter of six (6) years from the date respondents divest the Sandoz Animal Health Business or three (3) months after the Sandoz Animal Health Business Acquirer or its designee obtains all EPA or FDA approvals necessary to manufacture

all Methoprene required for products of the Sandoz Animal Health Business. The CMA shall contain the following provisions:

A. Respondents shall make representations and warranties to the Sandoz Animal Health Business Acquirer that the Methoprene manufactured pursuant to the CMA meets all applicable EPA, FDA and other governmental requirements for the United States and Canada, and respondents shall agree to indemnify, defend and hold the Sandoz Animal Health Business Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of Methoprene manufactured pursuant to the CMA to meet such governmental specifications. This obligation shall be contingent upon the Sandoz Animal Health Business Acquirer giving respondents prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting respondents to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require respondents to be liable for any negligent act or omission of the Sandoz Animal Health Business Acquirer or for any representations and warranties, express or implied, made by the Sandoz Animal Health Business Acquirer that exceed the representations and warranties made by respondents to the Sandoz Animal Health Business Acquirer.

B. Respondents shall agree to package and deliver the Methoprene manufactured pursuant to the CMA in a manner and form and according to a schedule reasonably requested by the Sandoz Animal Health Business Acquirer.

C. The CMA shall require that, for the first three years during which the CMA is effective, the Sandoz Animal Health Business Acquirer shall compensate respondents for all Methoprene supplied pursuant to the CMA at a rate not to exceed respondents' cost of producing such Methoprene during the period from July 1, 1995, through June 30, 1996, which cost may be adjusted for demonstrated input expenditure increases as determined by the trustee appointed pursuant to paragraph VIII of this order.

D. The contract of divestiture shall be submitted to and approved by the Commission prior to the divestiture of the Sandoz Animal Health Business required by this order. Respondents' application for approval of the divestiture pursuant to this order shall include: (1) a certification attesting to the good faith intention of the Sandoz

Animal Health Business Acquirer to obtain, or to cause its designee to obtain, in an expeditious manner all FDA, EPA and other governmental approvals required in the United States and Canada to manufacture and sell Methoprene; (2) a strategic plan to obtain all FDA, EPA and other governmental approvals required in the United States and Canada to manufacture or have manufactured, and sell Methoprene; and (3) a CMA pursuant to this paragraph.

E. Respondents shall provide information, assistance, and advice to the Sandoz Animal Health Business Acquirer, or its designee, to enable the Sandoz Animal Health Business Acquirer, or its designee, to manufacture and sell Methoprene in the United States or Canada. Respondents shall convey all know-how required to manufacture, sell and obtain all necessary EPA, FDA and other government approvals to manufacture and sell Methoprene in the United States or Canada. Such information, assistance and advice shall include reasonable consultation with knowledgeable employees of respondents and training at either or both the Sandoz Animal Health Business Acquirer's facilities, or those of its designee, and the respondents' facilities for a period of time sufficient to satisfy the Sandoz Animal Health Business Acquirer's management that its personnel, or those of its designee, are appropriately trained in the manufacture of Methoprene. Respondents shall continue to provide such information, assistance and advice until the ninetieth (90th) day following the date on which the Sandoz Animal Health Business Acquirer, or its designee, obtains EPA approval to manufacture and sell Methoprene. Respondents may charge the Sandoz Animal Health Business Acquirer at a rate no greater than respondents' direct cost for providing such technical assistance.

F. Respondents shall use best efforts to facilitate the Sandoz Animal Health Business Acquirer's ability to obtain adequate supplies of Methoprene starter material, chemical name S-(3,7-Dimethyl-7-methoxy-1-octanal) from Takasago Iwata.

VI.

It is further ordered, That for a period of six (6) years from the date on which the Sandoz Animal Health Business is divested, respondents shall not: (1) manufacture and sell, or cause to be manufactured for sale, in the United States and Canada, Methoprene to any entity other than the Sandoz Animal Health Business Acquirer,

or its designee; and (2) sell any products that contain Methoprene in the United States and Canada.

VII.

It is further ordered, That for a period of six (6) years from the date this order is placed on the public record for comment, except as required to comply with the terms of this order, respondents shall not provide, disclose or otherwise make available to any other person or to any employee of Novartis, any non-public information relating to any research and development project ongoing as of March 1, 1996, at Sandoz to develop or improve any base active flea ingredient or any Sandoz flea control product, if said person or employee did not have knowledge of such non-public information as of March 1, 1996.

VIII.

It is further ordered, That:

A. The Commission may appoint a trustee to ensure that respondents and the Sandoz Animal Health Business Acquirer expeditiously perform their responsibilities required under this order with respect to the Sandoz Animal Health Business. The trustee shall also ensure that the provisions of the Agreement to Hold Separate between respondents and the Commission, dated November 26, 1996, are carried out in good faith. Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the power and authority to assure respondents' compliance with the terms of this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and

powers necessary to permit the trustee to assure respondents' compliance with the terms of this order relating to the Sandoz Animal Health Business. As part of the trust agreement, the trustee shall execute confidentiality agreement(s) with respondents.

4. The trustee shall serve until the ninetieth (90th) day following the date on which the Sandoz Animal Health Business Acquirer or its designee obtains EPA approval to manufacture and sell Methoprene. If the responsibilities of the trustee are extended pursuant to the provisions of paragraph X, the trustee shall serve until such date as required by that paragraph.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Sandoz Animal Health Business or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities pursuant to this order.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as set forth in the trust agreement. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph A of this paragraph.

9. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order.

B. The agreement pursuant to which respondents divest the Sandoz Animal Health Business shall require the Sandoz Animal Health Business Acquirer to submit to the trustee appointed pursuant to this paragraph, periodic written reports setting forth in detail the efforts of the Sandoz Animal Health Business Acquirer to obtain all FDA, EPA and other governmental approvals required in the United States and Canada to continue the research, development, manufacture and sale of the products and projects of the Sandoz Animal Health Business. The first report shall be submitted within sixty (60) days after the date on which the Commission approves the Sandoz Animal Health Business Acquirer and every ninety (90) days thereafter until the Sandoz Animal Health Business Acquirer has obtained all FDA, EPA and other governmental approvals required in the United States and Canada to continue the research, development, manufacture and sale of the products and projects of the Sandoz Animal Health Business.

C. Respondents shall comply with all reasonable directives of the trustee regarding respondents' obligations to comply with this order.

IX.

It is further ordered, That:

A.1. On or before September 1, 1997, each respondent shall (i) grant a non-exclusive license to RPR to make, use and sell HSV-tk Licensed Products under such respondent's HSV-tk Patent Rights, in a manner that has received prior Commission approval and, except as provided in this order, is consistent with the Letter of Intent dated November 20, 1996 between RPR and Sandoz Ltd., which contains licensing terms concerning Sandoz and Chiron HSV-tk Patent Rights, hemophilia gene rights, and the Anderson Patent; or (ii) grant a non-exclusive license to make, use and sell HSV-tk Licensed Products under such respondent's HSV-tk Patent Rights to an HSV-tk Licensee that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, in perpetuity and in good faith, at no minimum price. In consideration for the HSV-tk

License, each respondent may request from the HSV-tk Licensee compensation in the form of royalties and/or an equivalent cross-license.

2. At the option of RPR or the HSV-tk Licensee, Novartis shall, in good faith, within one (1) year of execution of said HSV-tk License, or within one (1) year of the execution of any sublicense to the HSV-tk Patent Rights by RPR or the HSV-tk Licensee, provide to RPR or the HSV-tk Licensee, or the HSV-tk Sublicensee(s), technical information, know-how or material owned or controlled by Novartis as of the date on which this order become final, as is necessary to develop the HSV-tk Licensed Products. Such technical assistance may include reasonable consultation with knowledgeable employees of Novartis and training at RPR or the HSV-tk Licensee's facilities, or the HSV-tk Sublicensee's facilities, or at such other place as is mutually satisfactory to Novartis and RPR or the HSV-tk Licensee or the HSV-tk Sublicensee(s), such consultation to be for a period of time within the one-year period reasonably sufficient to satisfy RPR or the HSV-tk Licensee or the HSV-tk Sublicensee(s).

3. RPR or the HSV-tk Licensee may sublicense, to any HSV-tk Sublicensee, fields that are not being developed by RPR or said HSV-tk Licensee.

4. The purpose for the HSV-tk License is to ensure the continuation of HSV-tk gene therapy research and development for an HSV-tk Gene Therapy product to be approved by the FDA for sale in the United States and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

5. Pending licensing of the HSV-tk Patent Rights, each respondent shall take such action as is necessary to maintain the viability and marketability of the HSV-tk Patent Rights and the HSV-tk Licensed Products, including, but not limited to, maintaining in the ordinary course the research and development of HSV-tk products.

B. For the purpose of ensuring continuation of *ex vivo* gene therapy research and development, and to ensure the availability of cytokines for Gene Therapy, and to remedy the lessening of competition and research and development of Gene Therapy resulting from the Merger as alleged in the Commission's complaint, commencing within thirty (30) days of the date this order becomes final, respondents shall perform the following obligations:

1. Respondent Novartis shall grant to each person who so requests a Cytokine License, in perpetuity and in good faith. In payment for such license, respondent Novartis shall receive a royalty, or its equivalent, of no greater than three percent (3%) of the net sales price of Cytokine Licensed Products, paid from the date of first commercial sale of royalty bearing products or services until a time no later than the expiration of the last to expire patent. Respondent Novartis may also request certain non-exclusive rights to obtain and use safety and efficacy data generated by said Cytokine Licensee to support its own regulatory filings.

2. Respondent Chiron shall grant to each person who so requests a Cytokine License, in perpetuity and in good faith. In payment for such license, respondent Chiron shall receive a royalty, or its equivalent, of no greater than three percent (3%) of the net sales price of Cytokine Licensed Products, paid from the date of first commercial sale of royalty bearing products or services until a time no later than the expiration of the last to expire patent; provided, however, that if respondent Chiron's grant of a Cytokine License includes the right to manufacture, then respondent Chiron shall receive a royalty of no greater than one percent (1%) above the royalty due from respondent Chiron to all third party IL-2 licensors of respondent Chiron. Respondent Chiron may also request certain non-exclusive rights to obtain and use safety and efficacy data generated by said Cytokine Licensee to support its own regulatory filings.

3. In the event that royalties are to be paid by any such Cytokine Licensee under a Cytokine License described in subparagraphs 1 or 2 to a party who is not an affiliate of such Cytokine Licensee for royalty bearing products or services, then the royalties to be paid to respondents shall be reduced by up to one-half of the negotiated royalty rate of said Cytokine License, but in no event shall any royalties under subparagraphs 1 and/or 2 be reduced by more than fifty percent (50%). These stacking provisions shall also apply if at any time in the future it becomes scientifically advantageous to combine IL-2, IL-3, and IL-6, or any combination thereof, into a single Cytokine Licensed Product so that the royalty payable to all respondents shall be no more than three percent (3%). However, if respondent Chiron's grant of a Cytokine License includes the right to manufacture, this subparagraph IX.B.3 shall not apply to reduce the Cytokine Licensee's obligations to pay royalties owed to third party IL-2 licensors of Chiron.

4. If a person seeking a Cytokine License has patent rights and/or drug regulatory files on other Cytokines for use in *ex vivo* cell expansion, the licensing respondent may require equivalent cross licenses for such other Cytokines from such person.

C. For the purpose of ensuring continuation of *ex vivo* gene therapy research and development, and to ensure the availability of Anderson Patent Licenses, and to remedy the lessening of competition in research and development of Gene Therapy resulting from the Merger as alleged in the Commission's complaint, commencing within thirty (30) days of the date this order becomes final, respondent Novartis shall grant to each person who requests an Anderson Patent License a non-exclusive license or sub-license under any and all Anderson Patent Rights, in perpetuity and in good faith, in the United States. In payment for such license, respondent Novartis shall be entitled to receive: (i) a one-time payment of Ten Thousand Dollars (\$10,000) and (ii) a royalty based on the net sales price of any gene therapy product covered by the Anderson Patent Rights of no greater than one percent (1%) above the royalty due from respondent Novartis to the United States National Institutes of Health. Such royalty shall be paid from the date of first commercial sale of royalty bearing products or services in the United States, provided that the Anderson Patent is valid and enforceable, until the expiration of the last to expire patent.

D. Respondent Novartis shall by no later than September 1, 1997, either (i) convert its exclusive rights to the beta-domain deleted Factor VIII hemophilia gene from Genetics Institute to a non-exclusive license; or (ii) grant a Hemophilia License to RPR in a manner that has received prior Commission approval and in a manner consistent with the Letter of Intent dated November 20, 1996 between RPR and Sandoz Ltd.; or (iii) grant a Hemophilia License to a Subsequent Hemophilia Licensee that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, at no minimum amount. In consideration for the Hemophilia License, respondent Novartis may request from RPR or the Subsequent Hemophilia Licensee compensation in the form of royalties and/or an equivalent cross-license. At the option of RPR or the Subsequent Hemophilia Licensee, respondent Novartis shall, in good faith, within one (1) year of the execution of the Hemophilia License provide to RPR or the Subsequent Hemophilia Licensee,

such technical information, know-how or materials, owned or controlled by Genetic Therapy, Inc. as of the date on which this order become final, necessary for the development of a gene therapy product using the beta-domain deleted Factor VIII gene for the treatment of hemophilia.

E. Respondent Novartis shall not acquire from Ingenex, Inc. or the United States National Institutes of Health exclusive rights in intellectual property related to the gene sequence for MDR-1 or MRP.

F. Respondents shall include in each license granted pursuant to this paragraph a provision that ensures respondents have no access to any Licensee's Net Sales Price information. Respondents shall, in each license granted pursuant to this paragraph, provide for:

1. The appointment of an independent auditor agreed upon among the respective parties who shall: (a) enter into appropriate confidentiality agreements; (b) have full and complete access to the pertinent personnel, books, records, technological information, or any other information as to which the auditor may reasonably require; and (c) be authorized to collect, audit, aggregate and distribute the respective aggregated royalties on an annual basis. Respondents shall notify the Commission of the appointment of any independent auditor.

2. A binding arbitration clause to resolve any and all disputes regarding the royalties or any other License terms. Respondents shall notify the Commission of the institution of any arbitration.

G. There will be no limitations upon the rights of any respondent or any licensee or sublicensee hereunder to license or sublicense its own patents or patent applications to other third parties. Nothing in this order requires any respondent to guarantee freedom of operation under any third party patents not included within such respondent's HSV-tk Patent Rights, Cytokine Patent Rights, Anderson Patent Rights or the patent rights subject to the Hemophilia License.

X.

It is further ordered, That:

A. If respondent Novartis has not divested, absolutely and in good faith and with the Commission's prior approval, the Sandoz Corn Herbicide Business within the time required by paragraph II of this

order, the Commission may appoint a trustee, or direct the trustee appointed pursuant to paragraph VIII of this order, to divest the Sandoz Agricultural Chemical Business.

B. If respondent Novartis has not divested, absolutely and in good faith and with the Commission's prior approval, the Sandoz Animal Health Business within the time required by paragraph III of this order, the Commission may appoint a trustee, or direct the trustee appointed pursuant to paragraph VIII of this order, to divest the Sandoz Animal Health Business.

C. If respondents have not complied with the requirements of paragraph IX.A of this order within the time required by paragraph IX.A of this order, the Commission may appoint a trustee or direct the trustee appointed pursuant to paragraph VIII of this order to divest the HSV-tk Business to a buyer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission, at no minimum price. If respondent Novartis has not complied with the requirements of paragraph IX.D of this order within the time required by paragraph IX.D of this order, the Commission may appoint a trustee or direct the trustee appointed pursuant to paragraph VIII of this order to convert respondent Novartis' exclusive rights to the beta-domain deleted Factor VIII gene from Genetics Institute to a non-exclusive license.

D. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment or extension of responsibilities of a trustee nor a decision not to appoint or extend the responsibilities of a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, for any failure by the respondents to comply with this order.

E. If a trustee is appointed or directed by the Commission or a court pursuant to subparagraph A of this paragraph to divest the Sandoz Agricultural Chemical Business, or pursuant to subparagraph B of this paragraph to divest the Sandoz Animal Health Business, or pursuant to subparagraph C of this paragraph to divest the HSV-tk Business, respondents shall consent to the following terms and

conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. If a trustee is directed under subparagraph A of this paragraph to divest the Sandoz Agricultural Chemical Business, the Commission may extend the authority and responsibilities of the trustee appointed under paragraph VIII of this order to include divesting the Sandoz Agricultural Chemical Business.

3. If a trustee is directed under subparagraph B of this paragraph to divest the Sandoz Animal Health Business, the Commission may extend the authority and responsibilities of the trustee appointed under paragraph VIII of this order to include divesting the Sandoz Animal Health Business.

4. If a trustee is directed under subparagraph C of this paragraph to divest the HSV-tk Business, the Commission may extend the authority and responsibilities of the trustee appointed under paragraph VIII of this order to include divesting the HSV-tk Business. If a trustee is directed under subparagraph C of this paragraph to convert respondent Novartis' exclusive rights to the beta-domain deleted Factor VIII gene from Genetics Institute to a non-exclusive license, the Commission may extend the authority and responsibilities of the trustee appointed under paragraph VIII of this order to include converting respondent Novartis' exclusive rights to the beta-domain deleted Factor VIII gene from Genetics Institute to a non-exclusive license.

5. Subject to the prior approval of the Commission and consistent with paragraphs II through IX, the trustee shall have the exclusive power and authority to divest the assets identified in the Commission's appointment or extension of the trustee's authority and responsibilities.

6. Within ten (10) days after the appointment of the trustee or the extension of the trustee's authority and responsibilities, respondents shall execute a trust agreement, or shall amend the existing trust agreement in a manner that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

7. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement or the amended trust agreement, described in subparagraph E of this paragraph, to accomplish the divestiture or divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the applicable twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend each divestiture period only two (2) times.

8. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Sandoz Agricultural Chemical Business, the Sandoz Animal Health Business, the HSV-tk Business, the license to hemophilia patents and/or patent applications granted to respondent Novartis by Genetics Institute, or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

9. The trustee shall make every reasonable effort to negotiate the most favorable price and terms available in each contract submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the Agricultural Chemical Acquirer as set out in paragraph II of this order, or to the Animal Health Business Acquirer as set out in paragraph III of this order, or to the acquirer of the HSV-tk Business as set out in paragraph X.C of this order, as applicable; provided, however, if the

trustee receives *bona fide* offers from more than one acquiring entity for the Sandoz Agricultural Chemicals Business, or for the Sandoz Animal Health Business, or for the HSV-tk Business, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

10. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Sandoz Agricultural Chemical Business, the Sandoz Animal Health Business, or the HSV-tk Business, as applicable.

11. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

12. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VIII or this paragraph of this order.

13. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

14. In the event that the trustee determines that he or she is unable to divest the Sandoz Agricultural Chemical Business, if directed to divest pursuant to subparagraph A of this paragraph, in a manner consistent with the Commission's purpose as described in paragraph II of this order; or in the event that the trustee determines that he or she is unable to divest the Sandoz Animal Health Business, if directed to divest pursuant to subparagraph B of this paragraph, in a manner consistent with the Commission's purpose as described in paragraph III of this order; or in the event that the trustee determines that he or she is unable to divest the HSV-tk Business, if directed to divest pursuant to subparagraph C of this paragraph, in a manner consistent with the Commission's purpose as described in paragraph IX.A.2 of this order, the trustee may divest additional assets ancillary to the Sandoz Agricultural Chemical Business, ancillary to the Sandoz Animal Health Business, or as applicable, ancillary to the HSV-tk Business, and effect such arrangements as are necessary to satisfy the requirements of this order.

15. The trustee shall have no obligation or authority to operate or maintain the Sandoz Agricultural Chemical Business, the Sandoz Animal Health Business, or the HSV-tk Business.

16. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

XI.

It is further ordered, That, respondents shall comply with all terms of the Agreement to Hold Separate attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until (a) with respect to the Sandoz Corn Herbicide Business, such time as respondents have divested the Sandoz Corn Herbicide Business and (b) with respect to the Sandoz Animal Health Business, such time as respondents have divested the Sandoz Animal Health Business pursuant to paragraphs II and III of this order; or, if a trustee is appointed or the trustee's authorities and responsibilities have been extended pursuant to paragraph X of this order, the Agreement to Hold Separate shall continue in effect until such time as respondents or the trustee have divested all of the Sandoz Animal Health Business and, as applicable, the Sandoz Corn Herbicide Business or the Sandoz Agricultural Chemical Business pursuant to this order.

XII.

It is further ordered, That, for a period of ten (10) years after the date the order becomes final, respondents shall not, without prior notice to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 5% of any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the research, development, manufacture, distribution or sale of flea control products or other products containing Methoprene in the United States; or

B. Acquire any assets currently used, or used in the previous two years (and still suitable for use for) for the research, development, manufacture, distribution or sale of flea control products or other products containing Methoprene in the United States. Provided, however, that this paragraph XII shall not apply to the acquisition of equipment, machinery, supplies or facilities constructed, manufactured or developed by or for respondents.

The prior notifications required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and Notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this

paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

XIII.

It is further ordered, That, respondent Ciba and/or respondent Novartis shall not, without prior notice to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise acquire common stock of Chiron such as to increase by more than one percent (1%) or more the percentage of Chiron stock that Ciba owns as of the date this order becomes final, until the receipt by the Commission of a certification by RPR, the trustee, or respondents, that respondents have complied with the requirements of paragraphs IX.A and IX.D of this order; provided, however, in no event shall this provision apply later than five (5) years from the date this order becomes final.

The prior notifications required by this paragraph XIII shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and Notification is required only of respondent Novartis and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent Novartis shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

XIV.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II, III, and IX.A and IX.D of this order requiring, respectively, divestiture of the Sandoz Corn Herbicide Business, divestiture of the Sandoz Animal Health Business, and granting of the HSV-tk License, respondent Novartis shall submit to the Commission verified written report(s) ("compliance reports") setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II through IX of this order. After completing the divestitures required under paragraphs II, III, the licensing required under paragraph IX.A, and the requirements of paragraph IX.D of this order, and until the termination of the CMA required under paragraph V of this order, respondent Novartis shall submit such compliance reports every one hundred eighty (180) days beginning on the date of the divestiture of the Sandoz Animal Health Business. Following termination of the CMA required under paragraph V of this order, respondent Novartis shall submit to the Commission annual compliance reports on the anniversary of the date this order became final, until and including the tenth anniversary date of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II through IX of the order, including a description of all substantive contacts or negotiations for the divestiture or relating to the Gene Therapy License obligations. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent Novartis shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with paragraphs XII and XIII of this order.

XV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

XVI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents.

XVII.

It is further ordered, That this order shall terminate on March 24, 2007.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Sandoz Ltd. ("Sandoz"), a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business at Lichtstrasse 35, Basel, Switzerland, 4002; Ciba-Geigy Limited ("Ciba"), a corporation, organized, existing, and doing business under and by virtue of the laws of Switzerland with its principal place of business located at Klybeckstrasse 141, Basel, Switzerland 4002; and the

Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, on March 6, 1996, Ciba and Sandoz entered into an Agreement providing for the merger (hereinafter the "Merger") of Ciba and Sandoz into Novartis AG ("Novartis"); and

Whereas, Sandoz, through its subsidiary Sandoz Agro, Inc., operates, *inter alia*, (a) an agricultural chemical business as defined in an Agreement Containing Consent Order ("the "consent order"); and (b) an animal health business as defined in the consent order; and

Whereas, Ciba, through its subsidiary Ciba-Geigy Corporation, operates *inter alia*, (a) an agricultural chemical business, and (b) an animal health business; and

Whereas, the Commission is now investigating the Merger to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the consent order, which would require the divestiture of certain assets, the Commission must place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as defined in paragraph I of the consent order during the period prior to the final acceptance and issuance of the consent order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Merger might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Merger is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Sandoz Agricultural Chemical Business, as described in paragraph I.BB of the consent order, and the Sandoz Animal Health Business, as described in paragraph I.CC of the consent order, and the Commission's right to have the Sandoz

Agricultural Chemical Business and the Sandoz Animal Health Business continue as viable competitors independent of Ciba, Sandoz and Novartis; and

Whereas, even if the Commission determines to finally accept the consent order, it is necessary to hold separate the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business to protect interim competition pending divestiture or other relief; and

Whereas, the purpose of the Hold Separate and the consent order is:

1. To preserve the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as viable and competitive, independent businesses pending the divestitures required by the consent order;

2. To remedy any anticompetitive effects of the Merger; and

3. To preserve the Sandoz Agricultural Chemical Business and the Sandoz Animal Health Business as ongoing and competitive entities engaged in the same businesses in which they are presently employed until divestiture is achieved; and

Whereas, Sandoz and Ciba's entering into this Hold Separate shall in no way be construed as an admission by Sandoz or Ciba that the Merger is illegal; and

Whereas, Sandoz and Ciba understand that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the respondents, upon understanding that the Commission has not yet determined whether the Merger will be challenged, and in consideration of the Commission's agreement at the time it accepts the consent order for public comment that, unless the Commission determines to reject the consent order, the Commission will not seek a temporary restraining order, preliminary injunction, or permanent injunction to prevent consummation of the Merger, and will grant early termination of the Hart-Scott-Rodino waiting period, the Parties agree as follows:

1. Ciba and Sandoz agree that from the date this Hold Separate is signed by Sandoz and Ciba until the earliest of the dates listed in

paragraphs 1.a or 1.b they each will comply with the provisions of this Hold Separate:

a. Twenty (20) days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after each of the divestitures required by the consent order has been completed.

2. Ciba and Sandoz agree to execute and be bound by the attached consent order and to comply, from the date this Hold Separate is accepted, with the provisions of the consent order as if it were final.

3. The terms capitalized herein shall have the same definitions as in the consent order.

4. To ensure the complete independence and viability of the properties to be divested and to ensure that no competitive information is exchanged between the properties to be divested and Sandoz, Ciba or Novartis, Sandoz and Novartis shall hold the properties to be divested as they are presently constituted separate and apart on the following conditions:

a. The held separate businesses shall be held separate and apart and shall be operated independently of Ciba, Sandoz and Novartis (meaning here and hereinafter, Ciba, Sandoz and Novartis excluding the properties to be divested and excluding all personnel connected with the properties to be divested as of the date this Hold Separate was signed) except to the extent that Ciba, Sandoz or Novartis must exercise direction and control over the held separate businesses to assure compliance with this Hold Separate or the consent order.

b. The properties to be divested shall be staffed with sufficient employees to maintain the viability and competitiveness of the properties to be divested. Neither Sandoz, Ciba nor Novartis shall employ, or make offers of employment to, any person employed by Sandoz in connection with the properties to be divested or whose principal duties, during the year prior to the date of the signing of this Hold Separate, related to the management, operation, research, development, regulatory registration, sales or marketing activities of the properties to be divested. Sandoz, Ciba and Novartis shall encourage and facilitate employment by the properties to be divested of Sandoz employees who had line responsibility with respect to the properties to be divested in the year prior to the signing of this Hold

Separate; shall not offer any incentive to such employees to decline employment with the properties to be divested or accept other employment in Sandoz, Ciba or Novartis; and shall remove any impediments that may deter such employees from accepting employment with the properties to be divested, including but not limited to, the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Sandoz.

c. Ciba, Sandoz or Novartis personnel connected with the properties to be divested or providing support services to the properties to be divested as of the date of this Hold Separate was signed, may continue, as employees of Sandoz or Novartis, to provide such services as they are currently providing to the held separate businesses. Such Sandoz or Novartis personnel must retain and maintain all material confidential information relating to the held separate businesses on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any Sandoz or Novartis business.

d. Sandoz, Ciba and Novartis shall not exercise direction or control over, or influence directly or indirectly, the properties to be divested, the Management Committee (as defined in subparagraph 4.f), or any of its operations or businesses; provided, however, that Ciba, Sandoz and Novartis may exercise only such direction and control over the properties to be divested as is necessary to assure compliance with this Hold Separate or with the consent order.

e. Ciba, Sandoz and Novartis shall maintain the marketability, viability and competitiveness of the properties to be divested and shall not take any action that may cause or permit the destruction, removal, wasting, deterioration or impairment of the properties to be divested, except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the properties to be divested. Sandoz shall provide the properties to be divested with sufficient working capital to operate at current rates of operation, including but not limited to, current levels of research and development activities, to perform all necessary routine maintenance to, and replacement of, plant and equipment of the properties to be

divested, and to maintain the viability and competitiveness of the properties to be divested.

f. Sandoz shall appoint a three-person Management Committee for the properties to be divested (the "Management Committee"), one of whom shall be named chairman of the Management Committee. The Management Committee shall consist of persons who are, and shall remain, independent of Sandoz, Ciba and Novartis and competent to assure the continued viability and competitiveness of the properties to be divested. Sandoz shall not permit any director, officer, employee or agent of Ciba, Sandoz or Novartis also to be a director, officer, employee or agent of the properties to be divested. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate.

g. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Merger, defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the consent order (including accomplishing the divestitures), neither Sandoz, Ciba nor Novartis shall receive or have access to, or the use of, any material confidential information of the properties to be divested or the activities of the Management Committee, not in the public domain. Sandoz may receive on a regular basis from the properties to be divested aggregate financial reports, tax returns and personnel reports. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. ("Material confidential information," as used in this Hold Separate, means competitively sensitive or proprietary information not independently known to Ciba, Sandoz or Novartis from sources other than the properties to be divested or the Management Committee, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

h. All material transactions, out of the ordinary course of business and not precluded by paragraph four hereof, shall be subject to a majority vote of the Management Committee (as defined in paragraph 4.f hereof).

i. Sandoz shall not change the composition of the Management Committee unless it is necessary to do so in order to assure

compliance with this Hold Separate or with the consent order. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to appoint replacement members of the Management Committee. Sandoz shall not change the composition of the management of the properties to be divested except that the Management Committee shall have the power to remove management employees for cause. If the Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 4.f. The Management Committee shall circulate to the management employees of the properties to be divested and appropriately display a notice of this Hold Separate and the consent order at a conspicuous place at all offices and facilities of the properties to be divested.

j. All earnings and profits of the properties to be divested shall be retained separately in the properties to be divested.

k. Subject to the direction of the Management Committee, Sandoz and Novartis shall cause the properties to be divested to continue to expend funds for the advertising and trade promotion of such businesses at levels not lower than those budgeted for 1995 and 1996, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. If necessary, Sandoz and Novartis shall provide the held separate businesses with funds necessary to accomplish the foregoing. Sandoz and Novartis shall continue to provide to the properties to be divested such support services as is reasonably necessary and was provided prior to the merger by Sandoz.

5. Should the Federal Trade Commission seek in any proceeding to compel dissolution of Novartis, to compel Sandoz or Novartis to divest any assets or businesses of Ciba that they may hold, to compel Ciba or Novartis to divest any assets or businesses of Sandoz that they may hold, or to seek any other injunctive or equitable relief, neither Sandoz nor Ciba shall raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Merger. Sandoz and Ciba also waive all rights to contest the validity of this Hold Separate.

6. Within twenty-one (21) days after the date this Hold Separate is signed by respondents and every thirty (30) days thereafter,

respondents shall each submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Hold Separate and the consent order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the terms of the consent order, including a description of all contacts and negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

7. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request and five day's notice, Sandoz and Ciba shall permit any duly authorized representative(s) of the Commission:

a. Access during the office hours of Sandoz or Ciba and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Sandoz, Ciba or Sandoz Agro relating to compliance with this Hold Separate;

b. Without restraint or interference from respondents, to interview Sandoz or Ciba officers, directors or employees, or employees of the properties to be divested, who may have counsel present, regarding any such matters.

8. This Hold Separate shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Ciba-Geigy Limited ("Ciba") and Sandoz Ltd. ("Sandoz") have entered into a Agreement Containing Consent Order and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of certain Sandoz businesses. Until after the Commission's order becomes final and those businesses are divested, the Sandoz Agricultural Chemical

Business and the Sandoz Animal Health Business must be managed and maintained as separate, ongoing businesses, independent of all other Ciba, Sandoz and Novartis businesses. All competitive information relating to the held separate businesses, must be retained and maintained by the persons involved in these businesses on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Ciba, Sandoz or Novartis business. Similarly, all such persons involved in the Ciba, Sandoz or Novartis business. Similarly, all such persons involved in the Ciba, Sandoz or Novartis Agricultural Chemical and Animal Health Business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment involves the held separate businesses.

Any violation of the Consent Order or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Ciba, Sandoz and Novartis to civil penalties and other relief as provided by law.

SEPARATE STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS JANET D. STEIGER, ROSCOE B. STAREK, III
AND CHRISTINE A. VARNEY

We write to respond to Commissioner Azcuenaga's suggestion that the Commission erred by requiring licensing rather than divestiture in order to remedy competitive problems in the gene therapy markets.

The Commission's complaint in this matter alleges that the merger of Ciba-Geigy Ltd. ("Ciba") and Sandoz Ltd. ("Sandoz") may substantially lessen competition or tend to create a monopoly in several gene therapy markets, including "gene therapy technologies" and "research and development of gene therapies" as well as specific gene therapy product markets.¹ No gene therapy product is currently marketed or even approved by the Food and Drug Administration, and none is expected to obtain regulatory approval until the year 2000. The complaint notes, however, that sales of gene therapy products are projected to reach \$45 billion by 2010.² The complaint

¹ Complaint ¶ 9.

² *Id.* ¶ 10.

emphasizes that patent rights to proprietary inputs sufficient to provide a firm in this industry with reasonable assurances of freedom to operate are necessary for the firm to reach advanced stages of development.³ Moreover, the complaint alleges not only that Ciba and Sandoz "are two of only a few" entities capable of commercially developing gene therapy products, but also that they "control the substantial proprietary rights necessary to commercialize gene therapy products" and "control critical gene therapy proprietary portfolios, including patents, patent applications, and know-how."⁴ We are left with a post-merger picture of potentially life-saving therapies whose competitive development could be hindered by the merged firm's control of substantially all of the proprietary rights necessary to commercialize gene therapy products. Preserving long-run innovation in these circumstances is critical.

Commissioner Azcuenaga argues that the Commission should have required the divestiture of Ciba's or Sandoz's gene therapy businesses, rather than licensing, in order to "preserve the competition that existed before the merger."⁵ Of course, an injunction or divestiture is often the remedy chosen to resolve competition problems arising from mergers and acquisitions. In this case, however, patent licensing not only alleviated the competitive problems but also avoided divestiture's potentially disruptive effects on the parties' ongoing research.

As the Commission explained in the Analysis to Aid Public Comment that accompanied acceptance of the proposed consent agreement in this case, licensing was as effective in preserving competition as the traditional remedy of divestiture:

The Commission believes that licensing, rather than divestiture of assets, is sufficient because access to certain key intellectual property rights held by the merged firm is a crucial component of successful commercialization of many potential gene therapy products. Competitors already have (to varying degrees) the hard assets, e.g., production facilities, researchers and scientists, needed to compete. Rivals and other scientists confirm that licensing would enable them to develop gene therapy products and replace the competition lost due to the merger.⁶

³ *Id.* ¶ 26.

⁴ *Id.* ¶¶ 14, 15; *see also id.* ¶¶ 16-19.

⁵ *See* Statement of Commissioner Azcuenaga at 1.

⁶ Analysis to Aid Public Comment at 7.

Licensing was preferable to divestiture in this case because an asset divestiture "might create substantial disruption in the parties' research and development efforts."⁷ Not a single comment was submitted during the public comment period questioning this analysis, despite the invitation in the statement that Commissioner Azcuenaga issued when the Commission accepted the proposed order for public comment.

Commissioner Azcuenaga asks why the Commission could not have ordered a divestiture of Sandoz's wholly-owned Gene Therapy, Inc. ("GTI") subsidiary or Ciba's partially-owned Chiron Corporation subsidiary. It may be appealing to call for divestiture of businesses acquired only two or three years ago -- as both GTI and Chiron were -- particularly when one such business is only partially owned. Ciba and Chiron, however, have numerous joint efforts that would have to be unraveled to separate the two companies. And GTI's U.S. clinical development is being closely coordinated with trials that Sandoz is conducting in Europe. Divestiture in this case would not be simple. To divest a business that would have such extensive continuing entanglements with the merged firm -- its principal competitor -- not only could hamper efficiency but also could be less effective in restoring competition if it led to coordinated interaction or left the divested business at the mercy of the merged firm.⁸

Instead of divestiture, the order requires the merged firm to license gene therapy technology and patent rights to Rhône-Poulenc Rorer Inc. ("RPR"), so as to put RPR in a position to compete against the combined firm. In this way, RPR will be able to continue its research to develop HSV-tk gene therapy products for cancer and graft versus host disease. Commissioner Azcuenaga suggests that this relief only creates a potential "clone" that "may follow identical [research] tracks."⁹ We can not agree. This licensing package will give RPR the intellectual property that it likely could have obtained but for this merger's effect in reducing Novartis' incentive to license, so that RPR may continue to research and develop products on its own. Given RPR's ongoing research efforts, there is no basis for the assertion that this licensing package will turn RPR's efforts into a "clone" of the merging firms.

⁷ *Id.*

⁸ Divestiture of the type that Commissioner Azcuenaga favors also might have disrupted or even ended the merging firms' ongoing collaborations with academic researchers.

⁹ Statement of Commissioner Azcuenaga at 3.

In addition, the order mandates that the merged firm license specific patents of Ciba and Sandoz to any interested person at a reasonable royalty. The dissent seems to suggest that such relief is ill-advised because it is based on some notion of the "essential facilities" doctrine, it usurps the role of the Patent and Trademark Office, and the setting of a royalty rate puts the Commission in the position of a price regulator.

First, it is not accurate to suggest that this remedy flows from the essential facilities doctrine. The Commission is not saying that Sandoz's *ex vivo* patent and associated cytokine patents are so important that they "ought" to be shared with everyone. Instead, the remedy is a response to a *merger* in which the merging parties possessed competing technologies. Before the merger, if developers of potential gene therapies were unable to reach agreement with Sandoz to license the *ex vivo* and associated patents, in many instances they could have worked with Ciba and used other technologies that did not infringe the *ex vivo* patent.¹⁰ The merger has eliminated that option. Granting the right to sublicense was necessary to restore access to the critical patents for other developers of many gene therapies.

Second, although the Commission alleges in its complaint that both Ciba and Sandoz control portfolios of issued patents and patent applications "of uncertain breadth and validity,"¹¹ the Commission does so not as a patent tribunal but as a body charged with evaluating how market reality -- including firms' perceptions of their own and others' positions -- affects competitive behavior. Ciba and Sandoz each controlled a variety of patents and patent applications, and their merger combined alternative technologies and approaches to research and development. Whereas before the merger third parties might have had the option of licensing one party's patents or challenging the validity of the other's, the Commission was concerned that the merger created a "killer" patent portfolio so broad as to eliminate that option. As a result, the merger created a disincentive for Novartis to license

¹⁰ Analysis to Aid Public Comment at 6 ("Although Ciba/Chiron and Sandoz had substantial individual intellectual property portfolios pre-merger, they had the incentive and did act as rival centers from which others could obtain needed intellectual property rights. Ciba/Chiron and Sandoz would grant limited intellectual property rights to other developers and researchers in return for receiving marketing or other valuable rights back from them.").

¹¹ Complaint ¶ 31 f.

third parties.¹² Broad licensing of the *ex vivo* patent and the cytokines resolves these concerns. Simply stated, licensing of these patents preserves the innovation competition that would otherwise be lost as a result of the merger.¹³

Third, the Commission must always think long and hard before it enters an order which sets a price. But that cautionary rule should not be turned into an absolute. The Commission believes that a compulsory license was a more focused and effective remedy than divestiture. If there is to be a compulsory license, there must be a price, and that price cannot be too high.¹⁴ In this case the price was set at a level that would not interfere with the restoration of competition, and was commensurate with similar kinds of licenses negotiated in similar situations in the free market.

In short, requiring Novartis to license the key gene therapy patent rights is the best way to maintain competition and preserve the efficiencies gained in this transaction.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA,
CONCURRING IN PART AND DISSENTING IN PART

The order in this matter seeks to remedy the alleged anticompetitive effects of the merger of Ciba-Geigy Limited and Sandoz Ltd. in several product markets, corn herbicides, flea control products, and various gene therapy markets. I concur in the requirements of the order that the merged firm, Novartis, divest the corn herbicide business and the flea control product business that belonged to Sandoz. I do not concur with the order in the gene therapy markets, in which the Commission has bypassed the obvious, simple and effective remedy of divestiture in favor of a complex regulatory concoction that promises to be less effective and more costly.

¹² Complaint ¶¶ 15, 31 f, g. See W. Tom and J. Newberg, "U.S. Enforcement Approaches to the Antitrust/Intellectual Property Interface," in Competition Policy, Intellectual Property Rights, and International Economic Integration.

¹³ The dissent appears to suggest that the licensing remedy called into question the decision of NIH to license the *ex vivo* patent to Sandoz on an exclusive basis. Statement of Commissioner Azcuenaga at 5. That criticism is inapt since NIH's license grants Sandoz the full authority to sublicense the patent.

¹⁴ In previous cases the Commission has had concerns with royalty payments in licenses meant to restore competition eliminated by merger. There are two reasons for such a concern: (1) royalties can lead to information exchanges facilitating collusion, and (2) royalties can interfere with firms' incentives to compete vigorously. The order issued today minimizes the exchange of competitively sensitive information through use of an independent auditor to collect and aggregate royalty payments. Moreover, the relatively low royalty rate is unlikely to affect development of potential "blockbuster" drugs. See Analysis to Aid Public Comment at 8.

Given the allegations of the complaint, the obvious remedy in the gene therapy markets is to require the divestiture of the gene therapy business of either Ciba-Geigy or Sandoz. A divestiture of GTI¹ or of Ciba-Geigy's interest in Chiron² would eliminate the alleged anticompetitive overlaps in the gene therapy markets³ and preserve the competition that existed before the merger. It is a remedy that would be simple, complete, and easily reviewable. Normally, divestiture would be the remedy of choice, and no persuasive reason for a different remedy has been presented in this case.

The order of the Commission instead imposes licensing requirements that do not necessarily preserve the competition that existed before the merger. The only explanation offered for preferring licensing over an asset divestiture is the assertion in the Analysis To Aid Public Comment that a divestiture "might create a substantial disruption in the parties' research and development efforts."⁴ What this means is not clear. Any divestiture is likely to involve substantial disruption, and if concerns about "disruption" were sufficient to avert a divestiture, that remedy would never be used. No doubt the parties prefer the negotiated licensing arrangement, but the preferences of the parties should not define the remedy.

The implication that divestiture in this case somehow would be counterproductive does not ring quite true. This is an industry in which cooperative research and development often is undertaken and in which innovative companies frequently change hands. Indeed, Ciba-Geigy and Sandoz only recently acquired their interests in the gene therapy field.⁵ The gene therapy products at issue require years of research, and the FDA approval process also takes years. If the respective acquisitions by Ciba-Geigy and Sandoz in 1994 and 1995 of gene therapy companies did not hamper ongoing and future R&D

¹ Sandoz participated in the gene therapy market through its wholly-owned subsidiary Gene Therapy, Inc. (GTI), a corporation headquartered in Maryland that Sandoz acquired in 1995.

² Ciba-Geigy participated in the gene therapy market through Chiron Corporation, a company headquartered in California, in which Ciba-Geigy acquired a 46.5% interest in 1994. Chiron acquired Viagene, Inc., a U.S. gene therapy firm, in 1995.

³ See Complaint ¶¶ 31.d through g.

⁴ Analysis To Aid Public Comment at 7. The Analysis, published with the proposed consent order, states that its "purpose . . . 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 its terms." *Id.* at 17.

⁵ See notes 1 & 2 *supra*.

projects, one must wonder why a divestiture in 1997 of one of those companies would be problematic.

Also, the licensing requirements imposed by the order are somewhat different from what we previously have seen. In the HSV-tk gene therapy markets, the complaint on which the order is based alleges that Ciba-Geigy and Sandoz, after the merger, could "combine alternative technologies, and reduce innovation competition"⁶ and that "[o]nly two companies [presumably Ciba and Sandoz] are capable of commercially developing"⁷ the HSV-tk gene therapies at issue.⁸ The order permits Ciba-Geigy and Sandoz to combine their research and development projects in the HSV-tk gene therapy markets and requires them to license their combined intellectual property to an entity approved by the Commission. Instead of preserving the premerger competition between Ciba-Geigy and Sandoz, the order allows the allegedly anticompetitive combination to stand, as long as it clones its intellectual property.⁹ Novartis remains free to "combine alternative technologies," as alleged in the complaint. The diversity of research projects is an element of the premerger competition between Sandoz and Ciba-Geigy that is worth preserving,¹⁰ but the order does not ensure that it is preserved.

The remedy in the market for Factor VIII gene therapy for the treatment of hemophiliacs offers two alternatives for licensing.¹¹ It is not clear how these alternatives will eventually work out, but neither of them necessarily preserves the competition that existed before the merger. A divestiture of either GTI or of Ciba-Geigy's interest in Chiron would have preserved the diversity of competition that existed before the merger.

The complaint also alleges a market for "the research and development of gene therapy," in which Ciba-Geigy and Sandoz are

⁶ Complaint ¶ 31.d.

⁷ Complaint ¶¶ 16 & 17.

⁸ The complaint alleges HSV-tk gene therapy markets for the treatment of cancer and for the treatment of graft versus host disease.

⁹ In addition, at the option of the licensee of the intellectual property, Novartis (but not Chiron, *see* note 2 *supra*) is required to provide "technical information, know-how or materials . . . necessary to enable" the licensee to research and develop HSV-tk products. Order ¶ IX.A.2.

¹⁰ *See* FTC & DOJ, Antitrust Guidelines for the Licensing of Intellectual Property ¶ 3.2.3 (1995), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,132.

¹¹ Order ¶ IX.D requires Sandoz to convert its exclusive license to the partial Factor VIII hemophilia gene to a nonexclusive one or to license certain of its relevant intellectual property ("Hemophilia License," defined in Order ¶ I.PP).

"two of only a few entities capable of commercially developing gene therapy products" and in which they control "critical gene therapy proprietary portfolios."¹² In this overall market for the research and development of gene therapy, the merger allegedly would "heighten barriers to entry by combining portfolios of patents and patent applications of uncertain breadth and validity" and "create a disincentive in the merged firm to license intellectual property rights"¹³ to others. The remedy for the alleged violation is to require the licensing of intellectual property rights at a "low"¹⁴ royalty rate stipulated in the order.¹⁵

Remedies that require the Commission to police prices generally are disfavored as highly regulatory, difficult to enforce and likely to distort the normal functioning of the market. They should be particularly disfavored in cases such as this in which a clean, simple divestiture of a gene therapy business is readily available and would not impede consummation of the remainder of the transaction, which is neutral or procompetitive. This agency often has been in the forefront in opposing government price controls, which makes this part of the order particularly mystifying.

The compulsory licensing requirement applies to the so-called *ex vivo* or Anderson patent.¹⁶ The *ex vivo* patent, issued in 1995, is owned by the National Institutes of Health (NIH) and licensed by NIH exclusively to Sandoz. To commercialize a gene therapy product, a researcher would need either a license from Sandoz under the *ex vivo* patent or a different mode of transduction.¹⁷

The requirement to license the *ex vivo* patent does not follow, as in the usual case, from ownership by the merger partner of competing technology. There is no substitute for the *ex vivo* patent, and Sandoz is the exclusive licensee under the patent. The question, then, is what links the compulsory licensing requirement to the violation alleged

¹² Complaint ¶¶ 14 & 15.

¹³ Complaint ¶¶ 31.f & g.

¹⁴ Analysis To Aid Public Comment, *supra* note 4, at 8.

¹⁵ Order ¶¶ IX.B & C.

¹⁶ Order ¶ IX.C. As I understand it, the two modes of delivery (called "transduction") for gene therapies are *ex vivo* and *in vivo*. *Ex vivo* delivery involves removing, modifying and replacing the patient's cells and has been used in the majority of gene therapy trials. *In vivo* delivery involves delivery of genetic material directly into the patient.

¹⁷ The need to invent around existing patents can be a significant incentive for invention. To the extent that the compulsory licensing required by the order may reduce this incentive, it may reduce the research and development of alternative means of transduction for gene therapy.

in the complaint. One possibility is that the compulsory licensing requirement reflects a judgment that the *ex vivo* patent is excessively broad. The complaint alleges that the merger will "combin[e] portfolios of patents and patent applications of uncertain breadth and validity." This is a curious allegation for a complaint under Section 7 of the Clayton Act and one that is not explained. Antitrust can provide the basis for challenging the use or combination of patents in some circumstances, but patent law, not antitrust law, customarily applies to assess the breadth and validity of patents. As far as I am aware, we have neither standards nor evidence by which we might conclude that the breadth or validity of the *ex vivo* patent provides a basis for liability under Section 7 of the Clayton Act.

One authority has identified the *ex vivo* patent as a "broad" patent that "cover[s] enormous areas of technology" and suggested that compulsory licensing would encourage follow-on invention in the field.¹⁸ Others maintain that broad patent protection for inventions is necessary to encourage groundbreaking research and disclosure and that compulsory licensing would harm those incentives. These are important public policy issues, but they are not elements of a violation under Section 7 of the Clayton Act.

Even if some might think the *ex vivo* patent is too broad, it was granted to NIH by the U.S. Patent and Trademark Office, also an agency of the U.S. government, and licensed by NIH to Sandoz. It would seem curious for this agency, charged with enforcing Section 7 of the Clayton Act and Section 5 of the FTC Act, to call into question the breadth and validity of a patent granted by the Patent Office to another federal agency. It also would seem curious to call into question the decision of NIH to license the patent on an exclusive basis. To the extent that such a decision entails evaluation of the potential for advancing scientific research in aid of human health, the National Institutes of Health would appear to have qualifications superior to the FTC. The fact that the respondents agreed to this remedy tells us nothing about its competitive implications. We must look elsewhere for an explanation of the requirement to license the *ex vivo* patent.

¹⁸ John Barton, Global Hearings Tr. 3409 (Nov. 29, 1995) (suggesting at Tr. 3415 that compulsory licensing for follow-on investors is "an anathema in the United States"); see FTC Staff Report, "Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace," Ch. 8, at 13-14 (May 1996).

A theme running through the complaint is that the *ex vivo* patent is "essential" to commercializing a gene therapy product.¹⁹ But the courts and the Commission consistently have held that a patent holder has no obligation to deal and is free to refuse to grant licenses,²⁰ even if some believe that the patent is "essential" to follow-on inventors. There being no apparent basis for the compulsory licensing of the *ex vivo* patent under Section 7 of the Clayton Act, perhaps the majority selected this remedy in the belief that it serves the public good. The patent was developed with tax dollars, it is owned by a government agency, and access to the patent could be useful to follow-on inventors. Put another way, the majority may believe it is protecting the public health or even saving lives. These are powerful arguments, but Congress heard them and decided instead to encourage the patenting of inventions resulting from government-sponsored research and the licensing of the patents to private industry as an incentive for industry to make the significant investments to bring a product to market.²¹

A divestiture of the gene therapy business of either Ciba-Geigy or Sandoz would resolve the alleged anticompetitive overlap in all the gene therapy markets. It would preserve the competition in research and development that existed before the merger, without compulsory licensing under order, without the mandating by the Commission of "reasonable" fees, and without creating possible disincentives for innovative research.

I dissent from the order in the gene therapy markets.

¹⁹ The "essential facilities" doctrine ordinarily is triggered by a refusal to deal by a monopolist and is not part of an analysis under Section 7 of the Clayton Act.

²⁰ See *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U.S. 405, 426-30 (1908); see also *Hartford-Empire Co. v. United States*, 323 U.S. 386, 432-33, *clarified*, 324 U.S. 570 (1945); *SCM Corp. v. Xerox Corp.*, 645 F.2d 1195 (2d Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982); *United States v. Westinghouse Elec. Corp.*, 648 F.2d 642, 647 (9th Cir. 1981); *E.I. duPont de Nemours & Co.*, 96 FTC 705, 748 & n.40 (1980). See also FTC & DOJ, Antitrust Guidelines for the Licensing of Intellectual Property ¶ 2.2 (1995), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶ 13,132 ("The Agencies will not presume that a patent . . . necessarily confers market power upon its owner. . . . If a patent . . . does confer market power, that market power does not by itself offend the antitrust laws. . . . Nor does such market power impose on the intellectual property owner an obligation to license the use of that property to others.").

²¹ 35 U.S.C. 200-211; 15 U.S.C. 3701-3714. See Eisenberg, "Symposium: A Technology Policy Perspective on the NIH Gene Patenting Controversy," 55 U. Pitt. L. Rev. 633 (1994).

Complaint

123 F.T.C.

IN THE MATTER OF
BAXTER INTERNATIONAL INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3726. Complaint, March 24, 1997--Decision, March 24, 1997

This consent order requires, among other things, Baxter International ("Baxter"), an Illinois-based corporation, to divest its Autoplex product to a Commission-approved buyer, and to license Immuno International AG's ("Immuno") product in development to a Commission-approved licensee within four months of the date Baxter signs the consent. This would resolve antitrust concerns raised by the \$463 million acquisition of Immuno by Baxter, which both manufacture a wide variety of biologic products derived from human blood plasma.

Appearances

For the Commission: *Pamela Taylor and George Cary.*

For the respondent: *Michael Sennett, Bell, Boyd & Lloyd,*
Chicago, IL.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Baxter International Inc. ("Baxter"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the majority of the outstanding voting stock of Immuno International AG ("Immuno"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Baxter is a corporation organized, existing, and doing business under and by virtue of the laws of the state of

Delaware, with its principal place of business located at One Baxter Parkway, Deerfield, Illinois.

2. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

II. THE ACQUIRED COMPANY

3. Immuno is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its principal place of business located at Zollikerstrasse 60, CH-8702, Zollikon, Switzerland.

4. Immuno is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. On or about August 28, 1996, Baxter entered into a Stock Purchase Agreement with Pharminvest Ltd., Albenga Holding en Handelmaatschappij V.V. and Bio-Products and Bio-Engineering SA to purchase the majority of the voting stock of Immuno for approximately \$462.8 million ("Acquisition").

IV. THE RELEVANT MARKETS

6. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

a. The research, development, manufacture and sale of Factor VIII Inhibitor Treatments approved by the United States Food and Drug Administration ("FDA") for sale in the United States; and

b. The research, development, manufacture and sale of Fibrin Sealant to be approved by the FDA for sale in the United States.

7. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

V. STRUCTURE OF THE MARKET

8. The market for the research, development, manufacture and sale of Factor VIII Inhibitor Treatments is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). Baxter and Immuno are the only two suppliers of Factor VIII Inhibitor Treatments in the United States.

9. Baxter and Immuno are actual competitors in the relevant market for the research, development, manufacture and sale of Factor VIII Inhibitor Treatments.

10. The market for the research, development, manufacture and sale of Fibrin Sealant is highly concentrated as measured by the HHI. Baxter and Immuno are two of only a small number of companies seeking FDA approval to market Fibrin Sealant in the United States.

11. Baxter and Immuno are actual competitors in the relevant market for the research, development, manufacture and sale of Fibrin Sealant in the United States.

VI. BARRIERS TO ENTRY

12. Entry into the research, development, manufacture and sale of Factor VIII Inhibitor Treatments is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing the formulations and the manufacture of such products make new entry both difficult and unlikely.

13. Entry into the research, development, manufacture and sale of Fibrin Sealant is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial Fibrin Sealant will result. The existence of broad patents governing the formulations and the manufacture of such products make new entry both difficult and unlikely.

VII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.

18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Baxter and Immuno in the relevant markets;
- b. By increasing the likelihood that Baxter will unilaterally exercise market power in the relevant markets; and
- c. By creating a dominant firm in the relevant markets.

VIII. VIOLATIONS CHARGED

15. The Acquisition described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

16. The Acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Commissioner Starek recused.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of Immuno International AG, and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Baxter International Inc. ("Baxter") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Baxter Parkway, Deerfield, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Baxter*" means Baxter International Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Baxter International Inc., and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns. Baxter also includes Immuno International AG.

B. "*Immuno*" means Immuno International AG, a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its principal place of business located at Zollikerstrasse 60, CH-8702, Zollikon, Switzerland.

C. "*Commission*" means the Federal Trade Commission.

D. "*FDA*" means the United States Food and Drug Administration.

E. "*Acquisition*" means the acquisition by Baxter of the majority of Immuno voting stock.

F. "*Factor VIII Inhibitor Treatments*" means the activated prothrombin complex concentrates used to treat Factor VIII antibodies in hemophiliacs, approved by the FDA for sale in the United States.

G. "*Autoplex*" means the Factor VIII Inhibitor Treatments marketed by Baxter.

H. "*FEIBA*" means the Factor VIII Inhibitor Treatments marketed by Immuno.

I. "*Autoplex Assets*" means all of Baxter's assets and rights relating solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments sold under the trade names Autoplex or Autoplex T, including all arrangements necessary to meet the requirements of paragraph II.A of this order. "Autoplex Assets" include, but are not limited to, all machinery, fixtures, equipment and other tangible personal property, rights to brand or trade names, formulations, inventory, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the Acquirer to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

J. "*FEIBA Assets*" means all of Immuno's assets and rights relating solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments sold by Immuno, prior to the Acquisition, under the trade name FEIBA, including all arrangements necessary to meet the requirements of paragraph IV.A of this order. "FEIBA Assets" include, but are not limited to, all machinery, fixtures, equipment and other tangible personal property, rights to brand or trade names, formulations, inventory, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the New Acquirer to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

K. "*Divested Inhibitor Assets*" means either the Autoplex Assets or the FEIBA Assets, as applicable.

L. "*Acquirer*" means the entity to whom Baxter shall divest the Autoplex Assets pursuant to paragraph II of this order.

M. "*New Acquirer*" means the entity to whom the trustee shall divest either the Autoplex Assets or the FEIBA Assets pursuant to paragraph IV of this order.

N. "*Fibrin Sealant*" means a topical biological product, in any form, including, but not limited to, freeze-dried and frozen, used to control bleeding or seal tissues together.

O. "*Immuno Fibrin Sealant Assets*" means all of Immuno's assets and rights relating to the research, development, manufacture or sale of any Fibrin Sealant developed by Immuno, as of the date this order becomes final. "Immuno Fibrin Sealant Assets" include, but are not limited to, all formulations, patents, patent applications, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the Fibrin Sealant Licensee to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals for the United States.

P. "*Fibrin Sealant Licensee*" means the entity to whom Baxter shall license the Immuno Fibrin Sealant Assets pursuant to paragraphs V or VII of this order.

Q. "*Contract Manufacture*" means the manufacture of Factor VIII Inhibitor Treatments or Fibrin Sealant, as applicable, by Baxter for sale to the Acquirer, the New Acquirer or the Fibrin Sealant Licensee, as applicable.

R. "*Cost*" means the manufacturer's average direct per unit cost of manufacturing Factor VIII Inhibitor Treatments or Fibrin Sealant, as applicable, plus costs of manufacturing Factor VIII Inhibitor Treatments or Fibrin Sealants, as applicable, that are directly attributable to FDA regulatory, quality control and compliance.

II.

It is further ordered, That:

A. Within four (4) months of the date Baxter signed the agreement containing consent order in this matter, Baxter shall divest, absolutely and in good faith, the Autoplex Assets, effect all arrangements, including, but not limited to, the licensing of any Baxter patents and know-how not related solely to the research,

development, manufacture or sale of Factor VIII Inhibitor Treatments, necessary to enable the Acquirer to manufacture and sell a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets, and execute an agreement that includes the provisions required by paragraph II.C of this order.

B. The Autoplex Assets shall be divested only to, and the agreement executed only with, an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that the Acquirer does not choose to acquire all of the physical assets included in the Autoplex Assets because the Acquirer does not need such physical assets in order to engage in the manufacture and sale of Factor VIII Inhibitor Treatments, respondent shall not be required to divest such assets. The purpose of the divestiture is to ensure the continued competition between Autoplex and FEIBA in the United States, in the same manner in which these products would compete absent the Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint.

C. Respondent's agreement with the Acquirer or New Acquirer (hereinafter "Divestiture Agreement") shall include the following and Baxter shall commit to satisfy the following:

1. Baxter shall grant to the Acquirer the right of reference to the data contained in Baxter's Product License Application ("PLA") No. 91-0649 (or to the New Acquirer the right of reference to the data contained in Immuno's PLA No. 82-027) for the Divested Inhibitor Assets on file with the FDA. Baxter shall make all necessary filings with the FDA authorizing the FDA to refer to the applicable PLA for the data in support of the PLA of the Acquirer or New Acquirer for a Factor VIII Inhibitor Treatment, including any supplemental PLAs or related PLAs. Provided, however, that the right of reference granted in this subparagraph does not constitute a general release of the data in Baxter's PLA No. 91-0649 (or Immuno's PLA No. 87-027), including any supplemental PLAs or related PLAs, except as it may appear in labeling.

2. Baxter shall Contract Manufacture and deliver to the Acquirer or the New Acquirer, in a timely manner and under reasonable terms and conditions, a supply of Factor VIII Inhibitor Treatments specified in the Divestiture Agreement, at Baxter's cost for a period not to

exceed three (3) years from the date the Divestiture Agreement is approved, or four (4) months after the date the Acquirer or the New Acquirer obtains all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States, whichever is earlier; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph III of this order submits to the Commission the certification provided for in subparagraph II.C.8 of this order.

3. Baxter shall make representations and warranties to the Acquirer or the New Acquirer that the Factor VIII Inhibitor Treatments that are Contract Manufactured by Baxter for the Acquirer or the New Acquirer meet the FDA approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Baxter shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Factor VIII Inhibitor Treatments Contract Manufactured by Baxter pursuant to subparagraph II.C.2 of this order to meet FDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving Baxter prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Baxter to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Baxter to be liable for any negligent act or omission of the Acquirer or the New Acquirer, or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by Baxter to the Acquirer or the New Acquirer.

4. During the term of Contract Manufacturing, upon reasonable request by the Acquirer, the New Acquirer or the trustee appointed pursuant to paragraph III of this order, Baxter shall make available to the trustee, or its agents or representatives, all records kept in the normal course of business that relate to the cost of manufacturing the Contract Manufactured Factor VIII Inhibitor Treatments.

5. Upon reasonable notice and request from the Acquirer or the New Acquirer to respondent, respondent shall provide: (a) such assistance and advice as is reasonably necessary to enable the Acquirer or the New Acquirer to obtain all necessary FDA approvals

to manufacture Factor VIII Inhibitor Treatments for sale in the United States; (b) such assistance as is reasonably necessary to enable the Acquirer to manufacture Factor VIII Inhibitor Treatments in substantially the same manner and quality employed or achieved by Baxter or, if divested to the New Acquirer, Immuno, prior to the Acquisition; and (c) consultation with knowledgeable employees of Baxter and training at a facility of the Acquirer's or the New Acquirer's choosing, for a period of time, not to exceed one (1) year, sufficient to satisfy the management of the Acquirer or the New Acquirer that its personnel are adequately trained in the manufacture of Factor VIII Inhibitor Treatments for sale in the United States. Such assistance shall include an on-site inspection of Baxter's facility that is performing the Contract Manufacturing, upon reasonable notice and request of the Acquirer or the New Acquirer. Respondent may require reimbursement from the Acquirer or the New Acquirer for all its direct out-of-pocket expenses incurred in providing the services required by this subparagraph II.C.5.

6. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission, with the divestiture application filed by respondent with the Commission requesting approval of the proposed divestiture, a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including an actual plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the trustee appointed pursuant to paragraph III of this order, periodic verified written reports setting forth in detail the efforts of the Acquirer or the New Acquirer to sell Contract Manufactured Factor VIII Inhibitor Treatments in the United States and to obtain all FDA approvals necessary to manufacture its own Factor VIII Inhibitor Treatments for sale in the United States. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary FDA approvals are obtained by the Acquirer or the New Acquirer to manufacture Factor VIII Inhibitor Treatments for sale in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the trustee within ten (10) days of its ceasing the sale of Contract

Manufactured Factor VIII Inhibitor Treatments in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own Factor VIII Inhibitor Treatments for sale in the United States.

8. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of Contract Manufactured Factor VIII Inhibitor Treatments in the United States prior to obtaining all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States; (b) abandons its efforts to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture Factor VIII Inhibitor Treatments for sale in the United States within three (3) years from the date the Commission approves the Divestiture Agreement with the Acquirer or the New Acquirer; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph III of this order certifies to the Commission that the Acquirer or the New Acquirer made good faith efforts to obtain all necessary FDA approvals for manufacturing Factor VIII Inhibitor Treatments for sale in the United States and that such FDA approvals appear likely to be obtained within such extended time period.

9. The Divestiture Agreement with an Acquirer shall provide that if it is terminated, the Autoplex Assets shall revert back to the respondent and either the Autoplex Assets or the FEIBA Assets shall be divested by the trustee to a New Acquirer pursuant to the provisions of paragraph IV of this order.

D. While the obligations imposed by paragraphs II, III or IV of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture and sell both of the Factor VIII Inhibitor Treatments in the United States; (2) to maintain the viability and marketability of both of the Divested Inhibitor Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Factor VIII Inhibitor Treatments; and (3) to prevent the destruction, removal, wasting, deterioration or

impairment of any of the Divested Inhibitor Assets or tangible assets including the manufacturing facilities needed to Contract Manufacture and sell both of the Factor VIII Inhibitor Treatments, except for ordinary wear and tear.

III.

It is further ordered, That:

A. At any time after this order becomes final, the Commission may appoint a trustee to monitor whether Baxter and the Acquirer or the New Acquirer expeditiously perform their respective responsibilities as required by the Divestiture Agreement approved by the Commission and this order. Baxter shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the trustee appointed pursuant to this paragraph:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall have the power and authority to monitor respondent's compliance with the terms of paragraph II of this order and with the Divestiture Agreement with the Acquirer or the New Acquirer.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor respondent's compliance with the terms of paragraph II of this order and monitor the efforts of the Acquirer or New Acquirer to obtain all necessary FDA approvals to manufacture and sell Factor VIII Inhibitor Treatments.

4. The trustee shall serve until such time as the Acquirer or the New Acquirer has received all necessary FDA approvals to research, develop, manufacture and sell Factor VIII Inhibitor Treatments in the United States.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information relating to the research, development, manufacture or sale of Baxter's Factor VIII Inhibitor Treatments, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the cost of manufacturing Factor VIII Inhibitor Treatments. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to monitor respondent's compliance with paragraph II of this order and the Divestiture Agreement with the Acquirer or the New Acquirer.

6. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph III.A.1 of this order.

9. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of paragraph II of this order and the Divestiture Agreement with the Acquirer or the New Acquirer.

10. The trustee shall evaluate reports submitted to it by the Acquirer or the New Acquirer with respect to the efforts of the

Acquirer or the New Acquirer to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States and shall report in writing to the Commission every sixty (60) days concerning compliance by the respondent and the Acquirer or the New Acquirer, with the provisions of paragraph II of this order and the efforts of the Acquirer or the New Acquirer to obtain all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States.

B. If the Commission terminates the Divestiture Agreement pursuant to subparagraph II.C.8 of this order, the Commission may direct the trustee to seek a New Acquirer, as provided for in paragraph IV of this order and the Divested Inhibitor Assets shall revert back to the respondent.

IV.

It is further ordered, That:

A. If Baxter fails to comply with the terms of paragraph II of this order and to divest absolutely and in good faith the Autoplex Assets within four (4) months from the date respondent signed the agreement containing consent order, or if the Commission terminates the Divestiture Agreement pursuant to subparagraph II.C.8 of this order, then any executed Divestiture Agreement with the Acquirer shall be terminated and the Commission may appoint a trustee to: (a) divest either the Autoplex Assets or the FEIBA Assets; (b) effect all arrangements, including, but not limited to, the licensing of any Baxter patents and know-how not related solely to the research, development, manufacture or sale of Factor VIII Inhibitor Treatments, necessary to enable the New Acquirer to manufacture and sell a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets; and (c) enter into a Divestiture Agreement with a New Acquirer that satisfies the requirements of paragraph II.C of this order. In the event that the New Acquirer does not choose to acquire all of the physical assets included in the Divested Inhibitor Assets because the New Acquirer does not need such physical assets in order to engage in the manufacture and sale of Factor VIII Inhibitor Treatments, respondent shall not be required to divest such assets. The purpose of the divestiture is to ensure the continued competition between Autoplex and FEIBA, in the same manner in which these

products would compete absent the Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint. Neither the decision of the Commission to appoint the trustee nor the decision of the Commission not to appoint the trustee to divest either the Autoplex or the FEIBA Assets under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed under paragraph IV.A of this order to divest either the Autoplex Assets or the FEIBA Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee as appointed pursuant to paragraph III of this order.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest either the Autoplex Assets or the FEIBA Assets to a New Acquirer and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of paragraph II.C of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by paragraph IV.A of this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in subparagraph IV.B.3 of this order to divest either the Autoplex Assets or the FEIBA

Assets and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of paragraph II.C of this order. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the twelve (12) month period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, data, facilities and technical information related to the manufacture, distribution, or sale of Factor VIII Inhibitor Treatments or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities.

6. The trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price and the trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that Baxter effects all arrangements necessary to enable the New Acquirer to produce a Factor VIII Inhibitor Treatment using the Divested Inhibitor Assets; to assure that Baxter enters into a Divestiture Agreement with the New Acquirer to acquire the Divested Inhibitor Assets that complies with the provisions of paragraph II.C of this order; and to assure that Baxter complies with the remaining provisions of paragraph II.D of this order. The divestiture shall be made to, and the Divestiture Agreement shall be made with, the New Acquirer in the manner set forth in paragraph II.C of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment

bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's locating a New Acquirer and assuring compliance with this order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV.B of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this order.

11. The trustee shall have no obligation or authority to operate or maintain the Divested Inhibitor Assets.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning his or her efforts to divest either the Autoplex Assets or the FEIBA Assets as required by this order.

V.

It is further ordered, That:

A. Within four (4) months of the date Baxter signed the agreement containing consent order in this matter, Baxter shall grant a non-exclusive, royalty-free license, in perpetuity, and in good faith,

of the Immuno Fibrin Sealant Assets, and shall execute an agreement that includes the provisions required by paragraph V.C of this order.

B. The Immuno Fibrin Sealant Assets shall be licensed only to a Fibrin Sealant Licensee that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the licensing of the Immuno Fibrin Sealant Assets is to ensure the continued research and development competition between Immuno's Fibrin Sealant and Baxter's Fibrin Sealant, to ensure the use of the Immuno Fibrin Sealant Assets for the research, development, manufacture and sale of a Fibrin Sealant approved by the FDA for sale in the United States, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent's agreement with the Fibrin Sealant Licensee (hereinafter "License Agreement") shall not include any provision restricting the Fibrin Sealant Licensee's ability to sublicense the product. The License Agreement shall include the following and Baxter shall commit to satisfy the following:

1. Baxter shall grant to the Fibrin Sealant Licensee the right of reference to the data contained in Immuno's PLA No. 87-0509 for the Immuno Fibrin Sealant Assets on file with the FDA. Baxter shall make all necessary filings with the FDA authorizing the FDA to refer to Immuno's PLA No. 87-0509 for the data in support of the Fibrin Sealant Licensee's PLA for a Fibrin Sealant, including any supplemental PLAs or related PLAs. Provided, however, that the right of reference granted in this subparagraph does not constitute a general release of the data in Immuno's PLA No. 87-0509, including any supplemental PLAs or related PLAs, except as it may appear in labeling.

2. Once all necessary FDA approvals are obtained by Baxter (or Immuno prior to the Acquisition) to manufacture and sell Immuno's Fibrin Sealant in the United States, Baxter shall Contract Manufacture and deliver to the Fibrin Sealant Licensee in a timely manner and under reasonable terms and conditions, a supply of Immuno's Fibrin Sealant specified in the License Agreement, at Baxter's Cost for a period not to exceed three (3) years from the date the License Agreement is approved, or four (4) months after the date the Fibrin Sealant Licensee obtains all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States, whichever

is earlier; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph VI of this order submits to the Commission the certification provided for in subparagraph V.C.8 of this order.

3. Baxter shall make representations and warranties to the Fibrin Sealant Licensee that the Fibrin Sealant that is Contract Manufactured by Baxter for the Fibrin Sealant Licensee meets the FDA approved specifications therefor and is not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Baxter shall agree to indemnify, defend and hold the Fibrin Sealant Licensee harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Fibrin Sealant Contract Manufactured by Baxter pursuant to subparagraph V.C.2 of this order to meet FDA specifications. This obligation shall be contingent upon the Fibrin Sealant Licensee giving Baxter prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Baxter to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Baxter to be liable for any negligent act or omission of the Fibrin Sealant Licensee or for any representations and warranties, express or implied, made by the Fibrin Sealant Licensee that exceed the representations and warranties made by Baxter to the Fibrin Sealant Licensee.

4. During the term of Contract Manufacturing, upon reasonable request by the Fibrin Sealant Licensee or the trustee appointed pursuant to paragraph VI of this order, Baxter shall make available to the trustee, or its agents or representatives, all records kept in the normal course of business that relate to the cost of manufacturing the Contract Manufactured Fibrin Sealant.

5. Upon reasonable notice and request from the Fibrin Sealant Licensee to respondent, respondent shall provide: (a) such assistance and advice as is reasonably necessary to enable the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; (b) such assistance as is reasonably necessary to enable the Fibrin Sealant Licensee to manufacture Fibrin Sealant in substantially the same manner and quality employed or achieved by Baxter once it begins manufacturing

the Immuno Fibrin Sealant; and (c) consultation with knowledgeable employees of Baxter and training at either Immuno's or the Fibrin Sealant Licensee's facility, whichever the Fibrin Sealant Licensee chooses, for a period of time, not to exceed one (1) year, sufficient to satisfy the Fibrin Sealant Licensee's management that its personnel are adequately trained in the manufacture of Fibrin Sealant for sale in the United States. Such assistance shall include an on-site inspection of Baxter's facility that is performing the Contract Manufacturing, upon reasonable notice and request of the Fibrin Sealant Licensee. Respondent may require reimbursement from the Fibrin Sealant Licensee for all its direct out-of-pocket expenses incurred in providing the services required by this subparagraph V.C.5.

6. The License Agreement shall require the Fibrin Sealant Licensee to submit to the Commission, with the divestiture application filed by respondent with the Commission requesting approval of the proposed license, a certification attesting to the good faith intention of the Fibrin Sealant Licensee, and including an actual plan by the Fibrin Sealant Licensee, to obtain in an expeditious manner all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States.

7. The License Agreement shall require the Fibrin Sealant Licensee to submit to the trustee appointed pursuant to paragraph VI of this order, periodic verified written reports setting forth in detail the efforts of the Fibrin Sealant Licensee to sell Contract Manufactured Fibrin Sealant in the United States and to obtain all FDA approvals necessary to manufacture its own Fibrin Sealant for sale in the United States. The License Agreement shall require the first such report to be submitted 60 days from the date the Commission approves the License Agreement and every 90 days thereafter until all necessary FDA approvals are obtained by the Fibrin Sealant Licensee to manufacture Fibrin Sealant for sale in the United States. The License Agreement shall also require the Fibrin Sealant Licensee to report to the Commission and the trustee within ten (10) days of its ceasing the sale of any Contract Manufactured Fibrin Sealant in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own Fibrin Sealant for sale in the United States.

8. The License Agreement shall provide that the Commission may terminate the License Agreement if the Fibrin Sealant Licensee: (a)

voluntarily ceases for sixty (60) days or more the sale of Contract Manufactured Fibrin Sealant in the United States prior to obtaining all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; (b) abandons its efforts to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States; or (c) fails to obtain all necessary FDA approvals of its own to manufacture Fibrin Sealant for sale in the United States within three (3) years from the date the Commission approves the License Agreement with the Fibrin Sealant Licensee; provided, however, that the time period may be extended by the Commission in twelve (12) month increments for a period not to exceed an additional forty-eight (48) months if the trustee appointed pursuant to paragraph VI of this order certifies to the Commission that the Fibrin Sealant Licensee made good faith efforts to obtain all necessary FDA approvals for manufacturing Fibrin Sealant for sale in the United States and that such FDA approvals appear likely to be obtained within such extended time period. The License Agreement shall provide that if all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States are not obtained within the time frames specified by this subparagraph V.C.8, the Commission may terminate the License Agreement.

9. The License Agreement with a Fibrin Sealant Licensee shall provide that if it is terminated, the License Agreement shall be terminated and the trustee shall grant a new non-exclusive, royalty-free license to a new Fibrin Sealant Licensee pursuant to the provisions of paragraph VII of this order.

D. While the obligations imposed by paragraphs V, VI or VII of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain and obtain all necessary FDA approvals to research, develop, manufacture and sell Immuno's Fibrin Sealant in the United States; (2) to maintain the viability and marketability of the Immuno Fibrin Sealant Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Immuno Fibrin Sealant Assets or tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant, except for ordinary wear and tear.

VI.

It is further ordered, That:

A. At any time after this order becomes final, the Commission may appoint a trustee to monitor whether Baxter and the Fibrin Sealant Licensee expeditiously perform their respective responsibilities as required by the License Agreement approved by the Commission and this order. Baxter shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the trustee appointed pursuant to this paragraph:

1. The Commission shall select the trustee, subject to the consent of Baxter; which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee appointed pursuant to paragraphs III or IV of this order.

2. The trustee shall have the power and authority to monitor respondent's compliance with the terms of paragraph V of this order and with the License Agreement with the Fibrin Sealant Licensee.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor respondent's compliance with the terms of paragraph V of this order and monitor the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture and sell Fibrin Sealant.

4. The trustee shall serve until such time as the Fibrin Sealant Licensee has received all necessary FDA approvals to research, develop, manufacture and sell Fibrin Sealant in the United States.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information relating to the research, development, manufacture or sale of Immuno's Fibrin Sealant, or to any other relevant information, as the trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the cost of manufacturing Fibrin Sealant. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to

interfere with or impede the trustee's ability to monitor respondent's compliance with paragraph V of this order and the License Agreement with the Fibrin Sealant Licensee.

6. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph VI.A.1 of this order.

9. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of paragraph V of this order and the License Agreement with the Fibrin Sealant Licensee.

10. The trustee shall evaluate reports submitted to it by the Fibrin Sealant Licensee with respect to the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States and shall report in writing to the Commission every sixty (60) days concerning compliance by the respondent and the Fibrin Sealant Licensee with the provisions of paragraph V of this order and the efforts of the Fibrin Sealant Licensee to obtain all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States.

B. If the Commission terminates the Divestiture Agreement pursuant to subparagraph V.C.8 of this order, the Immuno Fibrin

Sealant Assets shall revert back to the respondent and the Commission may direct the trustee to seek a new Fibrin Sealant Licensee, as provided for in paragraph VII of this order.

VII.

It is further ordered, That:

A. If Baxter fails to comply with the terms of paragraph V of this order and enter into a License Agreement with a Fibrin Sealant Licensee within four (4) months from the date respondent signed the agreement containing consent order, the Commission may appoint a trustee to: (a) grant a non-exclusive, royalty-free license, in perpetuity, and in good faith, of the Immuno Fibrin Sealant Assets to a Fibrin Sealant Licensee; and (b) enter into a License Agreement with a Fibrin Sealant Licensee that satisfies the requirements of paragraph V.C of this order. The purpose of the licensing of the Immuno Fibrin Sealant Assets is to ensure the continued research and development competition between Immuno's Fibrin Sealant and Baxter's Fibrin Sealant, to ensure the use of the Immuno Fibrin Sealant Assets for the research, development, manufacture and sale of Fibrin Sealant approved by the FDA for sale in the United States, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Neither the decision of the Commission to appoint the trustee nor the decision of the Commission not to appoint the trustee to license the Immuno Fibrin Sealant Assets under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed under paragraph VII.A of this order to license the Immuno Fibrin Sealant Assets and enter into a License Agreement with a Fibrin Sealant Licensee, Baxter shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Baxter, which consent shall not be unreasonably withheld. If Baxter has not opposed, in writing, including the reasons for

opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Baxter of the identity of any proposed trustee, Baxter shall be deemed to have consented to the selection of the proposed trustee. This trustee may be the same trustee as appointed pursuant to paragraphs III, IV or VI of this order.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets to a Fibrin Sealant Licensee and to enter into a License Agreement with a Fibrin Sealant Licensee pursuant to the terms of paragraph V.C of this order, which License Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the trustee, Baxter shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the non-exclusive, royalty-free license required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in subparagraph VII.B.3 of this order to license the Immuno Fibrin Sealant Assets and enter into a License Agreement with a Fibrin Sealant Licensee that satisfies the requirements of paragraph V.C of this order. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of licensing or believes that licensing can be achieved within a reasonable time, the twelve (12) month period may be extended by the Commission or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, data, facilities, and technical information related to the Immuno Fibrin Sealant Assets, or to any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to accomplish the licensing of the Immuno Fibrin Sealant Assets required by this order. Any delays in licensing the Immuno Fibrin Sealant Assets required by this order caused by respondent shall extend the time under subparagraph VII.B.4 of the order for accomplishing the

licensing of the Immuno Fibrin Sealant Assets required by this order in an amount equal to the delay, as determined by the Commission or, for the court-appointed trustee, by the court.

6. The trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to grant a license of the Immuno Fibrin Sealant Assets as required by this order at no minimum price and the trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that Baxter enters into a License Agreement with a Fibrin Sealant Licensee to acquire the Immuno Fibrin Sealant Assets that complies with the provisions of paragraph V.C of this order; and to assure that Baxter complies with the remaining provisions of paragraph V.D of this order. The license shall be made to Fibrin Sealant Licensee in a manner set forth by this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall grant a non-exclusive, royalty-free license to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Baxter, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Baxter, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the licensing and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Baxter and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's ability to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses

incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph VII.B of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this order.

11. The trustee shall have no obligation or authority to operate or maintain the Immuno Fibrin Sealant Assets.

12. The trustee shall report in writing to Baxter and to the Commission every sixty (60) days concerning the trustee's efforts to grant a non-exclusive, royalty-free license of the Immuno Fibrin Sealant Assets as required by this order.

VIII.

It is further ordered, That respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I.

IX.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every ninety (90) days thereafter until Baxter has fully complied with the provisions of paragraphs II, IV, V and VII of this order, Baxter shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these paragraphs of this order. Baxter shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these paragraphs of this order, including a description of all substantive contacts or negotiations for accomplishing the divestiture, entering into the Divestiture Agreement and entering into a license Agreement, required by this

order, including the identity of all parties contacted. Baxter shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreement required by paragraph II and the License Agreement required by paragraph V of this order.

B. One (1) year from the date this order becomes final and annually until respondent has complied with all terms of this order or until the Acquirer or New Acquirer has obtained all necessary FDA approvals to manufacture Factor VIII Inhibitor Treatments for sale in the United States and the Fibrin Sealant Licensee has obtained all necessary FDA approvals to manufacture Fibrin Sealant for sale in the United States, whichever is later, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

X.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

XI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other

change that may affect compliance obligations arising out of the order.

Commissioner Starek recused.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Baxter International Inc. ("Baxter"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, Baxter has proposed to acquire the majority of the outstanding voting common stock of Immuno International AG; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Baxter entering into this Interim Agreement shall in no way be construed as an admission by Baxter that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Baxter understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade

Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Baxter agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. That it will execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Baxter signs the Consent Agreement.

2. That it will take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture and sell both of the Factor VIII Inhibitor Treatments in the United States; (2) to maintain the viability and marketability of both of the Divested Inhibitor Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Factor VIII Inhibitor Treatments; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Divested Inhibitor Assets or tangible assets including manufacturing facilities needed to Contract Manufacture and sell both of the Factor VIII Inhibitor Treatments, except for ordinary wear and tear.

3. That it will take such actions as are necessary: (1) to maintain and obtain all necessary FDA approvals to research, develop manufacture and sell Immuno's Fibrin Sealant in the United States; (2) to maintain the viability and marketability of the Immuno Fibrin Sealant Assets as well as all tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of the Immuno Fibrin Sealant Assets or tangible assets, including manufacturing facilities, needed to Contract Manufacture and sell Immuno's Fibrin Sealant, except for ordinary wear and tear.

4. Baxter agrees that, from the date Baxter signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a and 4.b, it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the Commission finally issues its complaint and its Decision and Order.

5. Baxter waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, to Baxter made to its principal office, Baxter shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of Baxter and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Baxter relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to Baxter and without restraint or interference from it, to interview officers, directors, or employees of Baxter, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

IN THE MATTER OF

JEANETTE L. DOUGLASS

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3727. Complaint, March 24, 1997--Decision, March 24, 1997*

This consent order prohibits, among other things, Jeanette L. Douglass, an officer of Computer Business Services, Inc. ("CBSI"), from misrepresenting the earnings or success rate of CBSI investors; the existence of a market for CBSI's products or services; the amount of time it takes investors to recoup their investments; and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless she possesses reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements and requires certain disclosures to investors.

Appearances

For the Commission: *C. Steven Baker, Evan Siegel, Alan Krause and Mary Tortorice.*

For the respondent: *Lewis Keiler, Sonnenschein, Nath & Rosenthal, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jeanette L. Douglass, individually and as an officer and director of Computer Business Services, Inc. ("CBSI"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Jeanette L. Douglass is an officer and director of CBSI. Individually or in concert with others, she formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. Her principal office or place of business is at 19348 Flippen Rd., Westfield, Indiana.

2. Respondent, in concert with CBSI, has advertised, offered for sale, sold, and distributed to the public home-based business ventures. Prospective consumers who purchase home-based business ventures from CBSI come to be known by the company as "Center Owners." A "center" ordinarily consists of computer hardware, software,

training manuals, marketing materials, and available technical assistance which, together, are represented to enable the owner to create products and services that can be resold profitably to the general public.

3. Beginning no later than April 1988, and continuing through the present, respondent, in concert with CBSI, has disseminated or has caused to be disseminated magazine, newspaper and postcard advertisements, including but not necessarily limited to the attached Exhibit A, to induce consumers nationwide to call a toll-free number to order a free information kit. Respondent, in concert with CBSI, represents through these advertisements that consumers can expect to earn \$4,000 per month using CBSI's "proven turnkey business." Exhibit A.

4. Respondent, in concert with CBSI, has also disseminated or has caused to be disseminated advertisements for home-based business ventures through commercial online services, including, but not limited to, CompuServe and America Online. Respondent, in concert with CBSI, represents through these advertisements that consumers can expect to earn \$4,000 per month through CBSI's home-based business ventures. Exhibit B.

5. Respondent, in concert with CBSI, has disseminated or has caused to be disseminated several information packets containing brochures and an audio cassette tape recording by the co-founders of CBSI, George and Jeanette Douglass. These materials, which are sent to prospective purchasers of home-based business ventures, contain the following statements:

(a) In the last 13 years, we've identified over 30 needs and wants. Each one of them is easy to run, helps other people, and provides you a good profit. Computer Business Services has not only identified these 30 needs, but has developed the technology to perform these services easily and profitably. Along with the technology, we've developed all the strategies to perform these services, plus the ways to find the people that need these services, and you can do it all from your home.

(b) Most of the couples and individuals that we've helped start their business have been extremely successful. . . .

(c) Each one of the programs I'm about to explain to you provides a needed service to the people or organizations in your community. Each service adds value to the people's lives you serve, and you can be proud to provide these services. Each program is a proven money-maker, and is now being operated successfully by our present center owners.

(d) Once you start to advertise your CBSI center, people know about it immediately and start coming to you for your services. Every business or

organization needs to contact people and you have the only way to contact people quickly, inexpensively and effectively. Once this word gets out, you'll have to expand your services very rapidly, just as we did.

(e) Now we've already helped thousands of couples and individuals turn into successful business people, and we believe we can help you, too.

(f) If you get our CBSI computer program and follow our proven strategies, I really don't believe that you can do it badly enough not to be successful. Once you get the word out that you've got these programs available, people will come to you.

(g) We right now have 30 services you can perform. We have thousands of center owners already earning good money, and I believe you can, too.

(h) Now you have 24 hours in a day. You work 8, sleep 8, and have 8 free hours. If you take 8 free hours times 7 days a week, you have 56 hours. Divide that by two, and you have 28 hours that you can use in this business. Now I realize I've not included weekends. If you use 28 hours per week to do this program, you will be extremely successful.

(i) I can't guarantee your success. I can't guarantee that you'll make \$4,000 to \$10,000 a month. I don't know what's inside of you. But I do know this. Our services are needed in every community in the United States. Our programs really work, and you can earn more money than you ever dreamed possible if you will work our programs.

(j) Most of the couples and individuals that we've helped start their business have been extremely successful and our relationship with them has been exhilarating.

(k) This is a business that you can build a few customers at a time and reap the profits for a long time to come. I call it stack up income. You set it up once and get paid for it every month. So after a few years, you have big money coming in every month, even if you take a month off.

(l) Each of these services is a proven money-maker in large cities, small towns and rural communities throughout the country.

(m) Now some of our center owners use the computer dialing equipment for telemarketing on the unattended mode. Some just don't like to use the computer for telemarketing at all, and in some states, there are regulations that limit the use in the unattended mode. . . . Again, you must make the decision how you use your equipment. Some center owners do very well using their computer dialing equipment for finding people who want their products. Others use the unattended mode to find qualified prospects for insurance, real estate, chimney cleaning and so forth. If they call from 9:00 a.m. to 9:00 p.m., they usually can call around 1,000 people a day.

6. Respondent, in concert with CBSI, also has disseminated or has caused to be disseminated materials containing endorsements by and photographs of purported Center Owners who convey the impression that ordinary consumers can successfully start and operate one or a combination of CBSI's home-based business ventures. These materials include but are not necessarily limited to the attached Exhibit C. For example, these materials contain the following statements and depictions:

(a) "LEE STOUT: I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point where I can make \$100,000+ per year. . . . If I can be successful at this, anyone can!"

(b) "DOUG STROUD: I earned \$101,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available."

(c) "CURTIS MAPP: I now have 258 subscribers to the CBSI Computerized Monitor Service program. Each subscriber is billed at \$30.00 per month, which means I'm earning over \$7,700 per month with this program alone."

7. Beginning no later than January 1991, and continuing through the present, respondent, in concert with CBSI, has sold home-based business ventures to approximately 15,000 consumers. Center Owners ordinarily spent between \$3,000 and \$16,000 on CBSI's products and services.

Profitability

8. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owners ordinarily operate profitable businesses out of their own homes.

9. In truth and in fact CBSI Center Owners do not ordinarily operate profitable businesses out of their own homes. Indeed, it is rare for CBSI Center Owners to recoup even their initial investments.

10. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

Substantial Income

11. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that:

- a. CBSI Center Owners ordinarily earn substantial income.
- b. CBSI Center Owners can reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month.

12. In truth and in fact:

- a. CBSI Center Owners do not ordinarily earn substantial income. Indeed, the vast majority of Center Owners never even recoup their initial average investments of approximately \$9,000.

b. CBSI Center Owners can not reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month. Indeed, the vast majority of Center Owners not only never earn \$4,000 per month, but never earn \$4,000 over the duration of their businesses.

13. Therefore, the representations set forth in paragraph eleven were, and are, false or misleading.

Endorsements: Actual Experiences

14. Through the means described in paragraph six, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials reflect the actual experiences of those Center Owners.

15. In truth and in fact, in numerous instances, CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials do not reflect those Center Owners' actual experiences.

16. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

Endorsements: Typicality and Ordinariness

17. Through the means described in paragraph six, respondent, in concert with CBSI, has represented, expressly or by implication, that CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

18. In truth and in fact, CBSI Center Owner endorsements appearing in CBSI's advertisements and promotional materials do not reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

19. Therefore, the representation set forth in paragraph seventeen was, and is, false or misleading.

Substantiation for Earnings Claims

20. Through the use of the statements and depictions contained in CBSI's advertisements and promotional materials referred to in

paragraph eleven, respondent, in concert with CBSI, has represented, expressly or by implication, that she, in concert with CBSI, possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven, at the time the representations were made.

21. In truth and in fact, respondent, in concert with CBSI, did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven, at the time the representations were made. Therefore, the representation set forth in paragraph twenty was, and is, false or misleading.

Automatic Telephone Dialing Systems

22. Through the means described in paragraphs two through seven, respondent, in concert with CBSI, has represented, expressly or by implication, that consumers can successfully utilize automatic telephone dialing systems to market their businesses.

23. Respondent, in concert with CBSI, has failed to disclose in advertisements and promotional materials for the outbound telemarketing programs that federal law prohibits the use of an automatic telephone dialing system in the unattended mode to initiate a telephone call to any residential telephone line to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party. This fact would be material to consumers in their purchase or use of CBSI's home-based business ventures. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

24. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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Complaint

EXHIBIT A

EXHIBIT A

**FREE** CBI 486 Computer

Earn \$4,000 Per Month From Your Home With A Computer!

Begin part-time and still retain the security of your present position. This is a proven turnkey business an individual or couple can run. If you purchase our software and business program, we will give you the computer and printer. If you already own a computer, you may receive a discount. You do not need to own, or know how to run, a computer—we will provide free home office training. Financing available.

Learn how other couples, and individuals like yourself, are building a lifetime income!

To receive free cassettes and color literature, call toll-free: **1-800-343-8014, ext. 145**

(In Indiana: 317-758-4415) Or Write

COMPUTER BUSINESS SERVICES INC., 260 PLAZA, STE. 145, SHERIDAN, INDIANA 46069

Complaint

123 F.T.C.

EXHIBIT B

EXHIBIT B

EARN \$4,000 PER MONTH ON THE NEW INFORMATION SUPERHIGHWAY

All you need is a kitchen table, computer, modem and a telephone

There is an exploding worldwide need for instant information. You can now be part of the start of a revolutionary new industry.

Computer Business Services Inc. the world leader in instant information immediately needs couples and individuals to provide these services from their homes. You may start part time and retain the security of your present job. Quit spending money on your computer and let it earn money for you. We provide a complete operation including everything you need to start plus the complete training to be a success.

If you purchase our software and training materials, we will provide you with a modem, color monitor and printer at no extra cost. If you already own a computer we will give you a discount. Financing available.

Call 1-800-343-8014 ext. 2050

24 hours a day to receive FREE color material and two cassette tapes. You can also make a profit from and be a part of the new instant information industry.

WORLD'S LARGEST POSTCARD

WARNING: Statistics show that reading this card
can change your life!

KEVIN ZICHNI
I earned \$1,000 in the most selling personalized children's books part time. I'm also running the Financial Aid for College program, and I sell a lot through high schools. I have worked on Voces Mail and Voces Message Center. I now have 30 accounts, and I'm trying about 20 new accounts per week. I'm done with working and I'm going to the sky's the limit for me. The sky's the limit for me."

LEE STOUT

"I am a very talented CBS Center Owner. Without my involvement with CBS the opportunities that I have become realized would not have been possible. The CBS telecommunications program has enabled me to grow my business to the point where I can take my family to all CBS, from the local support in Tulsa to the national service, making support and service available at this, anyone can be successful at this, anyone can."

— Lee Stout, Tulsa, Oklahoma

SHARON MALAGIATI

"Change is [difficult], much more so for people than for me. I was a very successful person. I thought I came to know from experience in my career that I could do anything. I was so used to things coming that I knew we had to do to survive in this economy. I was in the Midwest, in Indiana, to meet you. For years, just as you and Joanne and so many other people, I thought I had a full-time job waiting in our career world to start my own business. I was not. However, I told not happily because my dream was growing up to build my dream. People are not built to work for someone else. Everyone has their own dream and I look forward to work on each of us for many years to come."

DAVID SMITH

"I purchased a CBS 1000 Monogram & Emeryco machine and sent into business. I now have more business than I can actually handle. I'm to get about 150 per hour from my machine. Most days I come in and spend 100 to 150 hours, make six gross profit and spend 10 to 15 on parts, travel etc. I have a good working knowledge of the machine and I can identify all my machines up anywhere and do lots of business, even around malls, fairs etc. The business is very exciting and very profitable."

RYNDZULIN, S. N.

"Your company gave me the chance to do something I don't think was possible. Without your company, I would be stuck in a 9 to 5 job taking care of a child about leaving my children to the doctor for starting home from the streets with my CBS home audio. I am going to play a more active part in my children's lives. At the same time I am also able to provide for my family life fully. I am also able to make a difference in the lives (and education) of the children in my community. Without your audio system, doing it would be impossible."

7. **IT'S IN ROM**

I couldn't believe what I read as I read on the pages. It was just so good to be a "but a kid." Everything went great and the business plan was great. I made the Girl Weather and Lottery program. I had 23 screaming fans, and I tell them for \$50 to go to my restaurant really soon. I am also set to go. Personalized Bobby I have also set 70,000 worth of computer systems. I have a lot, and the harder I work the better I seem to be."

MARK BRANT
My name is Mark Brant and I'm running the CBSI video Database program. I recently signed a major cable company for advertising 10,000 coupons each month and plan to do much more. I also signed up three video stores as well. The concept is viral and the business is great!

DOUG STROUD

"I earned \$10,000 a year in 1986, and last year, with my own CBSI Business I Am running Voice Mail and Computer Home Monthly CBSI software in the U.S. available I believe CBSI went to Great Deal! The money was great! I was able to get a lot of money."

Salvatore: ...and I.
My brother and I have been United Carvers for 11 months. And we just want to say THANK YOU in all the times at CBS for their support and help. We carry that into this company and take care of them. United Carvers is not a fly by night organization and we do appreciate what we look forward to with the future too.

[illegible][illegible]

Marion J. *51*

Wanda can't describe the fun & excitement my Daughters provide! After three years, I am just as enthusiastic about it as in the beginning. It has been fun, busy, learning to touch lives and have a ministry in a community and gain a good income as well. I am enjoying it all. I suppose I love the ministry, religious education, and the love of my Daughters. But I love the love, the love, the love of my Daughters.

Call your program advisor **TODAY at**
1-800-545-2274, ext. 347

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EXHIBIT C

Complaint

EXHIBIT C

PAGE

AAGUDDYME

New Programs In The Works!



VON UNTER DER OPERATION: BILDUNGSGEHT AUF ALLES
das Name des Mannes, der die Operation durchführt, ist
nicht der Name, der die Operation durchführt, ist

THE UNIVERSITY OF CHICAGO

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1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them. The list includes names such as "J. H. Smith", "W. J. Jones", and "M. J. Brown", among others.

HAVE YOU RECEIVED THE
COPIES OF THE

COLOR LITERATURE Y

now drawing:

1

HAVE YOU RECEIVED THE

COLOR LITERATURE YOU ORDERED?
 You would have received a color literature package and literature on color.

you anything!

1

**For Further Information
Listen to the Tapes**

They Explain All Of The Following Services In Detail

- [illegible]

FREE PROGRAM

...the

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent, her attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Jeanette L. Douglass is an officer and director of Computer Business Services, Inc. Her principal office or place of business is at 19348 Flippen Rd., Westfield, Indiana.

2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Business venture*" means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436, and which consists of payment of any consideration for:

A. The right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. 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 radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. Unless otherwise specified, "*respondent*" shall mean Jeanette L. Douglass, individually, and each of his [sic] agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. "*Automatic telephone dialing system*" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. 227(a)(1).

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

A. That consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;

B. That consumers who purchase or use such business ventures ordinarily earn substantial income;

C. The existence of a market for the products and services promoted by respondent;

D. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;

E. The amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or

F. By use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondent from using hypothetical examples which do not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondent possesses and relies upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other

evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it has 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 respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

A. Use, publish, or refer to any user testimonial or endorsement unless respondent has good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or

B. Represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. The representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation; or

2. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

a. What the generally expected results would be for users of the product, or

b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further,

however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondent from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

V.

It is further ordered, That respondent Jeanette L. Douglass shall for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

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

VI.

It is further ordered, That respondent Jeanette L. Douglass, for a period of five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent Jeanette L. Douglass, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business addresses and telephone numbers and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent Jeanette L. Douglass, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

IX.

This order will terminate on March 24, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in fewer than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

PHILLIPS PETROLEUM COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3728. Complaint, March 28, 1997--Decision, March 28, 1997

This consent order requires, among other things, the Oklahoma-based corporation to divest approximately 160 miles of pipeline belonging to ANR Pipeline Company and Phillips in the Anadarko Basin area, and to maintain the assets in their current condition and to provide customers under the contract with ANR with gathering services at existing terms and conditions pending divestiture. The consent order also requires Phillips, for ten years, to notify the Commission before acquiring during any 18-month period more than five miles of gas gathering pipelines in the specified areas of the Oklahoma counties.

Appearances

For the Commission: *George Cary, Frank Lipson, Phillip Broyles and William Baer.*

For the respondent: *William Kolasky, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), is subject to the jurisdiction of the Commission and that Phillips' acquisition of certain gas-gathering assets of ANR Pipeline Company ("ANR"), a subsidiary of the Coastal Corporation, is in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. PHILLIPS

PARAGRAPH 1. Respondent Phillips is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Phillips Building, Bartlesville, Oklahoma.

PAR. 2. Respondent Phillips is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE PROPOSED ACQUISITION

PAR. 3. Respondent Phillips, through its subsidiary GPM, entered into a Purchase and Sale Agreement dated January 12, 1996, with ANR to acquire the gas gathering assets currently owned by ANR.

III. THE RELEVANT MARKETS

PAR. 4. The relevant line of commerce in which to analyze the effects of the merger is natural gas gathering services *i.e.*, the transportation, for the respondent's own account or for other persons, of natural gas from the wellhead or producing area to a natural gas transmission pipeline or a natural gas processing plant.

PAR. 5. The relevant sections of the country in which to analyze the effects of the acquisition are the areas in and around the following townships:

- a. T28N/R24W in Harper County, Oklahoma;
- b. T5N/R28E in Beaver County, Oklahoma;
- c. T29N/R21W in Woods County, Oklahoma;
- d. T24N/R25W in Ellis County, Oklahoma;
- e. T23N/R26W in Ellis Country, Oklahoma;
- f. T1N/R26E in Beaver, Oklahoma; and
- g. T23N/R18W in Woodward, Oklahoma.

PAR. 6. The relevant line of commerce is highly concentrated in the relevant geographic markets. The acquisition will significantly increase concentration in the relevant geographic markets set forth in paragraph five a-g.

PAR. 7. Respondent Phillips is an actual and potential competitor of ANR in the relevant line of commerce in the relevant geographic markets.

PAR. 8. Effective entry in the relevant line of commerce in the relevant geographic markets is unlikely.

IV. EFFECTS OF THE MERGER

PAR. 9. The effects of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in the following ways, among others:

a. Actual and potential competition between Phillips and ANR to provide natural gas gathering services to existing natural gas wells will be eliminated;

b. Actual and potential competition between Phillips and ANR to provide natural gas gathering services for new natural gas wells will be eliminated; and

c. The respondent is likely to exact anticompetitive price increases from producers in the relevant geographic market for performance of natural gas gathering services in the relevant geographic markets; and

d. Producers may be less likely to do exploratory and developmental drilling for new natural gas in the relevant geographic markets than prior to the merger.

V. VIOLATIONS CHARGED

PAR. 10. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

PAR. 11. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), of certain gas-gathering assets of ANR Pipeline Company,

a subsidiary of the Coastal Corporation ("Coastal"), and it now appearing that Phillips, hereinafter sometimes referred to as "respondent," having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Phillips Petroleum Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Phillips Building, Bartlesville, Oklahoma.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Phillips*" or "*respondent*" means Phillips Petroleum Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Phillips, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. "*Coastal*" means The Coastal Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Coastal, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. The "*Acquisition*" means the proposed acquisition by GPM Gas Corporation, a subsidiary of Phillips, of certain gas-gathering assets of ANR Pipeline Co., a subsidiary of Coastal, pursuant to the purchase agreement executed on January 12, 1996, by and between Phillips and Coastal as subsequently modified and amended.

D. "*Gas Gathering*" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

E. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

F. "*Related Person*" means a person controlled by, controlling, or under the common control with, another person.

G. "*Relevant geographic area*" means all portions of Harper County, Oklahoma, within fifteen miles of the Kansas border; all portions of Beaver County, Oklahoma, within twenty miles of the Harper County border; all portions of Ellis County, Oklahoma, within eighteen miles of the northwest corner of Ellis County; and Townships T23N/R14W, T23N/R15W, T23N/R16W, T23N/R17W, T23N/R18W, T22N/R16W, T22N/R17W, T22N/R18W, T21N/R17W, and T21N/R18W of Woodward, Major and Woods Counties, Oklahoma.

H. "*Schedule A assets*" means the whole and any part of the assets listed in Schedule A of this order.

I. "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That:

A. Following completion of the Acquisition, Phillips shall divest the Schedule A assets, absolutely and in good faith, at no minimum price, consistent with the provisions of this order.

B. The divestiture shall be made only to an acquirer or acquirers that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture of the Schedule A assets, Philips shall take such actions as are necessary to maintain the viability and marketability of the Schedule A assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A assets except for ordinary wear and tear.

D. Phillips shall comply with the Asset Maintenance Agreement, attached hereto and made a part hereof as Appendix I.

E. The purpose of the divestiture is to ensure the continued use of the Schedule A assets in the same type of business in which the Schedule A assets are used at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If Phillips has not divested the Schedule A assets consistent with paragraph II of this order by the later of April 30, 1997, or thirty days after Phillips consummates the Acquisition, the Commission may appoint a trustee to divest the Schedule A assets.

B. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Phillips shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any

other statute enforced by the Commission, for any failure by Phillips to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A, Phillips shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Phillips, which consent shall not be unreasonably withheld. The trustee shall preferably be a person with experience and expertise in acquisitions and divestitures of gas gathering assets. If Phillips has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Phillips of the identity of any proposed trustee, Phillips shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A assets. The trustee may, in his or her discretion, or at the direction of the Commission, effect such arrangements and divest (a) any additional gas gathering assets (including, but not limited to, gas gathering lines, compressors, surface equipment, and gas purchase and gathering contracts) of the respondent located in the relevant geographic area and (b) any additional assets necessary to connect the divested assets to the buyer's existing systems or to a third-party transmission line. The trustee may select such assets pursuant to clauses (a) and (b) of this paragraph to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of this order.

3. Within ten (10) days after appointment of the trustee, Phillips shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time,

the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. Phillips shall provide the trustee full and complete access to the personnel, books, records and facilities related to the Schedule A assets, or to any other relevant information, as the trustee may request. Phillips shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Phillips shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Phillips shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Phillips' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made to an acquirer or acquirers that receive the prior approval of the Commission, provided, however, if the trustee receives *bona fide* offers for any of the assets to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest that particular assets to the acquiring entity or entities selected by Phillips from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of Phillips, without bond or other security unless paid for by Phillips, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Phillips, such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Phillips, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets.

8. Phillips shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation to operate or maintain the Schedule A assets.

12. The trustee shall report in writing to Phillips and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Phillips shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire the Schedule A assets after their divestiture, or any assets the trustee may divest pursuant to paragraph III.C.2 of this order.

B. Acquire any stock, share capital, equity, or other interest in any person engaged in gas gathering within the relevant geographic area at any time within the two years preceding such acquisition, provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph (IV.B) if after the acquisition Phillips will hold cumulatively no more than two (2) percent of the outstanding shares of any class of security of such person; and provided further, that this paragraph (IV.B) shall not apply to the acquisition of any interest in a person that is not at the time of the acquisition engaged in gas gathering within the relevant geographic

area due to the sale within the preceding two years of all assets used for gas gathering within the relevant geographic area to another party who intended to operate said assets for gas gathering within the relevant geographic area; or

C. Enter into any agreements or other arrangements with any person or with two or more related persons to obtain, within any 18 month period, direct or indirect ownership, management, or control of more than five (5) miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the relevant geographic area.

V.

It is further ordered, That the prior notifications required by paragraph IV of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of Part 803, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Phillips. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code ("SIC") information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, Phillips shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the relevant geographic area and a statement showing, for the most recent 12 month period for which volume information is available, the quantity of gas that flowed through pipeline whose acquisition is proposed. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting

periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by paragraph IV of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Phillips has fully complied with the provisions of paragraphs II or III of this order, Phillips shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. Phillips shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Phillips shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order is entered, and at such other times as the Commission may require, Phillips shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VII.

It is further ordered, That Phillips shall notify the Commission at least thirty (30) days prior to any proposed change in Phillips, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, relating to any matters contained in this order.

IX.

It is further ordered, That this order shall terminate on March 28, 2007.

Decision and Order

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SCHEDULE A

SCHEDULE A

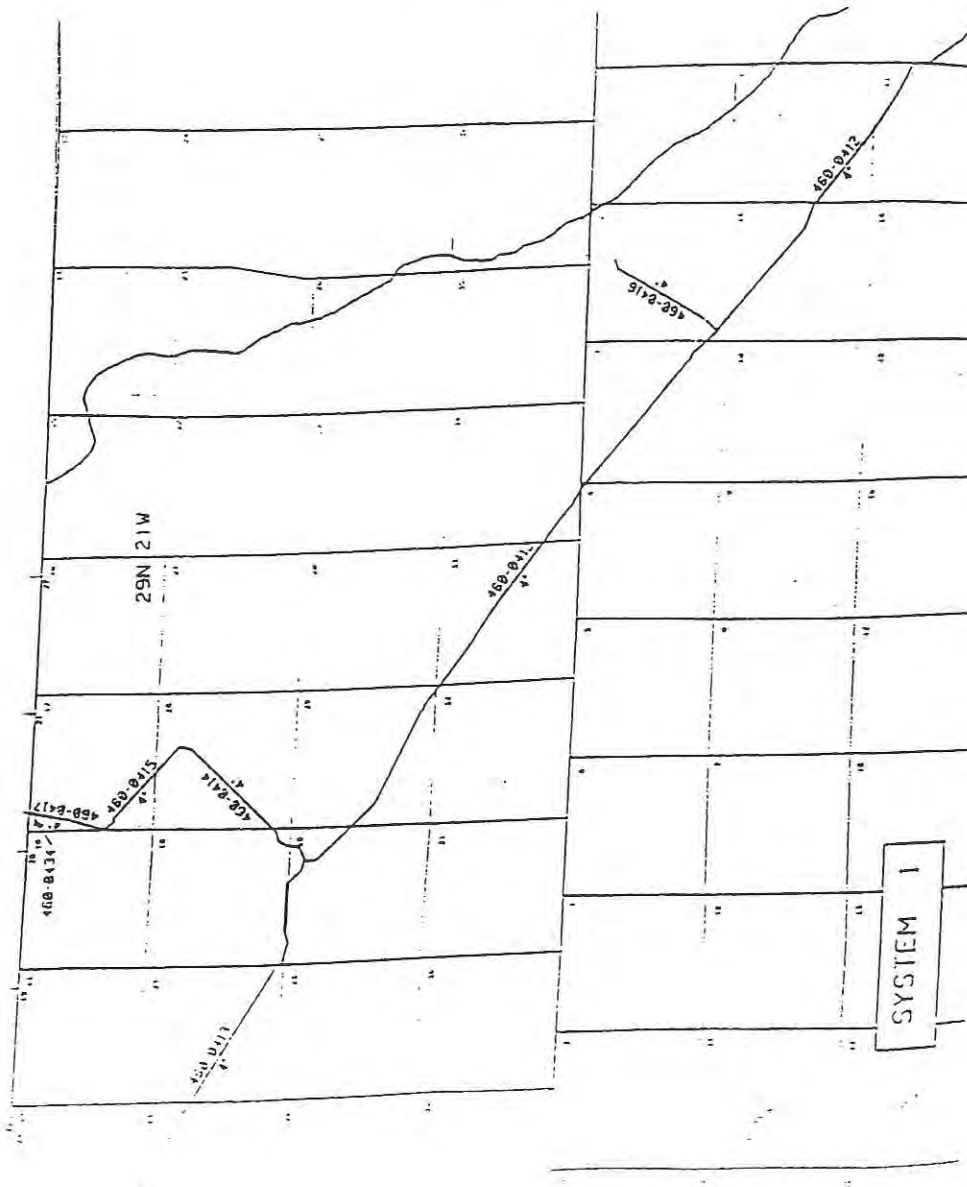
System 1 is located in T29N-R22W, T29N-R21W, T28N-R21W, and T28N-R20W in northeastern Harper County, Oklahoma, and consists of approximately 15 miles of 4" piping as described in the table and map below.

System Number	Item Number	Current Owner	ANR Line Number	Legal Location		Pipe Length Feet	Diameter Inches
				Township	Range		
1	1	ANR	460-413	29N	22W	17,400	4
				29N	21W		
	2	ANR	460-0434	29N	21W	400	4
	3	ANR	460-0417	29N	21W	3,800	4
	4	ANR	460-0415	29N	21W	3,700	4
	5	ANR	460-0414	29N	21W	11,000	4
	6	ANR	460-0412	29N	21W	40,500	4
				28N	21W		
				28N	20W		
	7	ANR	460-0416	28N	21W	5,000	4
				total		81,800	

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SCHEDULE A



Decision and Order

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SCHEDULE A

System 2 is located in T28N-R25W, T27N-R25W, T29N-R24W, T28N-R24W, T27N-R24W, T29N-R23W, T28N-R23W, and T28N-R22W in northern Harper County, Oklahoma, and consists of approximately 36 miles of 4" piping, approximately 14 miles of 6" piping, and approximately 3 miles of 10" piping as described in the table and map below.

[illegible]

System 3 is located in T6N-R27E, T5N-R27E, T5N-R28E, and, T4N-R28E in northeastern Beaver County, Oklahoma, and consist of approximately 18 miles of 4" piping and approximately 13 miles of 6" piping as described in the table and map below.

System Number	Item Number	Current Owner	Line Number	Legal Location		Pipe Length	Diameter Inches
				Township	Range	Feet	
3	1	GPM	OG15901	5N, 6N	27E	5,400	4
	2	GPM	OG15901-J	5N	27E	5,300	4
	3	GPM	OG15901-G	5N	27E	6,300	4
	4	GPM	OG159	5N	27E, 28E	29,200	6
	5	GPM	OG15901-K	5N	27E	1,800	4
	6	GPM	OG16501	5N, 6N	27E	11,200	6
	7	GPM	OG16501-B	6N	27E	500	4
	8	GPM	OG165D	5N	27E	600	4
	9	GPM	OG16501-C	6N	27E	700	4
	10	GPM	OG165E	6N	27E	6,800	4
	11	GPM	OG159F	5N	27E	5,100	4
	12	GPM	OG15901-F1	5N	27E	3,700	4
	13	GPM	OG15901-F	5N	27E	3,700	4
	14	GPM	OG159-B	5N, 6N	27E	4,500	4
	15	GPM	OG15901-B2	6N	27E	1,700	4
	16	GPM	LG-3	5N	28E	9,100	4
	17	GPM	LG-2	5N	28E	22,800	4
	18	GPM	LG-2-1	5N	28E	5,300	4
	19	GPM	LG-1	4N, 5N	28E	27,300	6
	20	GPM	LG-1-1	4N	28E	5,100	4
	21	GPM	LG-1-2 *	4N	28E	6,900	4
						163,000	

A hand-drawn map of a road network, likely a planning or engineering sketch. The map features a grid of roads with various labels and annotations:

- Top Section:**
 - CG 165E (top left)
 - CG 1591 (top left, below CG 165E)
 - CG 1591-32 (top center)
 - CG 1591-31 (top center, below CG 1591-32)
 - CG 1591-30 (top center, below CG 1591-31)
 - CG 1591-29 (top center, below CG 1591-30)
 - CG 1591-28 (top center, below CG 1591-29)
 - CG 1591-27 (top center, below CG 1591-28)
 - CG 1591-26 (top center, below CG 1591-27)
 - CG 1591-25 (top center, below CG 1591-26)
 - CG 1591-24 (top center, below CG 1591-25)
 - CG 1591-23 (top center, below CG 1591-24)
 - CG 1591-22 (top center, below CG 1591-23)
 - CG 1591-21 (top center, below CG 1591-22)
 - CG 1591-20 (top center, below CG 1591-21)
 - CG 1591-19 (top center, below CG 1591-20)
 - CG 1591-18 (top center, below CG 1591-19)
 - CG 1591-17 (top center, below CG 1591-18)
 - CG 1591-16 (top center, below CG 1591-17)
 - CG 1591-15 (top center, below CG 1591-16)
 - CG 1591-14 (top center, below CG 1591-15)
 - CG 1591-13 (top center, below CG 1591-14)
 - CG 1591-12 (top center, below CG 1591-13)
 - CG 1591-11 (top center, below CG 1591-12)
 - CG 1591-10 (top center, below CG 1591-11)
 - CG 1591-9 (top center, below CG 1591-10)
 - CG 1591-8 (top center, below CG 1591-9)
 - CG 1591-7 (top center, below CG 1591-8)
 - CG 1591-6 (top center, below CG 1591-7)
 - CG 1591-5 (top center, below CG 1591-6)
 - CG 1591-4 (top center, below CG 1591-5)
 - CG 1591-3 (top center, below CG 1591-4)
 - CG 1591-2 (top center, below CG 1591-3)
 - CG 1591-1 (top center, below CG 1591-2)
- Middle Section:**
 - CG 1591-32 (middle left)
 - CG 1591-31 (middle left, below CG 1591-32)
 - CG 1591-30 (middle left, below CG 1591-31)
 - CG 1591-29 (middle left, below CG 1591-30)
 - CG 1591-28 (middle left, below CG 1591-29)
 - CG 1591-27 (middle left, below CG 1591-28)
 - CG 1591-26 (middle left, below CG 1591-27)
 - CG 1591-25 (middle left, below CG 1591-26)
 - CG 1591-24 (middle left, below CG 1591-25)
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 - CG 1591-22 (middle left, below CG 1591-23)
 - CG 1591-21 (middle left, below CG 1591-22)
 - CG 1591-20 (middle left, below CG 1591-21)
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 - CG 1591-18 (middle left, below CG 1591-19)
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 - CG 1591-15 (middle left, below CG 1591-16)
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 - CG 1591-6 (middle left, below CG 1591-7)
 - CG 1591-5 (middle left, below CG 1591-6)
 - CG 1591-4 (middle left, below CG 1591-5)
 - CG 1591-3 (middle left, below CG 1591-4)
 - CG 1591-2 (middle left, below CG 1591-3)
 - CG 1591-1 (middle left, below CG 1591-2)
- Bottom Section:**
 - CG 1591-32 (bottom left)
 - CG 1591-31 (bottom left, below CG 1591-32)
 - CG 1591-30 (bottom left, below CG 1591-31)
 - CG 1591-29 (bottom left, below CG 1591-30)
 - CG 1591-28 (bottom left, below CG 1591-29)
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 - CG 1591-26 (bottom left, below CG 1591-27)
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 - CG 1591-23 (bottom left, below CG 1591-24)
 - CG 1591-22 (bottom left, below CG 1591-23)
 - CG 1591-21 (bottom left, below CG 1591-22)
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 - CG 1591-19 (bottom left, below CG 1591-20)
 - CG 1591-18 (bottom left, below CG 1591-19)
 - CG 1591-17 (bottom left, below CG 1591-18)
 - CG 1591-16 (bottom left, below CG 1591-17)
 - CG 1591-15 (bottom left, below CG 1591-16)
 - CG 1591-14 (bottom left, below CG 1591-15)
 - CG 1591-13 (bottom left, below CG 1591-14)
 - CG 1591-12 (bottom left, below CG 1591-13)
 - CG 1591-11 (bottom left, below CG 1591-12)
 - CG 1591-10 (bottom left, below CG 1591-11)
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 - CG 1591-8 (bottom left, below CG 1591-9)
 - CG 1591-7 (bottom left, below CG 1591-8)
 - CG 1591-6 (bottom left, below CG 1591-7)
 - CG 1591-5 (bottom left, below CG 1591-6)
 - CG 1591-4 (bottom left, below CG 1591-5)
 - CG 1591-3 (bottom left, below CG 1591-4)
 - CG 1591-2 (bottom left, below CG 1591-3)
 - CG 1591-1 (bottom left, below CG 1591-2)

Other labels and features include:

- CG 1591-32 (middle left)
- CG 1591-31 (middle left, below CG 1591-32)
- CG 1591-30 (middle left, below CG 1591-31)
- CG 1591-29 (middle left, below CG 1591-30)
- CG 1591-28 (middle left, below CG 1591-29)
- CG 1591-27 (middle left, below CG 1591-28)
- CG 1591-26 (middle left, below CG 1591-27)
- CG 1591-25 (middle left, below CG 1591-26)
- CG 1591-24 (middle left, below CG 1591-25)
- CG 1591-23 (middle left, below CG 1591-24)
- CG 1591-22 (middle left, below CG 1591-23)
- CG 1591-21 (middle left, below CG 1591-22)
- CG 1591-20 (middle left, below CG 1591-21)
- CG 1591-19 (middle left, below CG 1591-20)
- CG 1591-18 (middle left, below CG 1591-19)
- CG 1591-17 (middle left, below CG 1591-18)
- CG 1591-16 (middle left, below CG 1591-17)
- CG 1591-15 (middle left, below CG 1591-16)
- CG 1591-14 (middle left, below CG 1591-15)
- CG 1591-13 (middle left, below CG 1591-14)
- CG 1591-12 (middle left, below CG 1591-13)
- CG 1591-11 (middle left, below CG 1591-12)
- CG 1591-10 (middle left, below CG 1591-11)
- CG 1591-9 (middle left, below CG 1591-10)
- CG 1591-8 (middle left, below CG 1591-9)
- CG 1591-7 (middle left, below CG 1591-8)
- CG 1591-6 (middle left, below CG 1591-7)
- CG 1591-5 (middle left, below CG 1591-6)
- CG 1591-4 (middle left, below CG 1591-5)
- CG 1591-3 (middle left, below CG 1591-4)
- CG 1591-2 (middle left, below CG 1591-3)
- CG 1591-1 (middle left, below CG 1591-2)

Decision and Order

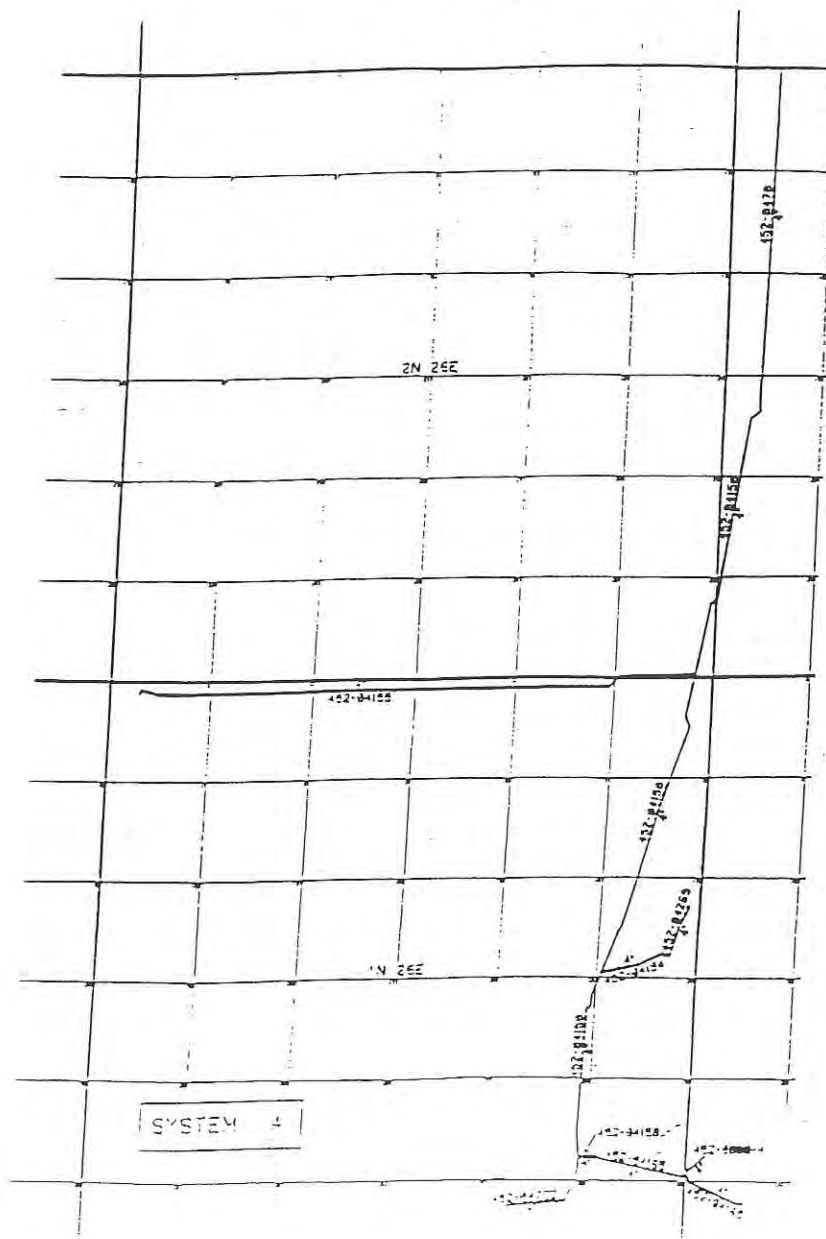
123 F.T.C.

SCHEDULE A

System 4 is located in T2N-R26E, T1N-R26E, T2N-R27E, and T1N-R27E in southeastern Beaver County, Oklahoma, and consists of approximately 21 miles of 4" piping as described in the table and map below.

System Number	Item Number	Current Owner	ANR Line Number	Legal Location		Pipe Length Feet	Diameter Inches
				Township	Range		
4	1	ANR	452-0470	2N	27E	15,500	4
	2	ANR	452-04150	2N	27E	45,000	4
				2N	26E		
				1N	26E		
	3	ANR	452-04155	1N, 2N	26E	30,600	4
	4	ANR	452-04194	1N	26E	3,900	4
	5	ANR	452-04269	1N	26E	3,200	4
	6	ANR	452-04158	1N	26E	1,700	4
	7	ANR	452-04232	1N	26E	2,900	4
	8	ANR	452-04165	1N	26E, 27E	8,200	4
	9	ANR	452-0000-4	1N	27E	1,400	4
					total	112,400	

SCHEDULE A



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System 5 is located in T23N-R26W, T23N-R25W, and T22N-R26W in northwestern Ellis County, Oklahoma, and consists of approximately 13 miles of 4" piping as described in the table and map below.

System Number	Item Number	Current Owner	ANR Line Number	Legal Location		Pipe Length Feet	Diameter Inches
				Township	Range		
5	1	ANR	452-4169	23N	26W	12,200	4
	2	ANR	452-4176	23N	26W	13,700	4
	3	ANR	452-4177	23N	25W, 26W	5,900	4
	4	ANR	452-4193	23N	26W	6,200	4
	5	ANR	452-4215	22N, 23N	26W	19,200	4
	6	ANR	452-4218	22N	26W	2,600	4
	7	ANR	452-4217	22N	26W	6,200	4
						68,000	

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Decision and Order

123 F.T.C.

SCHEDULE A

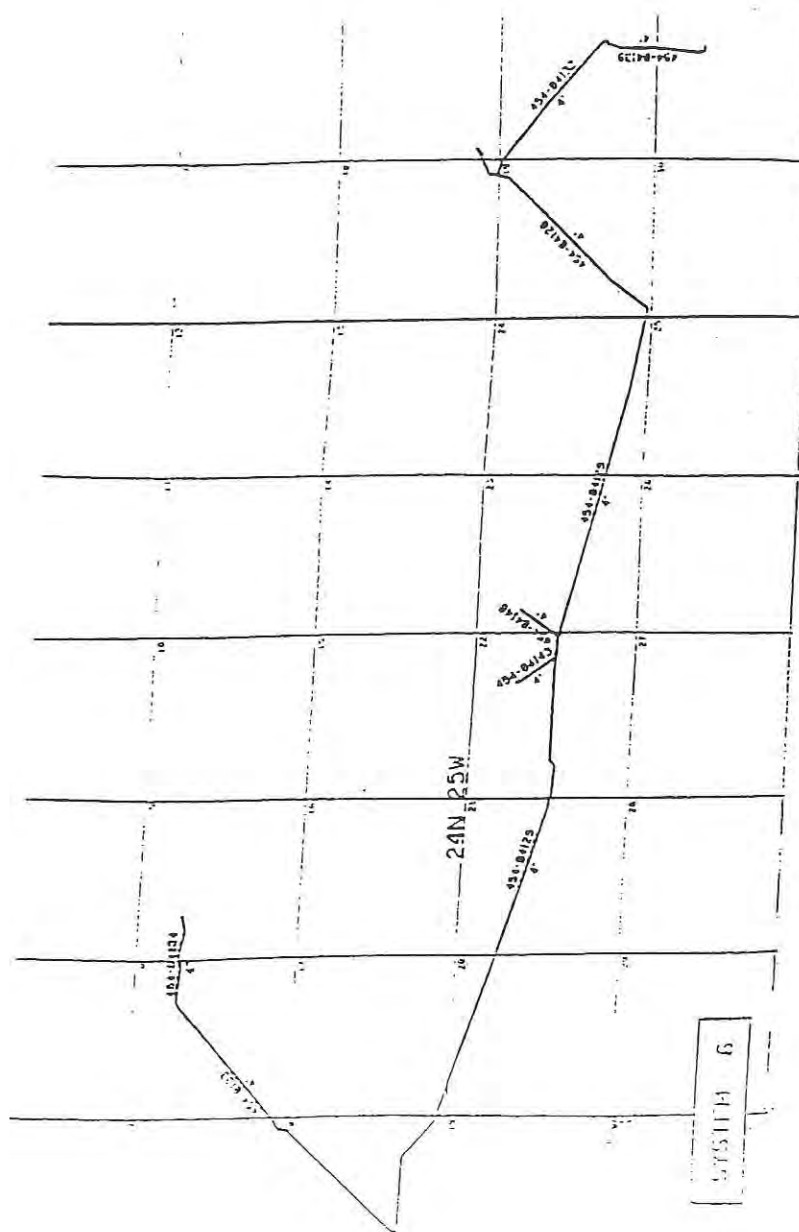
System 6 is located in T24N-R25W and T24N-R24W in northern Ellis County, Oklahoma, and consists of approximately 13 miles of 4" piping as described in the table and map below.

System Number	Item Number	Current Owner	ANR Line Number	Legal Location		Pipe Length Feet	Diameter Inches
				Township	Range		
6	1	ANR	454-04134	24N	25W	2,700	4
	2	ANR	454-04133	24N	25W	11,200	4
	3	ANR	454-04129	24N	24W	32,100	4
	4	ANR	454-04143	24N	25W	1,600	4
	5	ANR	454-04148	24N	25W	1,600	4
	6	ANR	454-04128	24N	24W	7,500	4
	7	ANR	454-04132	24N	25W	5,800	4
	8	ANR	454-04139	24N	24W	3,500	4
total						66,000	

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Decision and Order

SCHEDULE A

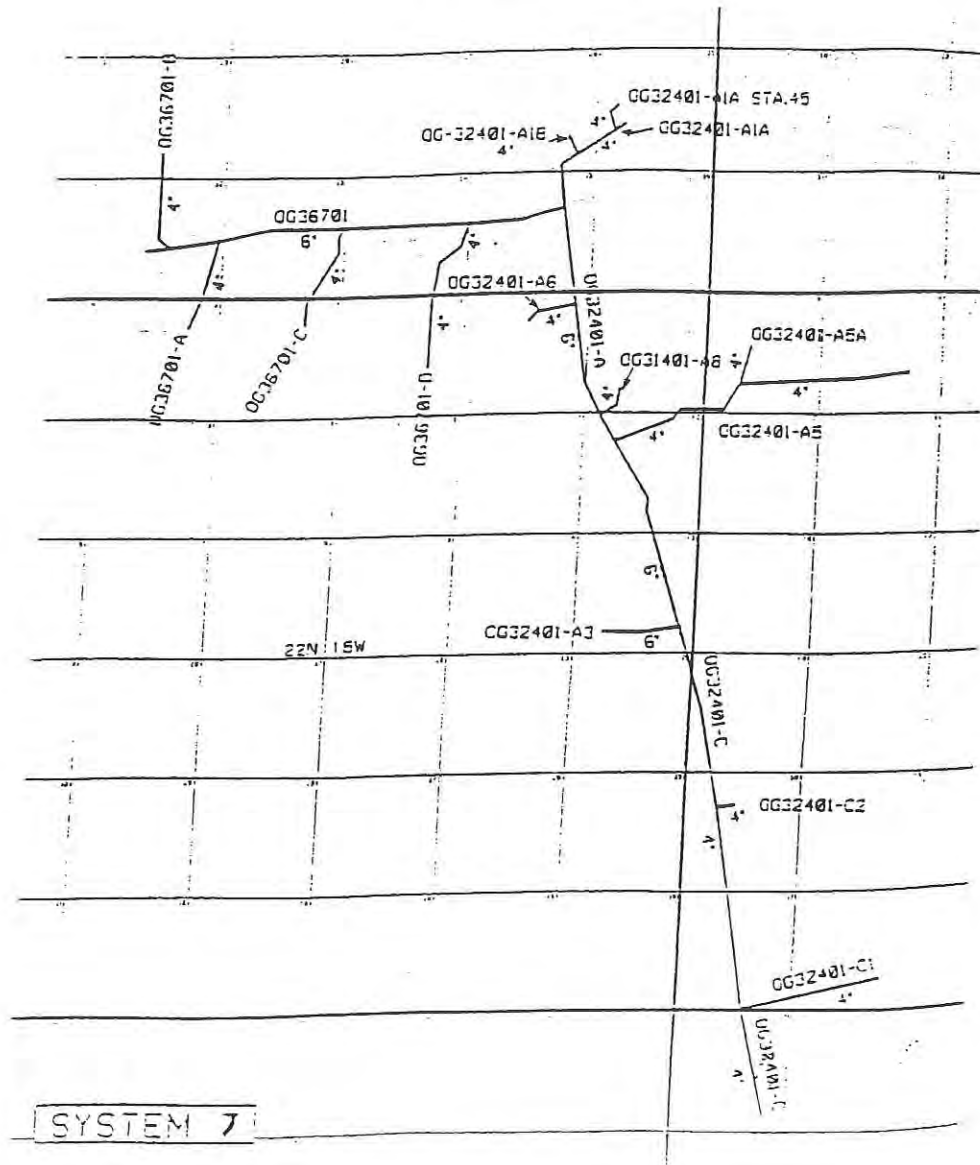


123 F.T.C.

System 7 is located in T23N-R18W, T22N-R18W, T22N-R17W, and T21N-R17W in Woodward County, Oklahoma, and consists of approximately 14 miles of 4" piping and approximately 8 miles of 6" piping as described in the table and map below.

System Number	Item Number	Current Owner	ANR Line Number	Legal Location		Pipe Length Feet	Diameter Inches
				Township	Range		
7	1	GPM	OG36701-B	23N	18W	7,900	4
	2	GPM	OG36701-A	22N, 23N	18W	4,200	4
	3	GPM	OG36701	23N	18W	18,000	6
	4	GPM	OG36701-C	22N, 23N	18W	4,300	4
	5	GPM	OG36701-D	22N, 23N	18W	7,000	4
	6	GPM	OG32401-A1A	23N	18W	3,300	4
	7	GPM	OG32401-A1B	23N	18W	1,000	4
	8	GPM	OG32401-A1A Sta. 45	23N	18W	1,500	4
	9	GPM	OG32401-A	22N, 23N	18W	22,300	6
	10	GPM	OG32401-A8	22N	18W	1,500	4
	11	GPM	OG32401-A5	22N	17W, 18W	11,500	4
	12	GPM	OG32401-A5A	22N	17W	3,400	4
	13	GPM	OG32401-A6	22N	18W	2,000	4
	14	GPM	OG32401-C	22N	18W	18,100	4
				22N	17W		
				21N	17W		
	15	GPM	OG32401-C2	22N	17W	900	4
16	GPM	OG32401-C1	22N	17W	6,300	4	
17	GPM	OG32401-A3	22N	18W	3,300	6	
						<u>116,500</u>	

SCHEDULE A



APPENDIX I

ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement ("Agreement") is by and between Phillips Petroleum Company ("Phillips"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Phillips Building, Bartlesville, Oklahoma; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively "the Parties").

PREMISES

Whereas, Phillips through its subsidiary GPM Gas Corporation ("GPM"), agreed to acquire certain gas-gathering assets of ANR Pipeline Company ("ANR"), a subsidiary of the Coastal Corporation ("Coastal"), pursuant to an agreement dated January 12, 1996, hereinafter "Acquisition"; and

Whereas, the Commission is investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules;

Whereas, Phillips and Coastal may consummate the acquisition upon provisional acceptance by the Commission of the Agreement Containing Consent Order; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested pursuant to the Agreement Containing Consent Order ("the Schedule A assets") during the period prior to their divestitures, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Schedule A assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Schedule A assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Phillips entering into this Agreement shall in no way be construed as an admission by Phillips that the Acquisition is illegal; and

Whereas, Phillips understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Schedule A assets, the Parties agree as follows:

TERMS OF AGREEMENT

1. Phillips agrees to execute the Agreement Containing Consent Order and, upon its issuance, to be bound by the Consent Order. The Parties further agree that each term defined in the Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15. U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Phillips and Coastal will be free to close the Acquisition any time after the Commission has provisionally accepted the Agreement Containing Consent Order.

3. Phillips agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a - 3.b, it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. On the day the divestiture set out in the Consent Order has been completed.

4. From the later of the date of this Agreement or from the date of their acquisition, until the divestiture set out in the Consent Order has been completed, Phillips shall maintain the viability, competitiveness and marketability of the Schedule A assets and shall not cause the wasting or deterioration of the Schedule A assets, nor shall Phillips encumber or otherwise impair their viability.

5.a. From the time that Phillips acquires the Schedule A assets that are currently owned by ANR until their divestiture has been completed in pertinent part, Phillips will offer to gather gas on those Schedule A assets on the same terms and conditions offered by ANR on the date of their transfer.

b. From the time that this Agreement is accepted by the Commission until Phillips divests in pertinent part the Schedule A assets that it owns as of the date of the Agreement, Phillips will continue to purchase or gather gas from wells connected to those assets on the same terms and conditions in effect as of the date of this Agreement.

c. If a producer, operator, or shipper executes a waiver of its rights under this paragraph, Phillips may contract on such other terms and conditions as it may deem appropriate.

6. Should the Commission seek in any proceeding to compel Phillips to divest itself of the assets to be acquired from Coastal or to seek any other injunctive or equitable relief, Phillips shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Phillips also waives all rights to contest the validity of this Agreement.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Phillips and to their principal offices, Phillips shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Phillips, in the presence of counsel, to inspect and copy all books; ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Phillips relating to compliance with this Agreement; and

b. Upon five (5) days' notice to Phillips and without restraint or interference from them, to interview officers or employees of Phillips, who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission.

Complaint

123 F.T.C.

IN THE MATTER OF

PRE-PAID LEGAL SERVICES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3729. Complaint, April 4, 1997--Decision, April 4, 1997*

This consent order prohibits, among other things, an Oklahoma-based corporation from making certain false and misleading claims concerning the benefits and appropriateness of living trusts or any legal instrument or service it offers and requires the respondent to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust. In addition, the respondent must offer a \$165 refund to every purchaser of an American Association for Senior Citizens trust who hasn't already received a refund and who doesn't live in certain states that have already been offered partial refunds in connection with an earlier multi-state settlement.

Appearances

For the Commission: *Elizabeth M. Palmquist.*

For the respondent: *Margaret Feinstein, Dickstein, Shapiro, Morin & Oshinsky, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Administrative Company, a corporation, Michael P. McIntyre, individually and as an officer and director of The Administrative Company, and Pre-Paid Legal Services, Inc. ("Pre-Paid"), a corporation (collectively, "respondents"), have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Michael P. McIntyre's current address is 4328 Hollow Oak, Dallas, Texas.

Respondent The Administrative Company has ceased doing business. Its address is the same as that of Michael P. McIntyre.

Respondent Pre-Paid Legal Services, Inc., is an Oklahoma corporation, with its principal office or place of business at 321 E. Main Street, Ada, Oklahoma.

PAR. 2. Respondents, at all times relevant to this complaint, have advertised, promoted, offered for sale, and sold living trusts to consumers. A living trust is a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

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.

PAR. 4. In the course of marketing their products to the public, respondents, directly or through commissioned sales agents, have caused to be disseminated sales literature concerning living trusts, including, but not necessarily limited to, the attached Exhibits 1 and 2. This literature contains the following statements:

(a) It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

YOU COULD SAVE THOUSANDS OF HARD EARNED DOLLARS!

Exh. 1.

(b) A LIVING TRUST eliminates ALL PROBATE FEES and COST. . . . With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs. Exh. 2, p. 18.

(c) A LIVING TRUST allows a quick DISTRIBUTION to your heirs. Assets in probate court are often frozen two years or more, even with a WILL. A LIVING TRUST allows these same assets to be distributed within days to your loved ones, since a LIVING TRUST avoids Probate Court. Exh. 2, p. 17.

(d) Total assets [pass through a] living trust [to] spouse or heirs [in] 1-3 days. Exh. 2, p. 24.

(e) A LIVING TRUST prevents a WILL CONTEST. . . . Through a LIVING TRUST your wishes will be carried out without interference. Exh. 2, p. 17.

(f) Membership entitles you to:

1. FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL. Exh. 2, p. 8.

(g) AN A-B LIVING TRUST protects against catastrophic MEDICAL COSTS. . . . With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs. Exh. 2, p. 19.

(h) Is There Anything Bad About a Living Trust? No. There is nothing bad about a Living Trust. Exh. 2, p. 20.

PAR. 5. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that:

(a) The use of a living trust avoids all probate and administrative costs.

(b) At death, a living trust allows assets to be distributed immediately or almost immediately.

(c) A living trust cannot be challenged.

(d) Living trusts are prepared by local attorneys.

(e) A living trust protects against catastrophic medical costs.

(f) A living trust is the appropriate estate planning device for every consumer.

(g) There are no disadvantages to a living trust.

PAR. 6. In truth and in fact:

(a) A living trust does not always avoid probate and administrative costs.

(b) The use of a living trust does not necessarily result in immediate distribution of assets since creditors may file claims against the trust instrument.

(c) A living trust is not immune from challenge.

(d) Most living trusts prepared for AASC members were not prepared by local attorneys. Instead, of the 3,064 living trusts prepared for AASC members in 43 states, approximately 3,000 were prepared by an Arizona attorney licensed to practice law solely in Arizona and New York.

(e) A living trust does not protect against catastrophic medical costs.

(f) A living trust is not appropriate for everyone. The determination of whether a living trust is appropriate for a particular consumer requires an examination of the assets that compose the consumer's estate, the potential tax consequences of the estate plan, and the objectives of the consumer.

(g) There are disadvantages to a living trust. For example, while probate law imposes a statutory deadline beyond which creditors can

no longer file claims against a will, in some states, there is no law limiting the time that creditors may file claims against a trust instrument.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, 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. 8. 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 seven was, and is, false and misleading.

PAR. 9. In their advertising, promoting, offering for sale, and sale of living trusts, respondents have failed to disclose that the transfer of an individual's assets into the living trust was not included in the price paid for creating the living trust and that it would be the responsibility of the individual purchaser to transfer assets into the trust, once created, or to arrange for another individual or entity to do so. This fact would be material to consumers in deciding whether to purchase a living trust and from whom to purchase a living trust. The failure to disclose this fact was, and is, a deceptive act or practice.

PAR. 10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

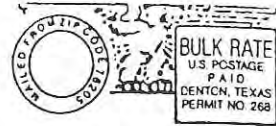
Complaint

123 F.T.C.

EXHIBIT 1

A.A.S.C.
1155 15th Street N.W. Suite 810
Washington D.C. 20077-1637

MAR 25 1984



URGENT MESSAGE ENCLOSED

**OPEN
IMMEDIATELY!**

TO

*****CAR-RT-SORT** CR-02
A37A 081 4812 S264 1549
541 VENTURA AVE
SAN MATEO CA 94403-3223

SPECIAL BULLETIN:

It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

**YOU COULD SAVE THOUSANDS
OF HARD EARNED DOLLARS!**

INFORMATION IS AVAILABLE ON HOW TO OBTAIN A FREE LIVING TRUST
Just fill out and return this postage paid card.

Name _____

Age: ☐ Male ☐ Female _____

County _____

Home Phone _____

Business Phone _____

*****CAR-RT-SORT** CR-02
A37A 081 4812 S264 1549
541 VENTURA AVE
SAN MATEO CA 94403-3223

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Complaint

EXHIBIT 2



**NATIONWIDE
NON-PROFIT
ORGANIZATION**

1155 15th Street, N.W.
Suite 810
Washington, D.C. 20005

1-800-880-1310

Complaint

123 F.T.C.

EXHIBIT 2



Dear Member:

We welcome you to the wonderful world of meaningful benefits and services provided as part of your membership in THE AMERICAN ASSOCIATION FOR SENIOR CITIZENS.

As the senior officer of this non-profit Association, and one who is on the sunny side of sixty, I assure you I value my membership and enjoy the many benefits available to all of our members.

This Association was founded several years ago and entrusted with the responsibility of getting the message to people our age so that we can receive every benefit and advantage to make sure the dollars we have spent a lifetime earning and saving will pass on to our heirs as intact as Uncle Sam will allow.

With this responsibility as our driving force, our Association explored every conceivable avenue available before making the decision to educate our membership on the value and importance of REVOCABLE LIVING TRUSTS.

It is also important for you to know and understand what this Association is committed to in regard to a PRE-PAID LEGAL benefit that actually pays the legal fees for your REVOCABLE LIVING TRUST, and provides many other legal benefits. Look at the following pages to understand our commitment to you in this respect.

In addition, we have sought meaningful and worthwhile consumer benefits and services for our membership. We are sure you can recognize the value of these benefits for you and your family. We are happy you have joined our "YOUNG AT HEART" adult Association. A living trust is the most important gift you can give to your loved ones.

Also, a portion of American Association of Senior Citizens membership dues are used to support the research efforts of medical research facilities, and others, as they seek better treatment and cures relating to our senior citizens. AASC Medical Research Foundation's charter, as explained in the following section, is to continually stay abreast of current research efforts throughout the United States to determine who should receive financial support from the Foundation.

Please know we are here to make things a little better for you and all of our growing family of members. As soon as we receive your application I will see that your membership kit is forwarded to you.

Warmest personal regards,

Donald T. Berlinn
Executive Director

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Complaint

EXHIBIT 2



**MEDICAL
RESEARCH
FOUNDATION**

EXHIBIT 2

As Directors on the Board of AASC Medical Research Foundation, we are charged with guiding the Foundation to fulfill its charter of supporting worthy medical research that relates to better health care for our senior citizens.

In many cases, this money has a direct impact on community awareness, education and health care delivery.

About our President . . .

Donovan F. Ward, M.D.

AASC Medical Research Foundation President.

Past President of the American Medical Association.

A Fellow of the American College of Surgeons.

President of the Fifty Year Club of American Medicine.

Member of the AMA's committees on Medical Practice and Public Relations.

Past President and National Director, American Health Care Advisory Foundation.



EXHIBIT 2

Our
other
Directors
are . . .



Robert P. Ewing, is past Chairman and President of Bankers Life and Casualty Company and is a Trustee of the MacArthur Foundation, a Director of Evanston Illinois Hospital and a former Director of the Health Insurance Association of America.



Howard E. Cartwright, of Chicago is past CEO of College of American Pathologists, past Director of College of American Pathologists Foundation and a member of American Association of Medical Society Executives.



Denis J. Fu, M.D., a practicing physician in Hawaii, has served as a medical consultant for various state and national development programs.



Joseph W. Lawrence, M.D., has a long and distinguished career in Public Health and is currently the Health Officer for Lee County, Florida, a position he has held since 1960.



Samuel R. Sherman, M.D., has a long list of accomplishments including: past President of the California Medical Association.



Alexander L. Sadowski, D.D.S., has accumulated over 1000 hours of continuing education, served on the New Mexico State Dental Association's Finance Committee and is both past president and secretary of the Southwest District Dental Society.



Donald T. Berlinn, has been Vice President of ITT Life Insurance Company Agency and President of Medical Air Services Association, the nation's first nationwide air ambulance service. Currently President of Affordable Dental Connection and Association Management Group and President of American Association for Senior Citizens.

All of our listed Directors are also members of the Advisory Board of American Association of Senior Citizens and advise the Association on developing new benefits or improving existing benefits for our senior citizens.

Complaint

123 F.T.C.

EXHIBIT 2

Financial support is provided by the AASC Medical Research Foundation to the following and other research facilities:

- American Medical Association
- American Heart Association
- American Public Health Foundation
- Alzheimers Disease and Related Disorders Association
- California Medical Education and Research Foundation
- Leukemia Research Foundation
- Mt Sinai Foundation
- National Multiple Sclerosis Society
- National Kidney Foundation
- Regional Cancer Treatment Center — Iowa
- University of Iowa Dept. of Immunology
- University of San Francisco Cardiovascular Research

In addition, the Foundation has given grants to the following, and others:

ON LOK Senior Health Services	Cancer Research Foundation
Iowa Methodist Health Foundation	of North Texas
March of Dimes — Walk America	Allegheny-Singer Research Institute
University of Iowa College of Medicine	University of Florida — Oncology
San Antonio Area Lupus Foundation	St. Jude's Children's Hospital
Tulane University Medical Center,	Sloan-Kettering Cancer Center
Dept. of Pediatric-Cardiology	North California Transplant Bank
Cancer Counseling, Inc.	ALS & Neuromuscular Research
Tarrant County Cancer Care Services	Foundation
Cystic Fibrosis Foundation	Children's Hospital Medical Center
Univ. of Connecticut Health Center	Florida Geriatric Research
Jean Marie Colbert Bone Marrow	Foundation
Transplant Center	Regional Cancer Foundation
Children's Heart Foundation	Children's Memorial Foundation
Fred Hutchinson Cancer Research	Cancer Care Services
Center	

The AASC Medical Research Foundation was formerly known as the American Health Care Advisory Association Foundation, providing financial support to the above and other research facilities.

EXHIBIT 2

AASC

Provides
for its Members
the Benefits of
Pre-Paid Legal Services, Inc.®



A few of the most common personal worries and business activities needing an attorney's professional counsel and assistance include:

Threat of a Lawsuit
Debt Collection
Auto Transaction
Contractor Dispute
Trusts
Election
Criminal Threats

Adoption
Domestic Problems
Partnerships
Lease Changes
Motor Vehicle Accidents
Creditor Harassment
Bankruptcy

Consumer Fraud
Taxes
Forming a Corporation
Property Purchase
Manufacturer Problems

An American Stock
Exchange Company

Paid Over 80,000 Attorneys

Paid Over \$80,000,000 in Legal Fees

Over 5,000,000 Members Have Access
to Services Nationwide

EXHIBIT 2

 embership entitles you to:

- 1 FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL (see following section)**
- 2 LEGAL SERVICES AT DEATH**
- 3 IN-OFFICE ATTORNEY CONSULTATION**
- 4 UNLIMITED TELEPHONE CONSULTATIONS WITH A PROVIDER ATTORNEY**
- 5 MOTOR VEHICLE LEGAL SERVICE**
- 6 TRIAL DEFENSE FUND**
- 7 IRS AUDIT PROTECTION**
- 8 LEGAL ASSISTANCE IN MANY CASES**

EXHIBIT 2

Unlimited Telephone Consultations:

- As a member of AASC, you may call the Pre-Paid Legal Toll-Free Number, 1-800-654-7757, from 8:30 a.m.-5:00 p.m. any business day. Pre-Paid Legal will direct you to your provider attorney for legal advice.
- You do not need to guess about your legal rights or spend hundreds of dollars for consultations with an attorney. In the privacy of your own home, you simply call the attorney and he will answer questions concerning ANY personal or legal matters.

The following are just a few examples of the types of questions you may need answered:

1. "I am 67 years old and collecting social security. Is it legal for me to claim a deduction for a dependent who earns an income?"
2. "My company is trying to force me into retirement by offering me an early retirement buyout. What are my rights?"
3. "It has been 12 weeks since I was in the hospital and my insurance company has still not paid the \$1,500 hospital bill. How long do they have to settle the claim?"
4. "My neighbor's teenage son, despite my requests to stop, continues to play loud music that keeps me awake at night. Is there anything I can do?"
5. "I had a contractor fix my roof, it still leaks and the contractor will not return my call. What can I do?"
6. "My husband is in a nursing home. I do not feel he is getting the proper care. Aren't there certain standards set by the state that nursing homes must follow? What are my husband's options?"
7. "I inherited some land in another state and I would like to lease it out. How do I do this?"

In addition to advising you of your rights, the attorney, if necessary, will personally call or send a letter to help resolve your problem.

EXHIBIT 2

Up to 50 Hours Legal Assistance at Death:

Everyone needs a lawyer upon the death of a family member for settlement of the estate and consultation with the surviving spouse or children:

- To finalize trust documents
- To resolve liens contesting the trust, including the IRS
- For out-of-state property settlements and property sales
- For deed transfers
- To resolve claims of creditors, including hospitals, funeral homes, etc.
- For protection against any person who attempts to challenge the estate

The settlement of an estate is a complicated and lengthy process. Qualified attorneys usually charge between \$175—\$300 per hour for their services. This translates into a cost of approximately \$8,750 — \$15,000 for 50 hours of legal assistance to settle an estate. **As a member of AASC, your membership entitles you to up to 50 hours of legal assistance, depending on your member classification.**

A True Story:

A Senior Citizen of Dixon, Illinois joined AASC in June of 1991. In July, 1991, he passed away. His children, rather than beginning the long and costly process of finding an attorney to probate his estate, simply called the AASC members' toll-free number. A Pre-Paid Legal attorney immediately began to settle the estate.

"My father only became a member six weeks ago but we feel so fortunate that he did. We immediately called a provider attorney and were so relieved to learn that we would have the legal work on my father's estate done immediately thanks to Pre-Paid Legal. The service is invaluable," said the daughter.

EXHIBIT 2

 n-Office Consultation:
ONE PER YEAR

AASC provides its members with a Living Trust. Each year it should be reviewed and updated with changes concerning:

- Any Legal Matter
- Investments
- Deeds
- Property and Real Estate
- Cars, Trucks and Equipment
- Bank Accounts
- C.D.'s

EXHIBIT 2

 **Motor Vehicle Legal Service
Expense Benefits:**

Nearly every American drives some form of motor vehicle every day. You are at risk, every time you get behind the wheel of your car.

AASC is proud to offer you a wide variety of coverage in the area of motor vehicles. Read below to discover the valuable benefits you will have after enrollment.

- **MINOR LEGAL EXPENSES:** If a licensed member, spouse, or any covered dependent, while driving any licensed motor vehicle, is accused of an alleged traffic violation, the Company pays your attorney fees, pursuant to the following schedule:

Up to \$75 for legal assistance regarding such charge; up to \$125 for legal assistance requiring court appearance; up to \$200 for legal assistance which includes trial work.
- **MAJOR LEGAL EXPENSES:** If a licensed member, spouse or any covered dependent, while driving any licensed motor vehicle, is accused of a criminal charge such as manslaughter, involuntary manslaughter, negligent homicide or vehicular homicide, the Company will pay your attorney fees based on a maximum hourly rate of \$100.
- **SUSPENDED DRIVER'S LICENSE:** The Company provides for professional assistance, and if necessary, maintenance of your driver's license. The Company will pay a reasonable attorney fee for the suspended driver's license services up to \$250 per occurrence to your attorney.
- **LEGAL COLLECTION SERVICE:** Should your licensed auto, private boat or motorcycle be damaged in an accident, the Company will assist you in collecting damages done to your vehicle. The Company provides legal assistance, win, lose, or draw, in collecting damages when your auto, private boat or motorcycle is involved in an accident, and will pay up to \$250 per occurrence to your attorney.
- **PERSONAL INJURY LEGAL EXPENSES:** The Company will pay your attorney fees, win, lose, or draw, up to \$250 per occurrence to collect or file for personal injuries of \$1000 or less received while driving, riding, or when struck as a pedestrian by any motor vehicle.

EXHIBIT 2

5,000 Trial Defense Fund:

All too often you read in the paper about someone being sued over what you would consider a trivial matter. . . It couldn't happen to you. But everyday, people just like you are sued by neighbors, friends, co-workers, even family. In this sue happy society, it is great to know that your AASC membership offers benefits to cover just that.

The Company will pay up to a maximum of \$5,000 in attorney fees the first membership year for either the member or member's spouse, if he or she is named Defendant or Respondent in a **covered civil or criminal action** in a court of law. **The criminal action must be one which arises out of the direct performance of the Covered Person's employment activities.** The trial defense fund benefit will even pay for the attorney even though your insurance company may have retained one for you, if the choice of attorney is not yours and you feel you need your own personal attorney.

BENEFITS TO BE PAID AS FOLLOWS:

Benefits are based on a maximum hourly rate of \$100 and are to be paid as follows:

Up to \$250 for any and all legal services rendered in defense of the covered lawsuit prior to the actual trial.

Up to \$300 per day for each actual day of trial, including covered criminal preliminary hearings not to exceed an annual aggregate trial defense fund of \$5,000 per membership.

Upon renewal of the membership the Covered Person will receive additional trial defense benefits at no additional cost to the member. The trial defense fund increases, as follows:

2nd Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$10,000 per membership payable up to \$300 for any and all legal services rendered prior to trial and up to \$350 per day for each actual day of trial, including criminal preliminary hearings.

3rd Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$15,000 per membership payable up to \$350 for any and all legal services rendered prior to trial and up to \$400 per day for each actual day of trial, including criminal preliminary hearings.

4th Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$20,000 per membership payable up to \$400 for any and all legal services rendered prior to trial and up to \$450 per day for each actual day of trial, including criminal preliminary hearings.

5th Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$25,000 per membership payable up to \$450 for any and all legal services rendered prior to trial and up to \$500 per day for each actual day of trial, including criminal preliminary hearings.

EXHIBIT 2

 IRS Audit Protection Service:

I.R.S. . . . The idea of an audit strikes fear in even the most careful tax payer. Why not enjoy the peace of mind that the AASC membership offers through the IRS Audit Protection Service? Here are the details.

The Company will pay up to a maximum of \$5,000 in professional fees for either the member, spouse, or dependent children, to the member's choice of any licensed public accountant, certified public accountant, enrolled agent or attorney or any combination thereof when a member is notified in writing by the Internal Revenue Service (IRS) of an audit of such member's tax return or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

BENEFITS TO BE PAID AS FOLLOWS:

Up to \$100 for consultation, advice and/or assistance, upon receipt of written notice from the IRS that the member's tax return is being audited or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

In the event settlement is not achieved with the IRS within thirty (30) days, then **up to \$250** beginning on the thirty-first (31) day to provide the member, spouse, or dependent children representation at the audit and at the audit and for negotiations, conferences, telephone conversations, settlement conferences, subsequent thereto, but prior to the institution of litigation.

In the event settlement is not achieved without litigation, then payment will be made up to the balance of \$5,000 in professional fees in either event of the IRS suing the member or the member paying the disputed tax and then suing the IRS. Such payment to be made at up to a rate of **\$300 per day** of each day of trial appearance.

Coverage begins with the return due on April 15 of the year this contract is effective.

EXHIBIT 2

Legal Assistance in Many Cases:

AASC membership provides legal assistance in many cases including the following . . .

PHONE CALLS AND LETTERS ON YOUR BEHALF

A letter or phone call from your Plan Attorney can get you the results you want fast and cut through the red tape. You and your Plan Attorney can now decide together when this is the best legal step for you. There is no charge for the first letter. **(Any further fees are to be set by the Plan Attorney and are the sole responsibility of the Named Member on the Contract.)**

REVIEW OF CONTRACTS AND DOCUMENTS

You can have an unlimited number of legal documents of up to three pages each reviewed by your Plan Attorney, free of charge. Your Plan Attorney will give you an analysis of the documents and suggest changes for your benefit or any other necessary procedures, before you sign!

LEGAL FORMS BENEFIT

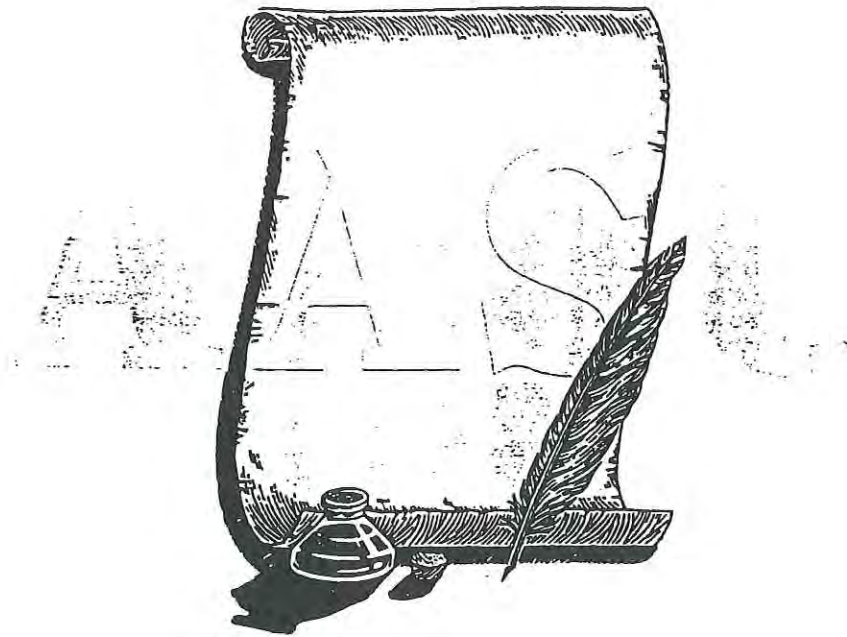
Imagine having access to the most often needed legal documents — just a phone call away!

The documents you need will be prepared for you at a greatly **reduced rate**, but don't worry, still with the same care and concern for your welfare. A list of legal forms available, along with the nominal charges, will be in your contract packet. Complete information about the forms you need can be obtained with just a phone call to your Plan Attorney.

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EXHIBIT 2



ALL ABOUT
A LIVING
TRUST

EXHIBIT 2

Advantages of a Living Trust

1 PROBATE:

A LIVING TRUST avoids a complex **PROBATE** proceeding. Probate is the court process designed to transfer title of assets to your heirs. A Probate is required even when there is a WILL. The Probate Court procedure is complicated by laws requiring your Executor to obtain special court approval to take any actions, including paying your bills, and distributing your assets.

With a LIVING TRUST, the title to property is transferred through the trust, so that your heirs can easily receive these assets, and will not have to go through complex Probate Court proceedings.

2 DISTRIBUTION:

A LIVING TRUST allows a quick DISTRIBUTION to your heirs. Assets in probate court are often frozen two years or more, even with a WILL.

A LIVING TRUST allows these same assets to be distributed within days to your loved ones, since a LIVING TRUST avoids Probate Court.

3 PRIVACY:

A LIVING TRUST is completely PRIVATE. There is no privacy with a public Probate Court Proceeding.

A LIVING TRUST is a private document, the size and distribution of your estate remains confidential.

4 WILL CONTEST:

A LIVING TRUST prevents a WILL CONTEST. In Probate Court, anyone can easily contest a WILL, even without a lawyer.

Through a LIVING TRUST your wishes will be carried out without interference.

5 CONTROL:

A LIVING TRUST enables you to CONTROL your assets. By making a gift of all of your property to your heirs, you may eliminate probate. However, once the gift is made you have lost ownership of your property, which you may later need for your support.

A LIVING TRUST allows you to retain control of your property, and upon your demise, YOU CONTROL WHEN AND HOW MUCH YOUR BENEFICIARY WILL RECEIVE.

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EXHIBIT 2

6 DISABLED HEIRS:

A LIVING TRUST preserves benefits for DISABLED HEIRS. A disabled heir generally loses government assistance payments upon receiving an inheritance.

A LIVING TRUST can authorize your successor trustee to make special distributions for a disabled heir while still preserving government benefits.

7 PROBATE FEES:

A LIVING TRUST eliminates ALL PROBATE FEES and COST. Probate fees are based on the entire value of an estate, without deducting bills or mortgage.

The probate expense can be as much as the following, or more:

GROSS ESTATE SIZE	APPROXIMATE EXPENSES
\$100,000.	\$10,000.
\$300,000.	\$30,000.
\$500,000.	\$50,000.

This example also applies to all other mortgaged property owned in every state. If a couple owns property in four states there would be four probates required.

With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs.

8 JOINT TENANCY:

A LIVING TRUST avoids JOINT TENANCY problems. Joint tenancy is a method of avoiding probate, where, upon death of one co-owner, the survivor becomes the full owner of the property.

1. As an owner, your child has the power to interfere with your decision to sell or refinance the property.
2. If your child should go through divorce, the other spouse may claim an interest in the property.
3. If your child should owe taxes, the tax collector may take your property to satisfy the tax obligation.
4. If your child should be found liable in any lawsuit, your property may be sold to pay the judgment.

With a LIVING TRUST, probate is entirely avoided and there is not exposure of your assets to the debts or liabilities of your child.

9 CONSERVATOR:

A LIVING TRUST avoids a CONSERVATOR. If you ever become incapacitated, the Probate Court will appoint a conservator to manage your property, and your estate will be required to pay court fees and costs for the conservatorship each year.

With a LIVING TRUST, your trustee can manage your property if you are unable to handle your affairs, and there are no court fees and costs.

EXHIBIT 2

10 INCOME TAXES:

A LIVING TRUST saves sizeable INCOME TAXES. When a couple holds property or stocks in joint tenancy, the surviving spouse is required to pay a capital gains tax upon sale. This tax is based upon one-half of the increase in value of the property since the time of its purchase.

In a LIVING TRUST, title is transferred into the trust. This entirely eliminates the Federal Capital Gains Tax on all increases in value up to the date of death.

11 ESTATE TAXES:

An A-B LIVING TRUST saves substantial ESTATE TAXES. Estate taxes are paid to the federal government for the transfer of property upon death. Federal estate taxes are based on the size of the estate and are imposed where the net value of an estate is larger than \$600,000.00. The Federal Estate Taxes are almost one-half of the estate after deducting \$600,000.00.

A Living Trust saves substantial estate taxes as follows:

NET ESTATE	APPROXIMATE TAX SAVINGS
\$ 800,000.	\$ 75,000.
\$1,000,000.	\$153,000.
\$1,200,000.	\$235,000.

12 MEDICAL COSTS:

AN A-B LIVING TRUST protects against catastrophic MEDICAL COSTS. If you should ever require care in a convalescent hospital or long term nursing home, the medical expense could eventually wipe out your estate, thereby denying you the opportunity to leave your property to your loved ones.

With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs.

EXHIBIT 2



Questions Most Commonly Asked

Q: Is There Anything Bad About a Living Trust?

A: No. There is nothing bad about a Living Trust. It is a traditional and well-proven estate planning tool that has been used, in one form or another, for hundreds of years.

Any problems people have with a properly prepared Living Trust have nothing to do with the trust itself, but with the property left out of it because they failed to change titles and beneficiary designations to the name of their trust. The trust still works - but any property left out risks being probated. If you desire to completely avoid probate, all assets must be in your Living Trust. It does not take much time to change the titles and beneficiary designations, and once it is done your Living Trust is easy to maintain.

Q: Where Should I Keep My Living Trust Documents?

A: We suggest that you make several copies of your original documents and give a copy to each of your back-up trustees. Make sure you tell them where the original documents are located. We suggest you keep the original trust document in your safe deposit box or another safe place and keep one copy at home so you can review it from time to time. (Make sure your safety deposit box is titled in the name of your trust, so your back-up trustee will have no trouble gaining access.)

Q: Can I Put Out-Of-State Property Into The Trust?

A: Yes, you can, and in fact, you should. If you do not transfer out-of-state property into your trust, your heirs will need to have a separate probate in each state in which you own real estate. This may result in probate fees for each state. If, however, the property is transferred into your trust, the probate systems of all of the states involved are avoided.

Q: What If I Move To Another State?

A: Call Pre-Paid Legal at 1-800-654-7757 to locate a Pre-Paid attorney nearest you. Ask for a review. Most states follow the same general rules, so if something needs changing, only those parts are changed that need to be under the laws of that state. You do not need a completely new document.

Q: What If I Buy Property In Another State?

A: Before you buy property in another state, especially real estate, check to make sure it can be titled in the same way as in your home state. A bank or title insurance company in the state where the property is located can tell you if the title you want to use is acceptable in that state.

EXHIBIT 2

Q: Does Transferring Property Into a Trust Cause a Reappraisal Of The Property So That Property Taxes Are Raised?

A: No, it does not. Revenue and Taxation Code 62 specifically states that a transfer into a Revocable Living Trust does not cause a reappraisal of the property.

Q: How Should Property And Accounts Be Titled?

A: As a general rule, all of your property should be titled in the name of your trust. Here are some examples:

If you are single:

"(your name), Trustee under trust dated (insert date you signed your trust)."

If you are married:

"(your name and your spouse's name), Trustees under trust dated (insert date you signed your trust)."

Very often you will see the letters "UTD" used as a shortened version of the words "under trust dated."

Q: If I Own Partial Interest In Property With Others, Can I Transfer That Interest Into A Trust?

A: Yes. You can transfer your share of any property into the trust without affecting the shares of the others.

Q: If I Want To Sell Assets Or Add New Assets To The Trust, Will I Need To Return To The Attorney's Office Each Time?

A: No, you will not. You can sell assets and add new assets yourself without requiring a change of the trust.

Q: Can I Sell Assets I Have In The Trust Without Any Complications?

A: Yes, you can. You can freely sell your property even if it is in the name of the trust. The only difference will be that escrow company officials may ask for a copy of the trust documents.

Q: Can IRAs, KEOGHS And Other Tax Deferred Investments Be Transferred Into The Trust?

A: IRAs, KEOGHS and other tax deferred investments **cannot** be transferred into the trust. However, the trust can be the beneficiary of those investments. Each case must be discussed with an attorney to determine whether it is better to name the trust as beneficiary, or the individuals themselves as beneficiaries.

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EXHIBIT 2

Q: What About Adding Other Persons On My Accounts, Deeds, Etc.?

A: Never add another person on the title of your property or your accounts (this includes parents and children) without first checking with your attorney. It could cause you or your family some very serious problems, possibly even defeating the purposes of your trust or exposing you to a lawsuit.

Q: When Will I Need To Update My Living Trust?

A: There is no special time to change your trust, although it is a good idea to review your living trust at least every year. As a general rule, you should change your trust anytime it no longer is what you want. Any major change in your family, such as marriage, divorce, death, adoption, birth, etc. should cause you to think about your trust. If one of your trustees/guardians can no longer fulfill their responsibilities you should make changes accordingly.

Remember that you should keep a separate list of your Special Gifts.

Q: How Do I Fund My Trust?

A: YOU CAN FUND YOUR TRUST BY THE FOLLOWING THREE STEPS:

1. Go to your bank and change the name on savings, money market and certificate of deposit accounts to the name of the family trust. Also, place trust in safety deposit box.
2. If you own stocks or bonds, contact your stock broker to change the name to the name of the family trust.
3. Finally, if you have real estate, you may use the Quick-Claim Deed to transfer it yourself or you may contact a title company to transfer the title to the name of the family trust.

IF YOU HAVE ANY QUESTIONS CONCERNING THE FUNDING OF YOUR TRUST, CALL **PRE-PAID LEGAL** AT 1-800-654-7757.

EXHIBIT 2

Disadvantages of Going
Through Probate

1. Impounded or frozen accounts
2. Impounded safety deposit box
3. Probate court cost (10% or more)
4. Waiting period (1-3 years)
5. Attorney fees (very costly)
6. Administration fees
7. Public disclosures
8. Impounded mail
9. Forced asset liquidations
10. Expensive litigation
11. Possible Federal Estate Taxes and/or
State Inheritance Taxes

EXHIBIT 2

D *Death Probate versus Revocable Living Trust*

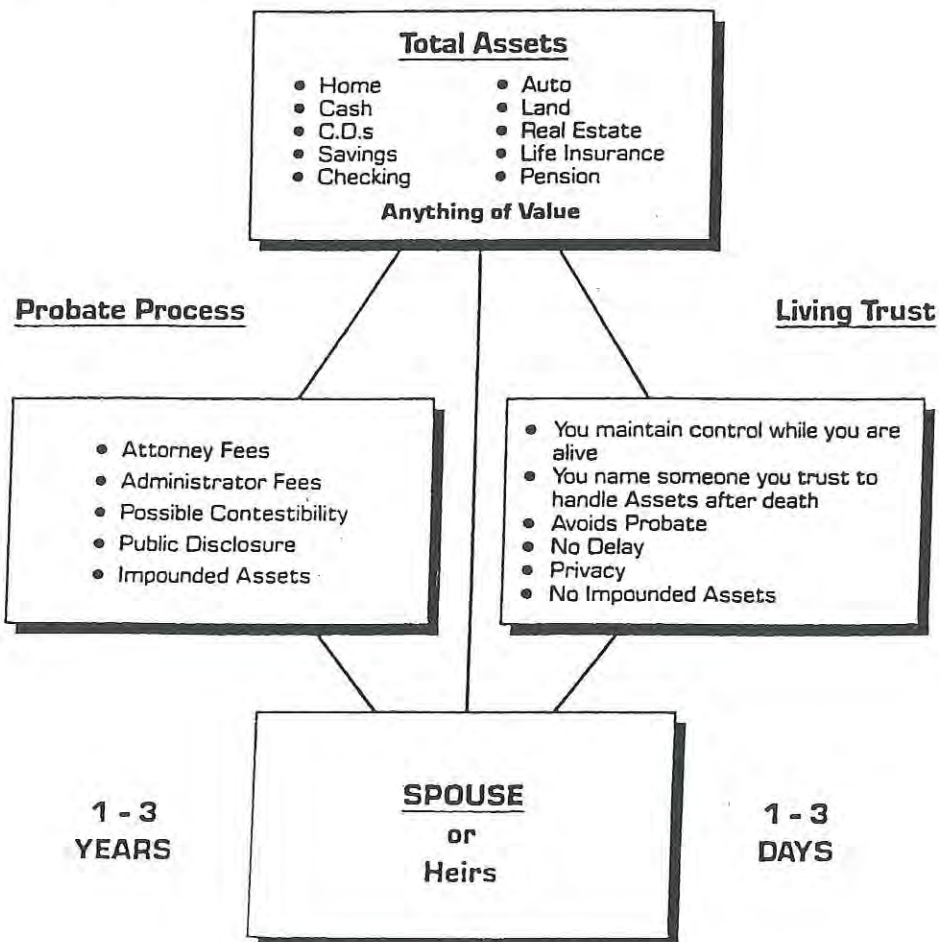


EXHIBIT 2

Preventing *These Situations*

A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:

Martha had been a widow for just one year when she put all of her property, including her house, into **joint ownership with her married son**. She did this thinking that when she died, her property would automatically go to her son **without the need for probate**.

Several years later, her son and his wife separated and Martha decided to sell her house so she could move in with her son. But she soon discovered **she could not sell the house** without her daughter-in-law's signature on the deed. The daughter-in-law was still legally married to her son and was entitled by law to a "marital interest" in the property. **The title company would not insure clear title to the buyer** without the daughter-in-law's signature because it was not clear what her "interest" would be — and the daughter-in-law refused to sign unless she got part of the money when the house was sold. Martha was stuck! She did not know that **joint ownership with a married person can include that person's spouse**. And because Martha had placed her house in joint ownership, **Martha lost control of her own home**.

A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:

Bill and Agnes were an elderly couple who put **everything they owned . . .** including their home and stock . . . in their adult unmarried daughter's name. **They believed that this would avoid probate** and that all of their property would pass directly to their daughter who was an only child, when they were both gone. A year later, Bill died of a heart attack. Several months after that, the daughter was killed in an auto accident.

Agnes never believed she would survive both her husband **and** daughter. To add to her distress, **Agnes now owned nothing in her own name**. Everything was in her daughter's name! She was forced to probate her daughter's estate to get back her own property.

During this long process she had to rely on the court to grant her living expenses. **Sometimes the court would approve expenses . . . sometimes not**. And during a declining stock market, she helplessly watched the value of her stocks fall to only a fraction of their previous value because the court could not react in time for them to be sold quickly enough. **Agnes lost her financial independence** plus a substantial portion of her assets to probate . . . just trying to get back what was hers in the first place.

THE CONSEQUENCES IF A JOINT OWNER CANNOT SIGN:

Most married couples own their property jointly, and they **assume** that if one of them becomes disabled or incompetent, the other can continue to take care of their personal and financial affairs without interruption. But look at what happened to Henry and Mary:

Henry and Mary were successful and responsible adults. **They made safe investments and planned carefully for their future**. They owned everything **jointly** and even had **WILLS**, leaving everything to each other. But in just seconds their lives changed dramatically. **Henry was in a tragic car accident**, and suffered extensive head injuries and

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EXHIBIT 2

brain damage. Mary could continue to write checks and pay their day to day bills because only one of their signatures was required on their checking account. But soon the cash started running out, and **Mary realized she needed to sell some of their investments, and maybe their house,** to pay for Henry's care and the other bills. Mary was unable to sell any of their jointly owned property without both signatures, and since Henry could not sign his name, **the only way Mary could sell their property was to place Henry into a probate guardianship and have the court sign for him.** Henry's WILL was no help at all because he was still alive.

Mary had no idea how expensive and cumbersome this legal "joint ownership" can be. Not only did she have to deal with Henry's situation and the effect of this tragedy on their personal lives, but **she also had to deal with the court system.** She was especially frustrated that **she had to pay for the court to approve the sale of their own property** and then get the court's approval on how Henry's share of that money was spent — even when it was used to pay their personal bills and take care of Henry! When Henry finally died more than five years later, Mary found herself back in probate court — this time to probate Henry's WILL.

THE SAME THING CAN EASILY HAPPEN TO YOU if you own property through joint ownership. Many older parents list their adult sons or daughters as joint owners on their property (especially real estate and C.D.s), mainly to avoid probate when they die. And many mistakenly assume that their adult child will automatically be able to take over for them if they become disabled or incompetent. Most people just do not know how easily joint ownership can lead to a probate guardianship.

EXHIBIT 2



**OTHER
MEMBERSHIP
BENEFITS &
SERVICES**

EXHIBIT 2

**Medical Air Ambulance Services**

Specialized Facilities ... often at distant locations, available to our members at NO out-of-pocket cost when the need arises.

Ten Separate Services ... Some Lifesaving ... Some Peace of Mind:

- **EMERGENCY AIR TRANSPORTATION** to any specialized hospital in the nation with what could be the single life sustaining element available to you or a member of your family.
- **ESCORT TRANSPORTATION** for your spouse, family member or companion to accompany you in flight if space permits.
- **NON-INJURY TRANSPORTATION** to have a family member flown round trip by common carrier to the city where you are hospitalized for more than seven days.
- **REPATRIATION**, should the patient and his attending physician determine that recuperation nearer home is feasible, air transportation will be provided.
- **ORGAN RETRIEVAL/ORGAN RECIPIENT TRANSPORTATION.** If a member requires a heart, heart/lung, liver, kidney, lung, or pancreas transplant, this service will transport the organ to the recipient or fly the recipient candidate to the organ.
- **RETURN TRANSPORTATION** either by air ambulance or scheduled air carrier for your return home.
- **MINOR CHILDREN RETURN**, including an attendant, if necessary, when minor children are stranded as a result of you being hospitalized out of town.
- **VEHICLE RETURN.** Privately owned or rented cars, vans, motorhomes, or travel trailers left unattended as a result of the medical emergency will be returned to your residence.
- **PHYSICAL REMAINS RETURN.** Will return mortal remains.

EXHIBIT 2

*Listen to What People Say About Medical Air Services:***Louis C. Timm:**

716-328-9824 • Rochester, New York

*"We could not have asked for better treatment, in fact we have been telling our friends about MASA."***Lee and Violet Frost**

618-832-6538 • Anna, Illinois

*"We are satisfied with your service we take every opportunity to encourage friends to enroll in MASA."***Mrs. James (Thelma) Wilkinson**

515-652-3244 • Ottumwa, Iowa

*"We have only good thoughts and remarks to make of Medical Air Services."***Mr. Victor S. Kalinoski**

218-681-4767 • Thief River Falls, Minnesota

*"It was a 400 mile trip one way. We were very pleased in that no time was wasted and everything seemed very well planned. We recommend this service very highly."***Harold and Ruth Wendt**

715-229-2770 • Owen, Wisconsin

*"I am now well on the way to recovery from open heart surgery while in Texas in April. We express our special thanks for the fine and prompt service Medical Air Services provided during our emergency. Besides providing air service home, we especially appreciated having a driver take our automobile 1700 miles to Wisconsin."***Christine J. Adamson**

313-659-6080 • Flushing, Michigan

*"We feel this service is very valuable for the security it provided and we feel it is one of the best investments we have ever made."***Bruce Theel**

701-477-5244 • Rolla, North Dakota

*"Your company is providing a critical medical service to the population living in remote areas, without air facilities closer to major medical centers. Could you sell hospitals such a service, so that more people are informed of this marvelous service you give at such a reasonable rate?"***Katherine G. Bennett**

716-637-6468 • Brockport, New York

*"The Bennetts are staunch believers that everyone should be a member of Medical Air Services. You showed concern far beyond the service anyone could expect."***Margaret Kreutzer**

204-326-9972 • Edinburg, Texas

*"I am very pleased with the services I received from your company after the death of my husband."***Frankie Adkins**

512-428-2534 • Brunswick, Missouri

*"We made a call to Medical Air Services and found out our daughter's flight to be with her critically ill father would be taken care of. We certainly thank your 'flight for life' service and don't intend to be without it."***Mrs. Joyce Evans**

816-638-4561 • Urich, Missouri

*"Words cannot express what I feel for your company. You were all so helpful and courteous. I would love to enroll some of my friends who have not heard of your services. Please send me some enrollment applications."***Stanley Snodgrass**

513-922-4562 • Cincinnati, Ohio

*"MASA will always be a part of our insurance program as long as it is available to us. On a scale of one to ten, we rate you a ten plus."***Mr. and Mrs. Robert Taylor**

612-894-9709 • Burnsville, Minnesota

*"We wish to thank you for the 'hassle free' way in which you handled all the arrangements to fly me and my injured husband home after he fractured a vertebra in his back. We say thanks for all your help."***Helen Redekal**

507-938-4241 • Canby, Minnesota

"In this day and age it is very difficult to believe some company would stand behind their promises and react so efficiently and promptly in our crisis. I highly recommend this service to each and everyone."

EXHIBIT 2

***Prescription Program***

The lowest price available at your local pharmacy!

- Over 30,000 participating neighborhood pharmacies
- Fill all your prescription needs **AT** or **BELOW** average wholesale prices

***Mail Order Pharmacy***

The preferred option for maintenance medications!

- TOLL FREE ORDER — Comparison cost line
- NO shipping or handling charges
- Doctor-Verified prescriptions
- Easy to use
- Convenient at-home delivery

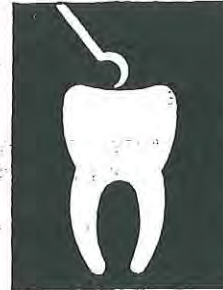


Savings that really add up!

EXHIBIT 2

***Affordable Dental Connection******Free & Discounted Dental Service***

- FREE Diagnosis
- FREE Dental History
- FREE Bite Wing X-Rays
- FREE Fluoride Treatment for Children
- FREE Oral Hygiene Instructions
- FREE Oral Cancer Examination



*Discounts of 20% to 50% off the
Dental Providers "usual and customary" fees.*

- Prosthodontists
- Implantologists
- Oral Surgeons
- General Dentistry
- Orthodontists
- Endodontists



EXHIBIT 2

Eyewear Savings

SPECS brings you savings at Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical, and many other stores.

You receive the SPECS Vision Plan free as part of your membership benefit package. The SPECS Vision Plan is designed to offer both you and your family savings of up to 60% on all your eyecare needs.

Simply present the SPECS card at any of the 1,500 participating Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical and many other eyewear departments located throughout the country and let the savings begin.

It's so easy! There's no waiting, no forms to complete, and no limitations — all merchandise is included. Most locations are open evenings and weekends for your convenience. And, you can pay for your order with your store credit card.



TYPICAL SAVINGS

	YOUR Cost
Frames	
Frames up to \$54 retail — you save 60%	\$20.00
Frames \$55 to \$74 — you save 60%	\$30.00
Frames over \$74	50% off
Lenses	
Single Vision — you save 45%	\$28.00
Bifocal — you save 40%	\$50.00
Trifocal — you save 40%	\$60.00
Lenticular — you save 50%	\$95.00
Contact Lenses & Non-Prescription Sunglasses	
20% Discount from regular retail prices	
Eye Examinations*	
Spectacle: \$5 off regular fee	
Contact: \$10 off regular fee	

*Eye Examinations are provided by Doctors of Optometry located in or adjacent to most participating optical departments. The fee for fitting and dispensing spectacles (including unlimited adjustments) is only \$8. There is no dispensing fee for contacts.

EXHIBIT 2

Hearing Aid Discounts

Save 60% or MORE!

- All world famous name brands.
- When is a \$400 hearing aid better than an \$800 hearing aid?

When it's the same hearing aid!!



30 day No cost - No obligation FREE home trial

Hear better today!

Chiropractic Discounts

*Nationwide network of over 2200
licensed chiropractors.*

- Free Chiropractic Evaluation!
- Preferred Client 15% discount.

*Headaches • Neck Pain • Pain In Lower Back, Hips or Legs
Tight Muscles or Spasms • Decreased Flexibility
Abdominal Pain • Dizziness or Blurred Vision
Shoulder or Arm Pain • Numbness in Extremities
Breathing Difficulties*



Get rid of that pain!

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EXHIBIT 2

Discount Shopping Service

*Members save up to 50% on
thousands of nationally
advertised items.*

As a Member you'll enjoy huge savings through substantial discounts on most major consumer purchases. It's easy. Just pick up the phone and you'll receive the guaranteed lowest price available for the item you want. Use your price to comparison shop at your local stores.

- Audio Equipment
- Cameras
- Carpeting
- China and Silverware
- Diamonds
- Fine Jewelry
- Furniture
- Personal Computers
- Luggage
- Major Appliances
- Pianos and Organs
- Sewing Machines
- Video Recorders
- Exercise Equipment
- Televisions
- Typewriters
- Video Tapes
- Binoculars
- Air Conditioners

*Plus thousands of
other items!*

You'll save hundreds of dollars!

EXHIBIT 2

Grocery Coupon Program

*Manufacturer's
coupons for brand
name items you want,
need, and use!!!*



*Save hundreds and hundreds
of dollars each year on your
grocery bills.*

**Saving Money on groceries
has never been easier.**

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EXHIBIT 2

**ift Catalog**

*Our members SAVE
up to 80%*

**Savings Galore!
Over 550 Items!**

Cameras • Jewelry • Household Appliances • Silver Plate
Luggage • China • Watches • Telephones
Silverware • Tools • Leather Goods • Fur Coats

*Receive impressive savings on gifts for
Birthdays Anniversaries Weddings
Graduations Christmas*

SAMPLE SAVINGS

Item	Suggested Retail	Your Price
Ladies or mens quartz Diamond Watch.....	\$ 119.00.....	\$ 23.00
35mm Camera - auto focus, auto wind, auto loading.....	\$ 269.00.....	\$ 69.00
Cordless telephone.....	\$ 179.00.....	\$ 59.00
Ladies Black Eel-Skin purse.....	\$ 345.00.....	\$ 69.00
Norwegian blue Fox fur coat.....	\$1250.00.....	\$256.00

EXHIBIT 2

Vacation & Travel Discounts

Your membership travel services are waiting for you NOW. Let our travel consultants accommodate you!



- \$100,000 FREE Travel Accident Insurance on selected flights
- Discounts from many of the world's most desired resorts, cruise lines, and tour packages

- Prompt, courteous, professional assistance
- Lowest currently available air fares
- Up to 5% off on air fares to many destinations worldwide



Get that dream vacation!

Hotel, Motel, Resort Condominium Discounts



Guarantees 50% Savings

- At over 2000 hotels, motels, and resort condominiums.
- Available at thousands of destinations worldwide.

The world can be yours!

EXHIBIT 2

New Car Discounts

Save \$1000 or MORE!



For a nominal service charge you'll receive a computer printout showing the dealers cost for the make and model you want.

Information that gives you a price advantage!

Knowing what your dealer knows can get you the very best price on the car you want.

Used Car Discounts

Outstanding savings on late-model pre-owned cars.



For a modest fee, you will receive a price quote for the late-model car of your choice that will also include the retail price and trade-in value.

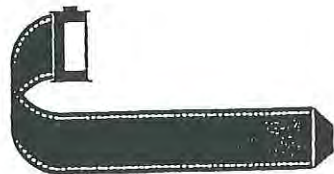
Make your best deal!

Every car is prepared for sale under guidelines which meet the highest standards and conditions.

EXHIBIT 2

Free Kodak Film

A \$350 Value!!



- Our members are provided certificates for 10 FREE rolls of KODAK Color Film.
- Send in a roll of film for processing - Receive a new roll of film FREE.
- MONEY BACK GUARANTEE: You pay only for the prints that come out!

Discounts on Flowers

Fresh & Beautiful



- Over 5,000 participating Florists worldwide.
- Open 24 hours a day — 7 days a week

Car Rental Discounts

SAVE 10% to 40% every time you rent a car!

- Free upgrade in car class at Hertz, Avis, National.
- Special exclusive flat-rates at National and Alamo.

Family Entertainment Discounts

At such places as:

SIX FLAGS
FUNSEEKERS CLUB

Ring's Believe It or Not!

And we are negotiating new entertainment discounts every day that will be added to your membership as available!

Something for everyone!

Complaint

123 F.T.C.

EXHIBIT 2

AASC

**NATIONWIDE
NON-PROFIT
ORGANIZATION**

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Pre-Paid Legal Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 321 E. Main Street, in the City of Ada, State of Oklahoma.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

DEFINITIONS

For purposes of this order:

a. "*Living trust*" means a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

b. "*Probate*" is the legal process that validates a will, the legal document that contains instructions to the court on how assets and liabilities are to be divided and distributed at death.

ORDER

I.

It is ordered, That respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in connection with the advertising, promoting, offering for sale, or sale of living trusts, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, orally or in writing, that:

- A. The use of a living trust avoids all probate and administrative costs.
- B. At death, a living trust allows assets to be distributed immediately or almost immediately.
- C. A living trust cannot be challenged.
- D. Living trusts are prepared by local attorneys.
- E. A living trust protects against catastrophic medical costs.
- F. A living trust is the appropriate estate planning device for every consumer.
- G. There are no disadvantages to a living trust.

II.

It is further ordered, That respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in

connection with the offering for sale or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information:

A. Living trusts may be challenged on similar grounds as wills.

B. Living trusts may not be appropriate in all instances, and all estate planning options should be examined before determining which estate plan best suits a particular individual's needs and wishes.

III.

It is further ordered, That respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in connection with the offering for sale or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information, if true:

A. The availability of informal probate under this state's statutes allows minimal or no contact with the courts and reduces the time required to probate a will.

B. The transfer of an individual's assets into the living trust is not included in the price of creating the living trust.

C. It is the sole responsibility of the purchaser of the living trust to transfer assets into the trust.

D. Creditors have a longer period of time to file a claim against a living trust than against a probated estate.

IV.

It is further ordered, That respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promoting, offering for sale, or sale of living trusts by any individual or entity with whom or which

respondent has contracted to provide pre-paid legal services, do forthwith cease and desist from failing to take reasonable steps sufficient to determine, commencing with the beginning of such a contractual relationship and continuing throughout the relationship, whether the promotion or sale involves any acts or practices prohibited by paragraphs I, II and III of this order. Such steps shall include, but are not limited to, evaluating, on a basis independent of the individual or entity with whom or which respondent has contracted to provide pre-paid legal services, the terms or conditions of sale, the adequacy of any disclosures, the representations made and the truthfulness of these representations (for the purposes herein, evaluating may, but need not, include reviewing advertisements, sales scripts and sales manuals, interviewing officers and employees, ascertaining the number and nature of consumer complaints and blind testing of oral representations).

V.

It is further ordered, That respondent Pre-Paid and its successors and assigns shall, in accordance with the provisions of this Part, offer a refund in the amount of one hundred sixty-five dollars (\$165.00) to every purchaser of a living trust, except for (1) those purchasers residing in states with which Pre-Paid has previously settled, and (2) all other purchasers who have previously received refunds from either Pre-Paid or the American Association for Senior Citizens ("AASC").

A. Within thirty (30) days of the date that this order becomes final, respondent shall compile and submit to the Commission a current mailing list containing the names and last known addresses of all AASC members for whom living trusts were prepared by Pre-Paid and who reside in states with which Pre-Paid has not previously settled. Respondent shall also compile and submit to the Commission a list of all AASC members to whom respondent has paid refunds, indicating the amount of each refund and the date the refund was issued. In compiling these lists, respondent shall search all relevant records in the possession, custody, or control of the respondent, including but not limited to its unincorporated divisions, joint ventures, partnerships, operations under other names, affiliates, and all directors, officers, partners, employees, agents, consultants, franchisees, and any other person or entity, including independent contractors, working for or on behalf of any of the foregoing.

B. The Commission shall compile and maintain a list of consumers potentially eligible to receive refunds based on the information respondent is required to produce pursuant to V.A, above, and supplemented by such further relevant information in the Commission's possession or that comes to the Commission's attention.

C. The Commission or its designated agent shall mail a notification letter substantially in the form set out in Appendix 1 to all persons the Commission has reason to believe are eligible consumers, to advise each of: (a) the settlement with Pre-Paid, and (b) the consumer's right to receive a refund.

D. The Commission shall enclose with each notification letter described in V.C, above, a claim form substantially in the form set out in Appendix 2. Refund eligibility shall be based on submission of such form, which has been signed by either the AASC member or the beneficiary, next-of-kin or other representative of the member, if the member is deceased.

E. Any potentially eligible consumer who does not submit a completed and executed claim form in response to the Commission's notification letter by the date specified in the notification letter shall not be eligible to participate in the distribution; provided, that the Commission may in its discretion accept and process an untimely response to the notification letter.

F. The funds from any returned checks, and checks not cashed within 60 days after the distribution date, shall be redeposited into the redress fund for possible redistribution.

VI.

It is further ordered, That the consumer redress fund shall be established, administered, distributed and terminated under the direction and control of the Commission and/or its designated agent. Respondent shall be notified, upon request, as to how the consumer refunds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. Within 30 days of completing the distribution of refunds pursuant to Part V of this order, the Commission or its designated staff will provide written notification to the escrow agent specified in the Escrow Agreement attached as Appendix 3 to return to the Commission for transmittal to Pre-Paid any funds remaining in the escrow account that were not paid to consumers or to cover administrative costs of the escrow

account. Nothing in this provision shall be construed to limit Pre-Paid's obligation under Parts V and VI of this order to provide consumer refunds.

VII.

It is further ordered, That, for a period of three (3) years from the date of issuance of this order, respondent, and its successors and assigns, shall maintain and upon request make available to a representative of the Federal Trade Commission for inspection and copying all documents relating to the advertising, promoting, offering for sale, or sale of living trusts that are developed, written, reviewed, authorized, or used by respondent, its successors and assigns, its officers, and its agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, or by any individual or entity with whom or which respondent has contracted to provide pre-paid legal services.

VIII.

It is further ordered, That respondent shall notify the Federal Trade Commission, through its Denver Regional Office unless otherwise directed, at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of new corporations, subsidiaries or affiliates of the respondent, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

IX.

It is further ordered, That respondent shall:

A. Within thirty (30) days of service of this order upon it, provide a copy of this order to each of respondent's current principals, officers, directors and managers and to all personnel, agents and representatives who are or have been participating or engaging in any manner in respondent's sales activities relating to living trusts.

B. For a period of three (3) years from the date of issuance 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 who are participating or engaging in any manner in respondent's sales activities relating to living trusts within three (3) days after the person assumes his or her position.

X.

It is further ordered, That this order will terminate on April 4, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

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

Decision and Order

123 F.T.C.

APPENDIX 1

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
DENVER REGIONAL OFFICE

1961 Stout Street, Suite 1523
Denver, CO 80294-0101
(303) 844-2271

Dear AASC Member:

The Federal Trade Commission has entered into a settlement agreement with Pre-Paid Legal Services, Inc. ("Pre-Paid"), the organization which provided living trusts to members of the American Association for Senior Citizens ("AASC"). The FTC charge AASC and Pre-Paid with making certain misrepresentations, as well as with failing to disclose important information, in the course of marketing and selling living trusts. The agreement reached between Pre-Paid and the Federal Trade Commission is for settlement purposes only and does not constitute an admission of wrongdoing on the part of Pre-Paid.

In settlement of this matter, Pre-Paid has agreed to make partial refunds to AASC members. To be eligible for this refund, you must sign and return the enclosed claim form. If you have already received a refund from Pre-Paid or AASC, you are not eligible for this refund.

Sincerely,

Federal Trade Commission

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Decision and Order

APPENDIX 2

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
DENVER REGIONAL OFFICE1961 Stout Street, Suite 1523
Denver, CO 80294-0101
(303) 844-2271

CLAIM FORM

Name _____
Address _____
City/State/Zip _____

This Claim Form is to be used in connection with your request for a refund from Pre-Paid Legal Services, Inc. ("Pre-Paid"). Please read the Letter enclosed with this Claim Form. **THIS CLAIM FORM MUST BE RECEIVED BY THE FTC AT THE ADDRESS SHOWN ABOVE NO LATER THAN _____, 199_. (60 day turn-around).** A self-addressed envelope is provided for your convenience. Please affix the proper postage.

INSTRUCTIONS

1. Please check the appropriate box to indicate your status:
 - ☐ As a member of the American Association for Senior Citizens ("AASC"), I received a living trust from Pre-Paid Legal Services, Inc. I have not received a refund from either AASC or Pre-Paid.
 - ☐ _____, the AASC member who received the living trust, is legally incompetent or deceased, and I am the beneficiary, next-of-kin or other representative of that person. Neither the AASC member nor myself, on behalf of that AASC member, has received a refund from either AASC or Pre-Paid.
2. If your name and/or address as they appear at the top of this form are different, or the information is otherwise incorrect, please enter the change(s) in the line(s) to the right.

PRIVACY ACT NOTICE

This information is being collected in order to make a distribution of funds paid to the Federal Trade Commission in connection with an Agreement Containing Consent Order to Cease and Desist issued to Pre-Paid Legal Services, Inc. by the Commission pursuant to 15 U.S.C. 45. In addition, this information may be disclosed for other purposes authorized by the Privacy Act, 5 U.S.C. 552a, 47 Fed. Reg. 32,622, including disclosure to other government agencies. Failure to provide the requested information could delay processing or, in some cases, make it impossible for us to process your claim.

Under penalty of perjury, I certify that the foregoing is true and correct to the best of my knowledge and belief.

Signature_____
Date

APPENDIX 3

ESCROW AGREEMENT

Whereas, Pre-Paid Legal Services, Inc. ("Pre-Paid" or "proposed respondent"), has agreed with the staff of the Federal Trade Commission ("the Staff") to settle a certain proposed complaint against it; and

Whereas, as part of the settlement of the proposed complaint for alleged violations of Section 5 of the Federal Trade Commission Act ("FTC Act"), Pre-Paid and the staff have agreed that Pre-Paid will pay partial consumer refunds to those who purchased living trusts from the American Association for Senior Citizens ("AASC"); and

Whereas, the staff requires as a condition of its recommendation of the proposed settlement to the Commission that one hundred thirty thousand dollars (\$130,000) be held in escrow to secure payment of the redress, pending final approval of the settlement and issuance of the order by the Commission, before being disbursed as directed by the terms of the proposed Agreement Containing Consent Order to Cease and Desist;

Now, therefore, in consideration of the premises and mutual covenants, agreements and conditions herein contained, Pre-Paid and the staff do hereby agree to and with each other as follows:

1. Gilardi & Co., in its capacity as a redress contractor (FTC contract #L-1127), shall serve as the Escrow Agent. Within forty-eight (48) hours of signing the Proposed Agreement Containing Consent Order to Cease and Desist to the Commission for final approval, the proposed respondent shall pay to Escrow Agent the amount of one hundred thirty thousand dollars (\$130,000), to be held in escrow in an interest-bearing account to secure payment of the refunds in trust for consumers, by depositing the same into an account ("the escrow fund") as designated by the Escrow Agent. Pre-Paid will pay said amount by a certified or cashier's check(s) or wire transfer.

2. Except as provided in paragraphs four and five of this Agreement and Part V of the proposed Agreement Containing Consent Order to Cease and Desist, proposed respondent agrees to make no claim to or demand for the return of the escrow fund or any portion thereof, directly or indirectly, through counsel or otherwise, and, in the event of bankruptcy of proposed respondent, proposed respondent agrees that the funds are not part of the debtor's estate and that the estate does not have any claim or interest therein.

3. The refund amounts so held in escrow shall be disbursed in accordance with the proposed Agreement Containing Consent Order to Cease and Desist executed by the parties. The Escrow Agent shall be compensated for its management of the escrow fund by the escrow fund.

4. This Agreement shall be irrevocable, and the escrow fund shall be used for no purpose other than payment of the consumer refunds as specified in the Agreement Containing Consent Order to Cease and Desist and to compensate Escrow Agent. The parties agree, however, that this fact is not and will not be interpreted as an admission or acknowledgment by either side that any dominion, title or interest, either legal or equitable, in the principal of the escrow fund remains in Pre-Paid. The Escrow Agent shall return to the Commission for transmittal to Pre-Paid any money remaining in the escrow fund after reimbursement to all consumers who request a refund as soon as practicable after the conclusion of the process of disbursement of the consumer refunds.

5. In the event that the proposed Agreement Containing Consent Order to Cease and Desist does not receive final approval from the Commission, the Escrow Agent shall terminate the escrow account and return all funds to the Commission for transmittal to proposed respondent. The parties agree, however, that this fact is not an admission or acknowledgment by either side that any dominion, title, or interest, either legal or equitable, in the principal of the funds remains in Pre-Paid.

In witness whereof, each of the parties caused this Escrow Agreement to be executed on its behalf by its duly authorized representatives.

Complaint

123 F.T.C.

IN THE MATTER OF

UNO RESTAURANT CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3730. Complaint, April 4, 1997--Decision, April 4, 1997*

This consent order prohibits, among other things, the Massachusetts-based pizza corporations from misrepresenting the existence or amount of fat or any other nutrient or substance in any pizza or other baked crust food products.

Appearances

For the Commission: *John T. Dugan.*

For the respondent: *Craig Fochler, Wildman, Harold, Allen & Dixon, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc., corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Uno Restaurant Corporation is a Delaware corporation with its principal office or place of business at 100 Charles Park Road, West Roxbury, Massachusetts.

2. Respondent Pizzeria Uno Corporation is a Delaware corporation with its principal office or place of business at 100 Charles Park Road, West Roxbury, Massachusetts.

3. Respondent Uno Restaurants, Inc. is a Massachusetts corporation with its principal office or place of business at 100 Charles Park Road, West Roxbury, Massachusetts.

4. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including thin crust pizzas known as "Thinzettas," which are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

5. 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.

6. Respondents have disseminated or have caused to be disseminated advertisements for thin crust pizzas, including but not necessarily limited to the attached Exhibits A1, A2, and B. These advertisements contain the following statements:

A. Customer: "Me, I Like to watch what I eat."

Chef: "Then keep watching . . ."

Announcer: "Introducing great tasting low fat thin crust pizzas."

(Exhibit A1, television commercial transcript, and Exhibit A2, television commercial videotape).

B. "Uno's menu is full of 23 new tempting items. Try our 3 new Deep Dish or 8 new Lowfat Thin Crust Pizzas."

(Exhibit B, print advertisement).

7. Through the means described in paragraph six, respondents have represented, expressly or by implication, that their Thinzettas thin crust pizzas are low in fat.

8. In truth and in fact, in most cases respondents' Thinzettas thin crust pizzas are not low in fat. Six out of nine types of Thinzettas thin crust pizzas contained from 14 to 36 grams of fat per serving at the time of dissemination of the advertisements referred to in paragraph six. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. 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.

Complaint

123 F.T.C.

EXHIBIT A1

PIZZERIA UNO TELEVISION COMMERCIAL TRANSCRIPT

Customer 1: Ok, Pizzeria Uno, you do great deep dish pizza, but what about chicken?

Chef: Chicken, you ask? Take this . . .

Announcer: Uno challenges your appetite with over twenty new dishes, like our chicken mushroom marsala with fettucine. [alternate version: Uno challenges your appetite with over twenty new dishes, like our grilled chicken breast sandwich with roasted red peppers].

Super: At participating Restaurants Only.

Customer 2: Me, I like to watch what I eat.

Chef: Then keep watching . . .

Announcer: Introducing great tasting low fat thin crust pizzas. We have over twenty new dishes all made the Uno way. Your way to great food.

Super: Prices May Vary.

Customer 3: Hey, you forgot the appetizers!

Chef: I don't think so.

EXHIBIT A2

EXHIBIT A2 IS A VIDEO TAPE

1038

Complaint

EXHIBIT B

UNO

Great Deals On UNO's NEW Meals!

HARVEST THINS

SAUSAGE

CHICKEN & ROASTED RED PEPPERS

CHICKEN FAJITA

GRILLED VEGETABLE PRIMAVERA

Uno's new menu is full of 23 new tempting items. Try our 3 new Deep Dish or 8 new Lowfat Thin Crust Pizzas. Or one of our new entrees like Grilled Vegetable Primavera or Lowfat Chicken Fajitas. Now there are more reasons than ever before to come to Uno's.

PRODUCTS MAY VARY

At the Woodfield Mall
Corner of Golf Road and Meacham Road
Schaumburg 413-0200

Jan 31, 1996
FSI

\$2 OFF ANY PIZZA, PASTA OR "FAVORITE" ENTRÉE Lunch Specials not included. Not valid with other offers. One offer per party. Valid at participating restaurants. Expires 2-18-96 	TWO CAN DINE FOR \$10.99 Any regular size Deep Dish Pizza & two House Salads for one low price. Additional things extra. Not valid with other offers. One offer per party of two. Valid at participating restaurants. Expires 2-18-96 	TWO CAN DINE FOR \$14.99 Any 2 Pasta or "Favorite" Entrées & two House Salads for one low price. Excluding Chicken and one Jumbo Ribs and Specialty Pizzas. Not valid with other offers. One offer per party of two. Valid at participating restaurants. 
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EXHIBIT B

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Uno Restaurant Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100 Charles Park Road, West Roxbury, Massachusetts.

Respondent Pizzeria Uno Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100 Charles Park Road, West Roxbury, Massachusetts.

Respondent Uno Restaurants, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its offices and principal place

of business located at 100 Charles Park Road, West Roxbury, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "*respondents*" shall mean Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc., corporations, their successors and assigns and their officers, agents, representatives and employees.

2. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, 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 pizzas, or any other food product containing a baked crust, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, through numerical or descriptive terms or any other means, the existence or amount of total fat or any other nutrient or substance in such product. If any representation covered by this Part either expressly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

It is further ordered, That respondents Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc. and their successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

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

IV.

It is further ordered, That respondents Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc. and their successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, managers, and franchisees, and to all current and future employees, agents, and representatives having responsibility for the preparation of advertising or promotional materials. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondents Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc. and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the

creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learns less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VI.

It is further ordered, That respondents Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc. and their successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

VII.

This order will terminate on April 4, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not

terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

THE ADMINISTRATIVE COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3731. Complaint, April 14, 1997--Decision, April 14, 1997*

This consent order prohibits, among other things, a Texas-based corporation and its officer from making certain false, misleading or unsubstantiated claims concerning the benefits and appropriateness of living trusts or any legal instrument or service they offer and requires the respondents to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust.

Appearances

For the Commission: *Elizabeth M. Palmquist.*

For the respondents: *Tony Chicchio, Chicchio & Associates* Dallas, TX.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Administrative Company, a corporation, Michael P. McIntyre, individually and as an officer and director of The Administrative Company, and Pre-Paid Legal Services, Inc. ("Pre-Paid"), a corporation (collectively, "respondents"), have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Michael P. McIntyre's current address is 4328 Hollow Oak, Dallas, Texas.

Respondent The Administrative Company has ceased doing business. Its address is the same as that of Michael P. McIntyre.

Respondent Pre-Paid Legal Services, Inc., is an Oklahoma corporation, with its principal office or place of business at 321 E. Main Street, Ada, Oklahoma.

PAR. 2. Respondents, at all times relevant to this complaint, have advertised, promoted, offered for sale, and sold living trusts to consumers. A living trust is a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring

ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

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.

PAR. 4. In the course of marketing their products to the public, respondents, directly or through commissioned sales agents, have caused to be disseminated sales literature concerning living trusts, including, but not necessarily limited to, the attached Exhibits 1 and 2. This literature contains the following statements:

(a) It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

YOU COULD SAVE THOUSANDS OF HARD EARNED DOLLARS! Exh. 1.

(b) A LIVING TRUST eliminates ALL PROBATE FEES and COST. . . . With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs. Exh. 2, p. 18.

(c) A LIVING TRUST allows a quick DISTRIBUTION to your heirs. Assets in probate court are often frozen two years or more, even with a WILL. A LIVING TRUST allows these same assets to be distributed within days to your loved ones, since a LIVING TRUST avoids Probate Court. Exh. 2, p. 17.

(d) Total assets [pass through a] living trust [to] spouse or heirs [in] 1-3 days. Exh. 2, p. 24.

(e) A LIVING TRUST prevents a WILL CONTEST. . . . Through a LIVING TRUST your wishes will be carried out without interference. Exh. 2, p. 17.

(f) Membership entitles you to:

1. FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL. Exh. 2, p. 8.

(g) AN A-B LIVING TRUST protects against catastrophic MEDICAL COSTS. . . . With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs. Exh. 2, p. 19.

(h) Is There Anything Bad About a Living Trust? No. There is nothing bad about a Living Trust. Exh. 2, p. 20.

PAR. 5. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that:

- (a) The use of a living trust avoids all probate and administrative costs.
- (b) At death, a living trust allows assets to be distributed immediately or almost immediately.
- (c) A living trust cannot be challenged.
- (d) Living trusts are prepared by local attorneys.
- (e) A living trust protects against catastrophic medical costs.
- (f) A living trust is the appropriate estate planning device for every consumer.
- (g) There are no disadvantages to a living trust.

PAR. 6. In truth and in fact:

(a) A living trust does not always avoid probate and administrative costs.

(b) The use of a living trust does not necessarily result in immediate distribution of assets since creditors may file claims against the trust instrument.

(c) A living trust is not immune from challenge.

(d) Most living trusts prepared for AASC members were not prepared by local attorneys. Instead, of the 3,064 living trusts prepared for AASC members in 43 states, approximately 3,000 were prepared by an Arizona attorney licensed to practice law solely in Arizona and New York.

(e) A living trust does not protect against catastrophic medical costs.

(f) A living trust is not appropriate for everyone. The determination of whether a living trust is appropriate for a particular consumer requires an examination of the assets that compose the consumer's estate, the potential tax consequences of the estate plan, and the objectives of the consumer.

(g) There are disadvantages to a living trust. For example, while probate law imposes a statutory deadline beyond which creditors can no longer file claims against a will, in some states, there is no law limiting the time that creditors may file claims against a trust instrument.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the sales literature referred to in paragraph four, including, but not necessarily

limited to, the sales literature attached as Exhibits 1 and 2, 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. 8. 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 seven was, and is, false and misleading.

PAR. 9. In their advertising, promoting, offering for sale, and sale of living trusts, respondents have failed to disclose that the transfer of an individual's assets into the living trust was not included in the price paid for creating the living trust and that it would be the responsibility of the individual purchaser to transfer assets into the trust, once created, or to arrange for another individual or entity to do so. This fact would be material to consumers in deciding whether to purchase a living trust and from whom to purchase a living trust. The failure to disclose this fact was, and is, a deceptive act or practice.

PAR. 10. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

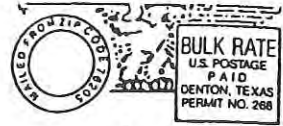
1047

Complaint

EXHIBIT 1

A.A.S.C.
1155 15th Street N.W. Suite 810
Washington D C 20077-1637

MAR 25 1994



URGENT MESSAGE ENCLOSED

**OPEN
IMMEDIATELY!**

TO
▽

*****CAR-RT-SORT** CR-02
A37A 081 4812 S264 1549

541 VENTURA AVE
SAN MATEO CA 94403-3223

SPECIAL BULLETIN:

It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

**YOU COULD SAVE THOUSANDS
OF HARD EARNED DOLLARS!**

INFORMATION IS AVAILABLE ON HOW TO OBTAIN A FREE LIVING TRUST
Just fill out and return this postage paid card.

Name: _____

Ages: ☐ Male ☐ Female _____

County: _____

Home Phone: () _____

Local Security No. _____

*****CAR-RT-SORT** CR-02
A37A 081 4812 S264 1549

541 VENTURA AVE
SAN MATEO CA 94403-3223

Exhibit 1

Complaint

123 F.T.C.

EXHIBIT 2



**NATIONWIDE
NON-PROFIT
ORGANIZATION**

1155 15th Street, N.W.
Suite 810
Washington, D.C. 20005

1-800-880-1310

Exhibit 2

1047

Complaint

EXHIBIT 2



Dear Member:

We welcome you to the wonderful world of meaningful benefits and services provided as part of your membership in THE AMERICAN ASSOCIATION FOR SENIOR CITIZENS.

As the senior officer of this non-profit Association, and one who is on the sunny side of sixty, I assure you I value my membership and enjoy the many benefits available to all of our members.

This Association was founded several years ago and entrusted with the responsibility of getting the message to people our age so that we can receive every benefit and advantage to make sure the dollars we have spent a lifetime earning and saving will pass on to our heirs as intact as Uncle Sam will allow.

With this responsibility as our driving force, our Association explored every conceivable avenue available before making the decision to educate our membership on the value and importance of REVOCABLE LIVING TRUSTS.

It is also important for you to know and understand what this Association is committed to in regard to a PRE-PAID LEGAL benefit that actually pays the legal fees for your REVOCABLE LIVING TRUST, and provides many other legal benefits. Look at the following pages to understand our commitment to you in this respect.

In addition, we have sought meaningful and worthwhile consumer benefits and services for our membership. We are sure you can recognize the value of these benefits for you and your family. We are happy you have joined our "YOUNG AT HEART" adult Association. A living trust is the most important gift you can give to your loved ones.

Also, a portion of American Association of Senior Citizens membership dues are used to support the research efforts of medical research facilities, and others, as they seek better treatment and cures relating to our senior citizens. AASC Medical Research Foundation's charter, as explained in the following section, is to continually stay abreast of current research efforts throughout the United States to determine who should receive financial support from the Foundation.

Please know we are here to make things a little better for you and all of our growing family of members. As soon as we receive your application I will see that your membership kit is forwarded to you.

Warmest personal regards,

Donald T. Berlinn
Executive Director

Complaint

123 F.T.C.

EXHIBIT 2



**MEDICAL
RESEARCH
FOUNDATION**

EXHIBIT 2

As Directors on the Board of AASC Medical Research Foundation, we are charged with guiding the Foundation to fulfill its charter of supporting worthy medical research that relates to better health care for our senior citizens.

In many cases, this money has a direct impact on community awareness, education and health care delivery.

About our President . . .

Donovan F. Ward, M.D.
AASC Medical Research Foundation President.

Past President of the American Medical Association.

A Fellow of the American College of Surgeons.

President of the Fifty Year Club of American Medicine.

Member of the AMA's committees on Medical Practice and Public Relations.

Past President and National Director, American Health Care Advisory Foundation.



Complaint

123 F.T.C.

EXHIBIT 2

Our
other
Directors
are . . .



Robert P. Ewing, is past Chairman and President of Bankers Life and Casualty Company and is a Trustee of the MacArthur Foundation, a Director of Evanston Illinois Hospital and a former Director of the Health Insurance Association of America.



Howard E. Cartwright, of Chicago is past CEO of College of American Pathologists, past Director of College of American Pathologists Foundation and a member of American Association of Medical Society Executives.



Denis J. Fu, M.D., a practicing physician in Hawaii, has served as a medical consultant for various state and national development programs.



Joseph W. Lawrence, M.D., has a long and distinguished career in Public Health and is currently the Health Officer for Lee County, Florida, a position he has held since 1960.



Samuel R. Sherman, M.D., has a long list of accomplishments including: past President of the California Medical Association.



Alexander L. Sadowski, D.D.S., has accumulated over 1000 hours of continuing education, served on the New Mexico State Dental Association's Finance Committee and is both past president and secretary of the Southwest District Dental Society.



Donald T. Berlinn, has been Vice President of ITT Life Insurance Company Agency and President of Medical Air Services Association, the nation's first nationwide air ambulance service. Currently President of Affordable Dental Connection and Association Management Group and President of American Association for Senior Citizens.

All of our listed Directors are also members of the Advisory Board of American Association of Senior Citizens and advise the Association on developing new benefits or improving existing benefits for our senior citizens.

EXHIBIT 2

Financial support is provided by the AASC Medical Research Foundation to the following and other research facilities:

- American Medical Association
- American Heart Association
- American Public Health Foundation
- Alzheimers Disease and Related Disorders Association
- California Medical Education and Research Foundation
- Leukemia Research Foundation
- Mt Sinai Foundation
- National Multiple Sclerosis Society
- National Kidney Foundation
- Regional Cancer Treatment Center — Iowa
- University of Iowa Dept. of Immunology
- University of San Francisco Cardiovascular Research

In addition, the Foundation has given grants to the following, and others:

ON LOK Senior Health Services	Cancer Research Foundation
Iowa Methodist Health Foundation	of North Texas
March of Dimes — Walk America	Allegheny-Singer Research Institute
University of Iowa College of Medicine	University of Florida — Oncology
San Antonio Area Lupus Foundation	St. Jude's Children's Hospital
Tulane University Medical Center,	Sloan-Kettering Cancer Center
Dept. of Pediatric-Cardiology	North California Transplant Bank
Cancer Counseling, Inc.	ALS & Neuromuscular Research
Tarrant County Cancer Care Services	Foundation
Cystic Fibrosis Foundation	Children's Hospital Medical Center
Univ. of Connecticut Health Center	Florida Geriatric Research
Jean Marie Colbert Bone Marrow	Foundation
Transplant Center	Regional Cancer Foundation
Children's Heart Foundation	Children's Memorial Foundation
Fred Hutchinson Cancer Research	Cancer Care Services
Center	

The AASC Medical Research Foundation was formerly known as the American Health Care Advisory Association Foundation, providing financial support to the above and other research facilities.

Complaint

123 F.T.C.

EXHIBIT 2

AASC

Provides
for its Members
the Benefits of
Pre-Paid Legal Services, Inc.[®]



A few of the most common personal worries and business activities needing an attorney's professional counsel and assistance include:

Threat of a Lawsuit
Debt Collection
Auto Transaction
Contractor Dispute
Trusts
Eviction
Criminal Threats

Adoption
Domestic Problems
Partnerships
Lease Change
Motor Vehicle Fleets
Creditor Harassment
Bankruptcy

Consumer Fraud
Taxes
Forming a Corporation
Property Purchase
Manufacturer Problems

An American Stock
Exchange Company

Paid Over 80,000 Attorneys

Paid Over \$80,000,000 in Legal Fees

Over 5,000,000 Members Have Access
to Services Nationwide

1047

Complaint

EXHIBIT 2

 embership entitles you to:

- 1 FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL (see following section)**
- 2 LEGAL SERVICES AT DEATH**
- 3 IN-OFFICE ATTORNEY CONSULTATION**
- 4 UNLIMITED TELEPHONE CONSULTATIONS WITH A PROVIDER ATTORNEY**
- 5 MOTOR VEHICLE LEGAL SERVICE**
- 6 TRIAL DEFENSE FUND**
- 7 IRS AUDIT PROTECTION**
- 8 LEGAL ASSISTANCE IN MANY CASES**

Complaint

123 F.T.C.

EXHIBIT 2

 Unlimited Telephone Consultations:

- As a member of AASC, you may call the Pre-Paid Legal Toll-Free Number, 1-800-654-7757, from 8:30 a.m.-5:00 p.m. any business day. Pre-Paid Legal will direct you to your provider attorney for legal advice.
- You do not need to guess about your legal rights or spend hundreds of dollars for consultations with an attorney. In the privacy of your own home, you simply call the attorney and he will answer questions concerning ANY personal or legal matters.

The following are just a few examples of the types of questions you may need answered:

1. "I am 67 years old and collecting social security. Is it legal for me to claim a deduction for a dependent who earns an income?"
2. "My company is trying to force me into retirement by offering me an early retirement buyout. What are my rights?"
3. "It has been 12 weeks since I was in the hospital and my insurance company has still not paid the \$1,500 hospital bill. How long do they have to settle the claim?"
4. "My neighbor's teenage son, despite my requests to stop, continues to play loud music that keeps me awake at night. Is there anything I can do?"
5. "I had a contractor fix my roof, it still leaks and the contractor will not return my call. What can I do?"
6. "My husband is in a nursing home. I do not feel he is getting the proper care. Aren't there certain standards set by the state that nursing homes must follow? What are my husband's options?"
7. "I inherited some land in another state and I would like to lease it out. How do I do this?"

In addition to advising you of your rights, the attorney, if necessary, will personally call or send a letter to help resolve your problem.

EXHIBIT 2

p to 50 Hours Legal Assistance at Death:

Everyone needs a lawyer upon the death of a family member for settlement of the estate and consultation with the surviving spouse or children:

- To finalize trust documents
- To resolve liens contesting the trust, including the IRS
- For out-of-state property settlements and property sales
- For deed transfers
- To resolve claims of creditors, including hospitals, funeral homes, etc.
- For protection against any person who attempts to challenge the estate

The settlement of an estate is a complicated and lengthy process. Qualified attorneys usually charge between \$175—\$300 per hour for their services. This translates into a cost of approximately \$8,750 — \$15,000 for 50 hours of legal assistance to settle an estate. **As a member of AASC, your membership entitles you to up to 50 hours of legal assistance, depending on your member classification.**

A True Story:

A Senior Citizen of Dixon, Illinois joined AASC in June of 1991. In July, 1991, he passed away. His children, rather than beginning the long and costly process of finding an attorney to probate his estate, simply called the AASC members' toll-free number. A Pre-Paid Legal attorney immediately began to settle the estate.

"My father only became a member six weeks ago but we feel so fortunate that he did. We immediately called a provider attorney and were so relieved to learn that we would have the legal work on my father's estate done immediately thanks to Pre-Paid Legal. The service is invaluable," said the daughter.

EXHIBIT 2

 n-Office Consultation:
ONE PER YEAR

AASC provides its members with a Living Trust. Each year it should be reviewed and updated with changes concerning:

- Any Legal Matter
- Investments
- Deeds
- Property and Real Estate
- Cars, Trucks and Equipment
- Bank Accounts
- C.D.'s

EXHIBIT 2

 **Motor Vehicle Legal Service
Expense Benefits:**

Nearly every American drives some form of motor vehicle every day. You are at risk, every time you get behind the wheel of your car.

AASC is proud to offer you a wide variety of coverage in the area of motor vehicles. Read below to discover the valuable benefits you will have after enrollment.

- **MINOR LEGAL EXPENSES:** If a licensed member, spouse, or any covered dependent, while driving any licensed motor vehicle, is accused of an alleged traffic violation, the Company pays your attorney fees, pursuant to the following schedule:

Up to \$75 for legal assistance regarding such charge; up to \$125 for legal assistance requiring court appearance; up to \$200 for legal assistance which includes trial work.
- **MAJOR LEGAL EXPENSES:** If a licensed member, spouse or any covered dependent, while driving any licensed motor vehicle, is accused of a criminal charge such as manslaughter, involuntary manslaughter, negligent homicide or vehicular homicide, the Company will pay your attorney fees based on a maximum hourly rate of \$100.
- **SUSPENDED DRIVER'S LICENSE:** The Company provides for professional assistance, and if necessary, maintenance of your driver's license. The Company will pay a reasonable attorney fee for the suspended driver's license services up to \$250 per occurrence to your attorney.
- **LEGAL COLLECTION SERVICE:** Should your licensed auto, private boat or motorcycle be damaged in an accident, the Company will assist you in collecting damages done to your vehicle. The Company provides legal assistance, win, lose, or draw, in collecting damages when your auto, private boat or motorcycle is involved in an accident, and will pay up to \$250 per occurrence to your attorney.
- **PERSONAL INJURY LEGAL EXPENSES:** The Company will pay your attorney fees, win, lose, or draw, up to \$250 per occurrence to collect or file for personal injuries of \$1000 or less received while driving, riding, or when struck as a pedestrian by any motor vehicle.

Complaint

123 F.T.C.

EXHIBIT 2



5,000 Trial Defense Fund:

All too often you read in the paper about someone being sued over what you would consider a trivial matter. . . It couldn't happen to you. But everyday, people just like you are sued by neighbors, friends, co-workers, even family. In this sue happy society, it is great to know that your AASC membership offers benefits to cover just that.

The Company will pay up to a maximum of \$5,000 in attorney fees the first membership year for either the member or member's spouse, if he or she is named Defendant or Respondent in a covered civil or criminal action in a court of law. **The criminal action must be one which arises out of the direct performance of the Covered Person's employment activities.** The trial defense fund benefit will even pay for the attorney even though your insurance company may have retained one for you, if the choice of attorney is not yours and you feel you need your own personal attorney.

BENEFITS TO BE PAID AS FOLLOWS:

Benefits are based on a maximum hourly rate of \$100 and are to be paid as follows:

Up to \$250 for any and all legal services rendered in defense of the covered lawsuit prior to the actual trial.

Up to \$300 per day for each actual day of trial, including covered criminal preliminary hearings not to exceed an annual aggregate trial defense fund of \$5,000 per membership.

Upon renewal of the membership the Covered Person will receive additional trial defense benefits at no additional cost to the member. The trial defense fund increases, as follows:

2nd Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$10,000 per membership payable up to \$300 for any and all legal services rendered prior to trial and up to \$350 per day for each actual day of trial, including criminal preliminary hearings.

3rd Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$15,000 per membership payable up to \$350 for any and all legal services rendered prior to trial and up to \$400 per day for each actual day of trial, including criminal preliminary hearings.

4th Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$20,000 per membership payable up to \$400 for any and all legal services rendered prior to trial and up to \$450 per day for each actual day of trial, including criminal preliminary hearings.

5th Year Renewal The trial defense fund will be increased to an annual aggregate sum of \$25,000 per membership payable up to \$450 for any and all legal services rendered prior to trial and up to \$500 per day for each actual day of trial, including criminal preliminary hearings.

EXHIBIT 2

 RS Audit Protection Service:

I.R.S. . . . The idea of an audit strikes fear in even the most careful tax payer. Why not enjoy the peace of mind that the AASC membership offers through the IRS Audit Protection Service? Here are the details.

The Company will pay up to a maximum of \$5,000 in professional fees for either the member, spouse, or dependent children, to the member's choice of any licensed public accountant, certified public accountant, enrolled agent or attorney or any combination thereof when a member is notified in writing by the Internal Revenue Service (IRS) of an audit of such member's tax return or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

BENEFITS TO BE PAID AS FOLLOWS:

Up to \$100 for consultation, advice and/or assistance, upon receipt of written notice from the IRS that the member's tax return is being audited or such member is requested in writing to appear at the offices of the IRS concerning such member's tax return.

In the event settlement is not achieved with the IRS within thirty (30) days, then **up to \$250** beginning on the thirty-first (31) day to provide the member, spouse, or dependent children representation at the audit and at the audit and for negotiations, conferences, telephone conversations, settlement conferences, subsequent thereto, but prior to the institution of litigation.

In the event settlement is not achieved without litigation, then payment will be made up to the balance of \$5,000 in professional fees in either event of the IRS suing the member or the member paying the disputed tax and then suing the IRS. Such payment to be made at up to a rate of **\$300 per day** of each day of trial appearance.

Coverage begins with the return due on April 15 of the year this contract is effective.

Complaint

123 F.T.C.

EXHIBIT 2

Legal Assistance in Many Cases:

AASC membership provides legal assistance in many cases including the following

PHONE CALLS AND LETTERS ON YOUR BEHALF

A letter or phone call from your Plan Attorney can get you the results you want fast and cut through the red tape. You and your Plan Attorney can now decide together when this is the best legal step for you. There is no charge for the first letter. **(Any further fees are to be set by the Plan Attorney and are the sole responsibility of the Named Member on the Contract.)**

REVIEW OF CONTRACTS AND DOCUMENTS

You can have an unlimited number of legal documents of up to three pages each reviewed by your Plan Attorney, free of charge. Your Plan Attorney will give you an analysis of the documents and suggest changes for your benefit or any other necessary procedures, before you sign!

LEGAL FORMS BENEFIT

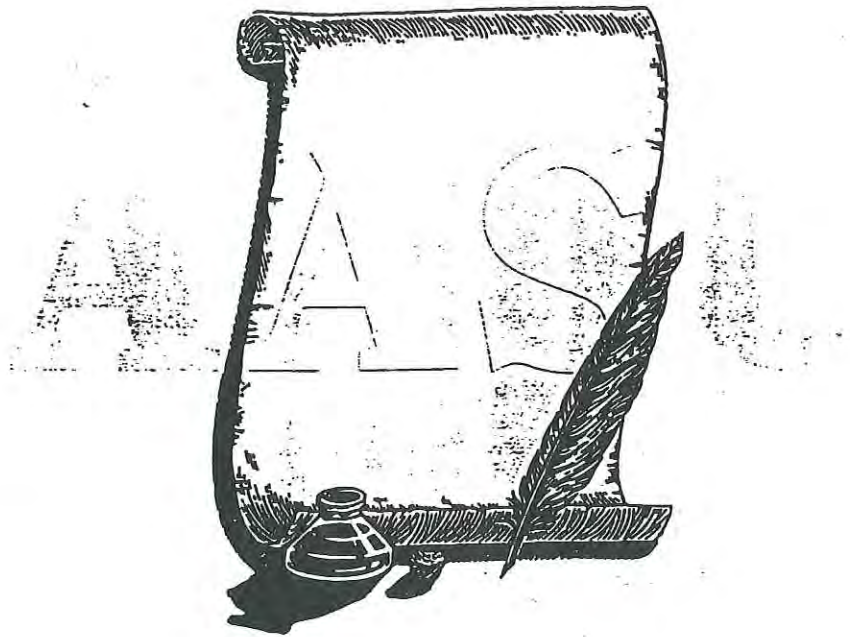
Imagine having access to the most often needed legal documents — just a phone call away!

The documents you need will be prepared for you at a greatly **reduced rate**, but don't worry, still with the same care and concern for your welfare. A list of legal forms available, along with the nominal charges, will be in your contract packet. Complete information about the forms you need can be obtained with just a phone call to your Plan Attorney.

1047

Complaint

EXHIBIT 2



**ALL ABOUT
A LIVING
TRUST**

EXHIBIT 2

Advantages of a Living Trust

1 PROBATE:

A LIVING TRUST avoids a complex **PROBATE** proceeding. Probate is the court process designed to transfer title of assets to your heirs. A Probate is required even when there is a **WILL**. The Probate Court procedure is complicated by laws requiring your Executor to obtain special court approval to take any actions, including paying your bills, and distributing your assets.

With a **LIVING TRUST**, the title to property is transferred through the trust, so that your heirs can easily receive these assets, and will not have to go through complex Probate Court proceedings.

2 DISTRIBUTION:

A LIVING TRUST allows a quick **DISTRIBUTION** to your heirs. Assets in probate court are often frozen two years or more, even with a **WILL**.

A **LIVING TRUST** allows these same assets to be distributed within days to your loved ones, since a **LIVING TRUST** avoids Probate Court.

3 PRIVACY:

A LIVING TRUST is completely **PRIVATE**. There is no privacy with a public Probate Court Proceeding.

A **LIVING TRUST** is a private document, the size and distribution of your estate remains confidential.

4 WILL CONTEST:

A LIVING TRUST prevents a **WILL CONTEST**. In Probate Court, anyone can easily contest a **WILL**, even without a lawyer.

Through a **LIVING TRUST** your wishes will be carried out without interference.

5 CONTROL:

A LIVING TRUST enables you to **CONTROL** your assets. By making a gift of all of your property to your heirs, you may eliminate probate. However, once the gift is made you have lost ownership of your property, which you may later need for your support.

A **LIVING TRUST** allows you to retain control of your property, and upon your demise, **YOU CONTROL WHEN AND HOW MUCH YOUR BENEFICIARY WILL RECEIVE.**

EXHIBIT 2

6 DISABLED HEIRS:

A LIVING TRUST preserves benefits for DISABLED HEIRS. A disabled heir generally loses government assistance payments upon receiving an inheritance.

A LIVING TRUST can authorize your successor trustee to make special distributions for a disabled heir while still preserving government benefits.

7 PROBATE FEES:

A LIVING TRUST eliminates ALL PROBATE FEES and COST. Probate fees are based on the entire value of an estate, without deducting bills or mortgage.

The probate expense can be as much as the following, or more:

GROSS ESTATE SIZE	APPROXIMATE EXPENSES
\$100,000.	\$10,000.
\$300,000.	\$30,000.
\$500,000.	\$50,000.

This example also applies to all other mortgaged property owned in every state. If a couple owns property in four states there would be four probates required.

With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs.

8 JOINT TENANCY:

A LIVING TRUST avoids JOINT TENANCY problems. Joint tenancy is a method of avoiding probate, where, upon death of one co-owner, the survivor becomes the full owner of the property.

1. As an owner, your child has the power to interfere with your decision to sell or refinance the property.
2. If your child should go through divorce, the other spouse may claim an interest in the property.
3. If your child should owe taxes, the tax collector may take your property to satisfy the tax obligation.
4. If your child should be found liable in any lawsuit, your property may be sold to pay the judgment.

With a LIVING TRUST, probate is entirely avoided and there is not exposure of your assets to the debts or liabilities of your child.

9 CONSERVATOR:

A LIVING TRUST avoids a CONSERVATOR. If you ever become incapacitated, the Probate Court will appoint a conservator to manage your property, and your estate will be required to pay court fees and costs for the conservatorship each year.

With a LIVING TRUST, your trustee can manage your property if you are unable to handle your affairs, and there are no court fees and costs.

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EXHIBIT 2

10 INCOME TAXES:

A **LIVING TRUST** saves sizeable **INCOME TAXES**. When a couple holds property or stocks in joint tenancy, the surviving spouse is required to pay a capital gains tax upon sale. This tax is based upon one-half of the increase in value of the property since the time of its purchase.

In a **LIVING TRUST**, title is transferred into the trust. This entirely eliminates the Federal Capital Gains Tax on all increases in value up to the date of death.

11 ESTATE TAXES:

An **A-B LIVING TRUST** saves substantial **ESTATE TAXES**. Estate taxes are paid to the federal government for the transfer of property upon death. Federal estate taxes are based on the size of the estate and are imposed where the net value of an estate is larger than \$600,000.00. The Federal Estate Taxes are almost one-half of the estate after deducting \$600,000.00.

A Living Trust saves substantial estate taxes as follows:

NET ESTATE	APPROXIMATE TAX SAVINGS
\$ 800,000.	\$ 75,000.
\$1,000,000.	\$153,000.
\$1,200,000.	\$235,000.

12 MEDICAL COSTS:

An **A-B LIVING TRUST** protects against catastrophic **MEDICAL COSTS**. If you should ever require care in a convalescent hospital or long term nursing home, the medical expense could eventually wipe out your estate, thereby denying you the opportunity to leave your property to your loved ones.

With an **A-B LIVING TRUST**, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs.

EXHIBIT 2



Questions Most Commonly Asked

Q: Is There Anything Bad About a Living Trust?

A: No. There is nothing bad about a Living Trust. It is a traditional and well-proven estate planning tool that has been used, in one form or another, for hundreds of years.

Any problems people have with a properly prepared Living Trust have nothing to do with the trust itself, but with the property left out of it because they failed to change titles and beneficiary designations to the name of their trust. The trust still works – but any property left out risks being probated. If you desire to completely avoid probate, all assets must be in your Living Trust. It does not take much time to change the titles and beneficiary designations, and once it is done your Living Trust is easy to maintain.

Q: Where Should I Keep My Living Trust Documents?

A: We suggest that you make several copies of your original documents and give a copy to each of your back-up trustees. Make sure you tell them where the original documents are located. We suggest you keep the original trust document in your safe deposit box or another safe place and keep one copy at home so you can review it from time to time. (Make sure your safety deposit box is titled in the name of your trust, so your back-up trustee will have no trouble gaining access.)

Q: Can I Put Out-Of-State Property Into The Trust?

A: Yes, you can, and in fact, you should. If you do not transfer out-of-state property into your trust, your heirs will need to have a separate probate in each state in which you own real estate. This may result in probate fees for each state. If, however, the property is transferred into your trust, the probate systems of all of the states involved are avoided.

Q: What If I Move To Another State?

A: Call Pre-Paid Legal at 1-800-654-7757 to locate a Pre-Paid attorney nearest you. Ask for a review. Most states follow the same general rules, so if something needs changing, only those parts are changed that need to be under the laws of that state. You do not need a completely new document.

Q: What If I Buy Property In Another State?

A: Before you buy property in another state, especially real estate, check to make sure it can be titled in the same way as in your home state. A bank or title insurance company in the state where the property is located can tell you if the title you want to use is acceptable in that state.

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EXHIBIT 2

Q: Does Transferring Property Into a Trust Cause a Reappraisal Of The Property So That Property Taxes Are Raised?

A: No, it does not. Revenue and Taxation Code 62 specifically states that a transfer into a Revocable Living Trust does not cause a reappraisal of the property.

Q: How Should Property And Accounts Be Titled?

A: As a general rule, all of your property should be titled in the name of your trust. Here are some examples:

If you are single:

"(your name), Trustee under trust dated (insert date you signed your trust)."

If you are married:

"(your name and your spouse's name), Trustees under trust dated (insert date you signed your trust)."

Very often you will see the letters "UTD" used as a shortened version of the words "under trust dated."

Q: If I Own Partial Interest In Property With Others, Can I Transfer That Interest Into A Trust?

A: Yes. You can transfer your share of any property into the trust without affecting the shares of the others.

Q: If I Want To Sell Assets Or Add New Assets To The Trust, Will I Need To Return To The Attorney's Office Each Time?

A: No, you will not. You can sell assets and add new assets yourself without requiring a change of the trust.

Q: Can I Sell Assets I Have In The Trust Without Any Complications?

A: Yes, you can. You can freely sell your property even if it is in the name of the trust. The only difference will be that escrow company officials may ask for a copy of the trust documents.

Q: Can IRAs, KEOGHS And Other Tax Deferred Investments Be Transferred Into The Trust?

A: IRAs, KEOGHS and other tax deferred investments **cannot** be transferred into the trust. However, the trust can be the beneficiary of those investments. Each case must be discussed with an attorney to determine whether it is better to name the trust as beneficiary, or the individuals themselves as beneficiaries.

EXHIBIT 2

Q: What About Adding Other Persons On My Accounts, Deeds, Etc.?

A: Never add another person on the title of your property or your accounts (this includes parents and children) without first checking with your attorney. It could cause you or your family some very serious problems, possibly even defeating the purposes of your trust or exposing you to a lawsuit.

Q: When Will I Need To Update My Living Trust?

A: There is no special time to change your trust, although it is a good idea to review your living trust at least every year. As a general rule, you should change your trust anytime it no longer is what you want. Any major change in your family, such as marriage, divorce, death, adoption, birth, etc. should cause you to think about your trust. If one of your trustees/guardians can no longer fulfill their responsibilities you should make changes accordingly.

Remember that you should keep a separate list of your Special Gifts.

Q: How Do I Fund My Trust?

A: YOU CAN FUND YOUR TRUST BY THE FOLLOWING THREE STEPS:

1. Go to your bank and change the name on savings, money market and certificate of deposit accounts to the name of the family trust. Also, place trust in safety deposit box.
2. If you own stocks or bonds, contact your stock broker to change the name to the name of the family trust.
3. Finally, if you have real estate, you may use the Quick-Claim Deed to transfer it yourself or you may contact a title company to transfer the title to the name of the family trust.

IF YOU HAVE ANY QUESTIONS CONCERNING THE FUNDING OF YOUR TRUST,
CALL **PRE-PAID LEGAL** AT 1-800-654-7757.

EXHIBIT 2

Disadvantages of Going
Through Probate

1. Impounded or frozen accounts
2. Impounded safety deposit box
3. Probate court cost (10% or more)
4. Waiting period (1-3 years)
5. Attorney fees (very costly)
6. Administration fees
7. Public disclosures
8. Impounded mail
9. Forced asset liquidations
10. Expensive litigation
11. Possible Federal Estate Taxes and/or
State Inheritance Taxes

EXHIBIT 2

D *Death Probate versus Revocable Living Trust*

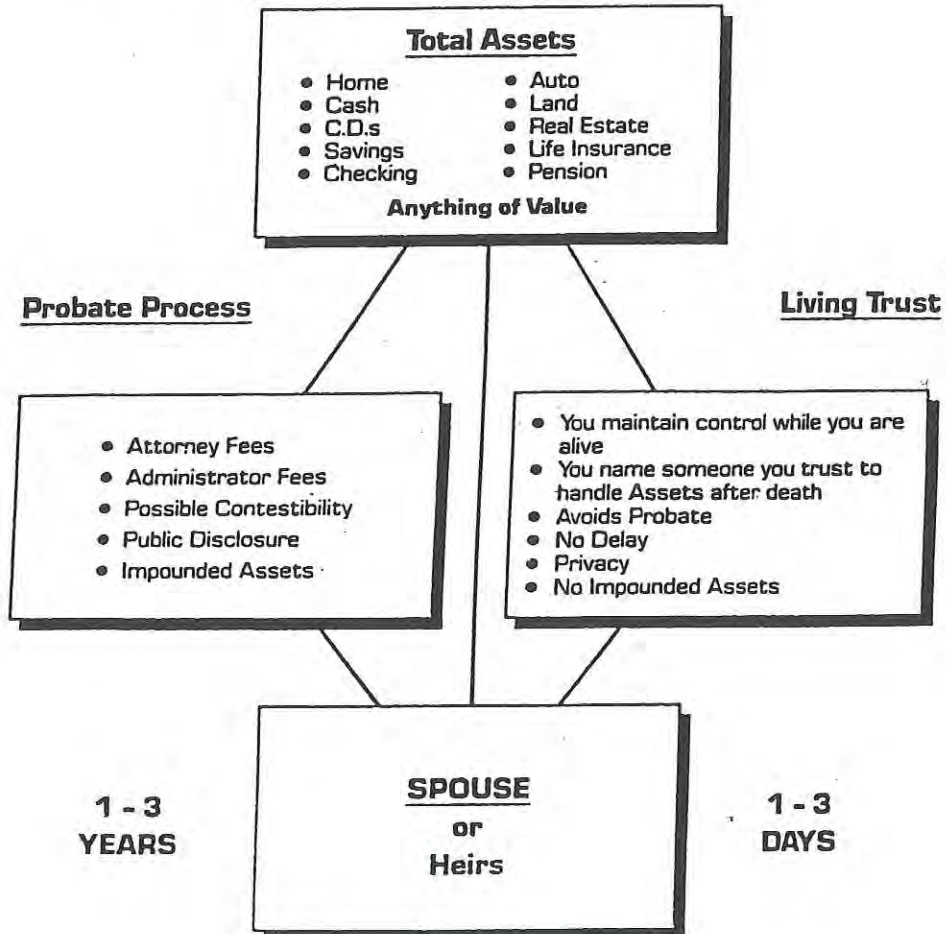


EXHIBIT 2

Preventing These Situations

A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:

Martha had been a widow for just one year when she put all of her property, including her house, into **joint ownership with her married son**. She did this thinking that when she died, her property would automatically go to her son **without the need for probate**.

Several years later, her son and his wife separated and Martha decided to sell her house so she could move in with her son. But she soon discovered **she could not sell the house** without her daughter-in-law's signature on the deed. The daughter-in-law was still legally married to her son and was entitled by law to a "marital interest" in the property. **The title company would not insure clear title to the buyer** without the daughter-in-law's signature because it was not clear what her "interest" would be — and the daughter-in-law refused to sign unless she got part of the money when the house was sold. Martha was stuck! She did not know that **joint ownership with a married person can include that person's spouse**. And because Martha had placed her house in joint ownership, **Martha lost control of her own home**.

A LIVING TRUST WOULD HAVE PREVENTED THIS SITUATION:

Bill and Agnes were an elderly couple who put **everything they owned . . .** including their home and stock . . . in their adult unmarried daughter's name. **They believed that this would avoid probate** and that all of their property would pass directly to their daughter who was an only child, when they were both gone. A year later, Bill died of a heart attack. Several months after that, the daughter was killed in an auto accident.

Agnes never believed she would survive both her husband and daughter. To add to her distress, **Agnes now owned nothing in her own name**. Everything was in her daughter's name! She was forced to probate her daughter's estate to get back her **own** property.

During this long process she had to rely on the court to grant her living expenses. **Sometimes the court would approve expenses . . . sometimes not**. And during a declining stock market, she helplessly watched the value of her stocks fall to only a fraction of their previous value because the court could not react in time for them to be sold quickly enough. **Agnes lost her financial independence** plus a substantial portion of her assets to probate . . . **just trying to get back what was hers in the first place**.

THE CONSEQUENCES IF A JOINT OWNER CANNOT SIGN:

Most married couples own their property jointly, and they **assume** that if one of them becomes disabled or incompetent, the other can continue to take care of their personal and financial affairs without interruption. But look at what happened to Henry and Mary:

Henry and Mary were successful and responsible adults. **They made safe investments and planned carefully for their future**. They owned everything **jointly** and even had **WILLS**, leaving everything to each other. But in just seconds their lives changed dramatically. **Henry was in a tragic car accident**, and suffered extensive head injuries and

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EXHIBIT 2

brain damage. Mary could continue to write checks and pay their day to day bills because only one of their signatures was required on their checking account. But soon the cash started running out, and **Mary realized she needed to sell some of their investments, and maybe their house,** to pay for Henry's care and the other bills. Mary was unable to sell any of their jointly owned property without both signatures, and since Henry could not sign his name, **the only way Mary could sell their property was to place Henry into a probate guardianship and have the court sign for him.** Henry's WILL was no help at all because he was still alive.

Mary had no idea how expensive and cumbersome this legal "joint ownership" can be. Not only did she have to deal with Henry's situation and the effect of this tragedy on their personal lives, but **she also had to deal with the court system.** She was especially frustrated that **she had to pay for the court to approve the sale of their own property** and then get the court's approval on how Henry's share of that money was spent — even when it was used to pay their personal bills and take care of Henry! When Henry finally died more than five years later, Mary found herself back in probate court — this time to probate Henry's WILL.

THE SAME THING CAN EASILY HAPPEN TO YOU if you own property through joint ownership. Many older parents list their adult sons or daughters as joint owners on their property (especially real estate and C.D.s), mainly to avoid probate when they die. And many mistakenly assume that their adult child will automatically be able to take over for them if they become disabled or incompetent. Most people just do not know how easily joint ownership can lead to a probate guardianship.

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**OTHER
MEMBERSHIP
BENEFITS &
SERVICES**

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Medical Air Ambulance Services

Specialized Facilities ... often at distant locations, available to our members at NO out-of-pocket cost when the need arises.

Ten Separate Services ... Some Lifesaving ... Some Peace of Mind:

- **EMERGENCY AIR TRANSPORTATION** to any specialized hospital in the nation with what could be the single life sustaining element available to you or a member of your family.
- **ESCORT TRANSPORTATION** for your spouse, family member or companion to accompany you in flight if space permits.
- **NON-INJURY TRANSPORTATION** to have a family member flown round trip by common carrier to the city where you are hospitalized for more than seven days.
- **REPATRIATION**, should the patient and his attending physician determine that recuperation nearer home is feasible, air transportation will be provided.
- **ORGAN RETRIEVAL/ORGAN RECIPIENT TRANSPORTATION**. If a member requires a heart, heart/lung, liver, kidney, lung, or pancreas transplant, this service will transport the organ to the recipient or fly the recipient candidate to the organ.
- **RETURN TRANSPORTATION** either by air ambulance or scheduled air carrier for your return home.
- **MINOR CHILDREN RETURN**, including an attendant, if necessary, when minor children are stranded as a result of you being hospitalized out of town.
- **VEHICLE RETURN**. Privately owned or rented cars, vans, motorhomes, or travel trailers left unattended as a result of the medical emergency will be returned to your residence.
- **PHYSICAL REMAINS RETURN**. Will return mortal remains.

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*Listen to What People Say About Medical Air Services:***Louis C. Timm**

716-328-9824 • Rochester, New York

*"We could not have asked for better treatment, in fact we have been telling our friends about MASA."***Lee and Violet Frost**

618-832-6538 • Anna, Illinois

*"We are satisfied with your service we take every opportunity to encourage friends to enroll in MASA."***Mrs. James (Thelma) Wilkinson**

515-652-3244 • Ottumwa, Iowa

*"We have only good thoughts and remarks to make of Medical Air Services."***Mr. Victor S. Kalinoski**

218-681-4767 • Thief River Falls, Minnesota

*"It was a 400 mile trip one way. We were very pleased in that no time was wasted and everything seemed very well planned. We recommend this service very highly."***Harold and Ruth Wendt**

715-229-2770 • Owen, Wisconsin

*"I am now well on the way to recovery from open heart surgery while in Texas in April. We express our special thanks for the fine and prompt service Medical Air Services provided during our emergency. Besides providing air service home, we especially appreciated having a driver take our automobile 1700 miles to Wisconsin."***Christine J. Adamson**

313-659-6080 • Flushing, Michigan

*"We feel this service is very valuable for the security it provided and we feel it is one of the best investments we have ever made."***Bruce Theel**

701-477-5244 • Rolla, North Dakota

*"Your company is providing a critical medical service to the population living in remote areas, without air facilities closer to major medical centers. Could you sell hospitals such a service, so that more people are informed of this marvelous service you give at such a reasonable rate?"***Katherine G. Bennett**

716-637-6468 • Brockport, New York

*"The Bennetts are staunch believers that everyone should be a member of Medical Air Services. You showed concern far beyond the service anyone could expect."***Margaret Kreutzer**

204-326-9972 • Edinburg, Texas

*"I am very pleased with the services I received from your company after the death of my husband."***Frankie Adkins**

512-428-2534 • Brunswick, Missouri

*"We made a call to Medical Air Services and found out our daughter's flight to be with her critically ill father would be taken care of. We certainly thank your "flight for life" service and don't intend to be without it."***Mrs. Joyce Evans**

816-638-4561 • Urich, Missouri

*"Words cannot express what I feel for your company. You were all so helpful and courteous. I would love to enroll some of my friends who have not heard of your services. Please send me some enrollment applications."***Stanley Snodgrass**

513-922-4562 • Cincinnati, Ohio

*MASA will always be a part of our insurance program as long as it is available to us. On a scale of one to ten, we rate you a ten plus."***Mr. and Mrs. Robert Taylor**

612-894-9709 • Burnsville, Minnesota

*"We wish to thank you for the "hassle free" way in which you handled all the arrangements to fly me and my injured husband home after he fractured a vertebra in his back. We say thanks for all your help."***Helen Redekal**

507-938-4241 • Canby, Minnesota

"In this day and age it is very difficult to believe some company would stand behind their promises and react so efficiently and promptly in our crisis. I highly recommend this service to each and everyone."

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Prescription Program

The lowest price available at your local pharmacy!

- Over 30,000 participating neighborhood pharmacies
- Fill all your prescription needs **AT** or **BELOW** average wholesale prices



Mail Order Pharmacy

The preferred option for maintenance medications!

- TOLL FREE ORDER — Comparison cost line
- NO shipping or handling charges
- Doctor-Verified prescriptions
- Easy to use
- Convenient at-home delivery



Savings that really add up!

EXHIBIT 2

***Affordable Dental Connection******Free & Discounted Dental Service***

- FREE Diagnosis
- FREE Dental History
- FREE Bite Wing X-Rays
- FREE Flouride Treatment for Children
- FREE Oral Hygiene Instructions
- FREE Oral Cancer Examination



*Discounts of 20% to 50% off the
Dental Providers "usual and customary" fees.*

- | | |
|-------------------|---------------------|
| • Prosthodontists | • General Dentistry |
| • Implantologists | • Orthodontists |
| • Oral Surgeons | • Endodontists |



EXHIBIT 2

Eyewear Savings

SPECS brings you savings at Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical, and many other stores.

You receive the SPECS Vision Plan free as part of your membership benefit package. The SPECS Vision Plan is designed to offer both you and your family savings of up to 60% on all your eyecare needs.

Simply present the SPECS card at any of the 1,500 participating Sears, Montgomery Ward, JC Penney, Dillard's, Marshall Fields, Royal Optical and many other eyewear departments located throughout the country and let the savings begin.

It's so easy! There's no waiting, no forms to complete, and no limitations — all merchandise is included. Most locations are open evenings and weekends for your convenience. And, you can pay for your order with your store credit card.



TYPICAL SAVINGS

	YOUR Cost
Frames	
Frames up to \$54 retail — you save 60%	\$20.00
Frames \$55 to \$74 — you save 60%	\$30.00
Frames over \$74	50% off
Lenses	
Single Vision — you save 45%	\$28.00
Bifocal — you save 40%	\$50.00
Trifocal — you save 40%	\$60.00
Lenticular — you save 50%	\$95.00

Contact Lenses & Non-Prescription Sunglasses
20% Discount from regular retail prices

Eye Examinations*

Spectacle: \$5 off regular fee
Contact: \$10 off regular fee

*Eye Examinations are provided by Doctors of Optometry located in or adjacent to most participating optical departments. The fee for fitting and dispensing spectacles (including unlimited adjustments) is only \$8. There is no dispensing fee for contacts.

EXHIBIT 2

Hearing Aid Discounts

Save 60% or MORE!

- All world famous name brands.
- When is a \$400 hearing aid better than an \$800 hearing aid?

When it's the same hearing aid!!



30 day No cost – No obligation FREE home trial

Hear better today!

Chiropractic Discounts

*Nationwide network of over 2200
licensed chiropractors.*

- Free Chiropractic Evaluation!
- Preferred Client 15% discount.

*Headaches • Neck Pain • Pain In Lower Back, Hips or Legs
Tight Muscles or Spasms • Decreased Flexibility
Abdominal Pain • Dizziness or Blurred Vision
Shoulder or Arm Pain • Numbness in Extremities
Breathing Difficulties*



Get rid of that pain!

EXHIBIT 2

Discount Shopping Service

*Members save up to 50% on
thousands of nationally
advertised items.*

As a Member you'll enjoy huge savings through substantial discounts on most major consumer purchases. It's easy. Just pick up the phone and you'll receive the guaranteed lowest price available for the item you want. Use your price to comparison shop at your local stores.

- Audio Equipment
- Cameras
- Carpeting
- China and Silverware
- Diamonds
- Fine Jewelry
- Furniture
- Personal Computers
- Luggage
- Major Appliances
- Pianos and Organs
- Sewing Machines
- Video Recorders
- Exercise Equipment
- Televisions
- Typewriters
- Video Tapes
- Binoculars
- Air Conditioners

*Plus thousands of
other items!*

You'll save hundreds of dollars!

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Grocery Coupon Program

*Manufacturer's
coupons for brand
name items you want,
need, and use!!!*



*Save hundreds and hundreds
of dollars each year on your
grocery bills.*

**Saving Money on groceries
has never been easier.**

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**ift Catalog**

*Our members SAVE
up to 80%*

**Savings Galore!
Over 550 Items!**

Cameras • Jewelry • Household Appliances • Silver Plate
Luggage • China • Watches • Telephones
Silverware • Tools • Leather Goods • Fur Coats

*Receive impressive savings on gifts for
Birthdays Anniversaries Weddings
Graduations Christmas*

SAMPLE SAVINGS

Item	Suggested Retail	Your Price
Ladies or mens quartz Diamond Watch.....	\$ 119.00.....	\$ 23.00
35mm Camera - auto focus, auto wind, auto loading.....	\$ 269.00.....	\$ 69.00
Cordless telephone.....	\$ 179.00.....	\$ 59.00
Ladies Black Eel-Skin purse.....	\$ 345.00.....	\$ 69.00
Norwegian blue Fox fur coat.....	\$1250.00.....	\$256.00

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Vacation & Travel Discounts

Your membership travel services are waiting for you NOW. Let our travel consultants accommodate you!



- \$100,000 FREE Travel Accident Insurance on selected flights
- Discounts from many of the world's most desired resorts, cruise lines, and tour packages

- Prompt, courteous, professional assistance
- Lowest currently available air fares
- Up to 5% off on air fares to many destinations worldwide



Get that dream vacation!

Hotel, Motel, Resort Condominium Discounts



Guarantees 50% Savings

- At over 2000 hotels, motels, and resort condominiums.
- Available at thousands of destinations worldwide.

The world can be yours!

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New Car Discounts

Save \$1000 or MORE!



For a nominal service charge you'll receive a computer printout showing the dealers cost for the make and model you want.

Information that gives you a price advantage!

Knowing what your dealer knows can get you the very best price on the car you want.

Used Car Discounts

Outstanding savings on late-model pre-owned cars.



For a modest fee, you will receive a price quote for the late-model car of your choice that will also include the retail price and trade-in value.

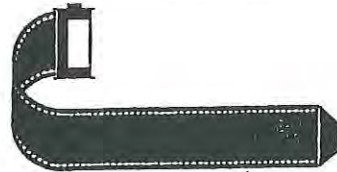
Make your best deal!

Every car is prepared for sale under guidelines which meet the highest standards and conditions.

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*ree Kodak Film**A \$350 Value!!*

- Our members are provided certificates for 10 FREE rolls of KODAK Color Film.
- Send in a roll of film for processing - Receive a new roll of film FREE.
- MONEY BACK GUARANTEE: You pay only for the prints that come out!

*iscounts on Flowers**Fresh & Beautiful*

- Over 5,000 participating Florists worldwide.
- Open 24 hours a day — 7 days a week

*ar Rental Discounts**SAVE 10% to 40% every time you rent a car!*

- Free upgrade in car class at Hertz, Avis, National.
- Special exclusive flat-rates at National and Alamo.

*amily Entertainment Discounts**At such places as:*
SIX FLAGS
 FUNSEEKERS CLUB
Rolls - Believe It or Not!

And we are negotiating new entertainment discounts every day that will be added to your membership as available!

Something for everyone!

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AASC

**NATIONWIDE
NON-PROFIT
ORGANIZATION**

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, the attorney for the individual respondent, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Administrative Company is a corporation organized under and by virtue of the laws of the State of Texas, with its current address at 4328 Hollow Oak, in the City of Dallas, State of Texas. The Administrative Company has ceased doing business.

Respondent Michael P. McIntyre's current address is 4328 Hollow Oak, in the City of Dallas, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

DEFINITIONS

For purposes of this order:

a. "*Living trust*" means a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

b. "*Probate*" is the legal process that validates a will, which is a legal document that contains instructions to the court on how an individual's assets and liabilities are to be divided and distributed at death.

ORDER

I.

It is ordered, That respondents The Administrative Company, a corporation, its successors and assigns, and its officers; Michael P. McIntyre, individually and as an officer and director of The Administrative Company; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promoting, offering for sale, or sale of living trusts, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, orally or in writing, that:

- A. The use of a living trust avoids all probate and administrative costs.
- B. At death, a living trust allows assets to be distributed immediately or almost immediately.
- C. A living trust cannot be challenged.
- D. Living trusts are prepared by local attorneys.
- E. A living trust protects against catastrophic medical costs.
- F. A living trust is the appropriate estate planning device for every consumer.
- G. There are no disadvantages to a living trust.

II.

It is further ordered, That respondents The Administrative Company, a corporation, its successors and assigns, and its officers; Michael P. McIntyre, individually and as an officer and director of The Administrative Company; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the promoting, offering for sale, or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information:

A. Living trusts may be challenged on similar grounds as wills.

B. Living trusts may not be appropriate in all instances, and all estate planning options should be examined before determining which estate plan best suits a particular individual's needs and wishes.

III.

It is further ordered, That respondents The Administrative Company, a corporation, its successors and assigns, and its officers; Michael P. McIntyre, individually and as an officer and director of The Administrative Company; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the promoting, offering for sale, or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information, if true:

A. The availability of informal probate under this state's statutes allows minimal or no contact with the courts and reduces the time required to probate a will.

B. The transfer of an individual's assets into the living trust is not included in the price of creating the living trust.

C. It is the sole responsibility of the purchaser of the living trust to transfer assets into the trust.

D. Creditors have a longer period of time to file a claim against a living trust than against a probated estate.

IV.

It is further ordered, That respondents The Administrative Company, a corporation, its successors and assigns, and its officers; Michael P. McIntyre, individually and as an officer and director of The Administrative Company; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promoting, offering for sale, or sale of any legal instrument, service or program, do forthwith cease and desist from making, directly or by implication, orally or in writing:

A. Any statement or representation of material fact that is false or misleading; and

B. Any statement or representation about the advantages, risks or consequences of such legal instrument, service or program unless, at the time of making the statement or representation, they possess and rely upon a reasonable basis.

V.

It is further ordered, That, for a period of five (5) years from the date of issuance of this order, respondents, and their successors and assigns, shall maintain and upon request make available to representatives of the Federal Trade Commission for inspection and copying all documents relating to living trusts or the preparation of living trusts that are developed, written, reviewed, authorized, or used by respondents, their successors and assigns, their officers, and their agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device.

VI.

It is further ordered, That, in connection with the advertising, promoting, offering for sale, or sale of living trusts, respondents shall maintain, for a period of five (5) years from the date of issuance of this order, books, records, and accounts which, in reasonable detail, will demonstrate compliance with this order and accurately, fairly, and completely reflect the incomes, disbursements, transactions, and use of monies by respondents and, upon reasonable notice, make such books, records, and accounts available to representatives of the Federal Trade Commission for inspection and copying.

VII.

It is further ordered, That the corporate respondent shall notify the Federal Trade Commission, through its Denver Regional Office unless otherwise directed, 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 new corporations, subsidiaries or affiliates of the respondent, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That respondent Michael P. McIntyre shall, for a period of five (5) years from the date of issuance of this order, notify the Federal Trade Commission, through its Denver Regional Office unless otherwise directed, within forty-five (45) days of the discontinuance of his present business or employment, including self-employment and of his affiliation with a new business or employment, including self-employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address and a statement describing the nature of the business or employment and his duties and responsibilities.

IX.

It is further ordered, That respondents shall:

A. Within thirty (30) days of service of this order upon them, provide a copy of this order to each of respondents' current principals, officers, directors and managers and to all personnel, agents and representatives who are or have been participating or engaging in any manner in respondents' living trust sales activities.

B. For a period of five (5) years from the date of issuance of this order, provide a copy of this order to each of respondents' principals, officers, directors and managers, and to all personnel, agents and representatives who are participating or engaging in any manner in respondents' living trust sales activities, within three (3) days after the person assumes his or her position.

X.

It is further ordered, That this order will terminate on April 14, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

It is further ordered, That respondents shall, within sixty (60) days of service of this order upon them, and at such other times as the Federal Trade 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.

Complaint

123 F.T.C.

IN THE MATTER OF

HULING BROS. CHEVROLET, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT,
THE TRUTH IN LENDING ACT AND REGULATION Z

Docket C-3732. Complaint, April 14, 1997--Decision, April 14, 1997

This consent order requires, among other things, the Seattle, Washington, automobile dealerships to correctly calculate the annual percentage rate ("APR") for financed purchases in accordance with Regulation Z, and to include in a clear and conspicuous manner all the disclosures required by law when a triggering term is used in an advertisement. The consent order prohibits the respondents from misrepresenting the terms of financed deals, the APR, the amount of any periodic payment, the availability of any advertised credit terms, the sale price, or the availability of any rebate.

Appearances

For the Commission: *Charles Harwood and George Zweibel.*

For the respondents: *James Aiken, Aiken & Fein, Seattle, WA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Huling Bros. Chevrolet, Inc., a corporation; Huling Buick, Inc., a corporation; and Huling Bros. Chrysler/Plymouth, Inc., a corporation, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667e, as amended, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Huling Bros. Chevrolet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4755 Fauntleroy Way S.W., Seattle, Washington.

PAR. 2. Huling Buick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4545 Fauntleroy Way S.W., Seattle, Washington.

PAR. 3. Huling Bros. Chrysler/Plymouth, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Washington, with its principal place of business located at 4550 Fauntleroy Way S.W., Seattle, Washington.

PAR. 4. In the ordinary course and conduct of their business, respondents have been engaged in the dissemination of advertisements that promote, directly or indirectly, credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," "closed-end credit," and "consumer credit" are defined in the TILA and Regulation Z.

PAR. 5. The acts and practices of respondents alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT ONE

PAR. 6. Respondent Huling Bros. Chevrolet, Inc., in the course and conduct of its business, on numerous occasions has disseminated, or caused to be disseminated, advertisements that state annual percentage rates as well as monthly payment amounts and vehicle sales prices. In fact, in many instances, the advertisements understate the annual percentage rates by more than 1/4 of 1 percentage point, thereby failing to disclose accurately the annual percentage rate.

PAR. 7. Respondent's aforesaid practice violates Sections 107 and 144(c) and (d) of the TILA, 15 U.S.C. 1606 and 1664(c) and (d), and Sections 226.22(a) and 226.24(b) and (c) of Regulation Z, 12 CFR 226.22(a) and 226.24(b) and (c), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT TWO

PAR. 8. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state the annual percentage rate.

PAR. 9. Respondents' aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

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COUNT THREE

PAR. 10. Respondents Huling Bros. Chevrolet, Inc., and Huling Buick, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state conflicting monthly payment amounts for the same transaction, thereby failing to disclose accurately the terms of repayment.

PAR. 11. Respondents' aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FOUR

PAR. 12. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, on numerous occasions have disseminated, or caused to be disseminated, advertisements that state terms of repayment (such as monthly payment amounts) or annual percentage rates that are not actually arranged or offered by respondents.

PAR. 13. Respondents' aforesaid practice violates Section 142 of the TILA, 15 U.S.C. 1662, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a), and constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT FIVE

PAR. 14. Respondents Huling Bros. Chevrolet, Inc., Huling Buick, Inc., and Huling Bros. Chrysler/Plymouth, Inc., in the course and conduct of their business, in numerous instances including but not limited to Exhibits A and B, have disseminated, or caused to be disseminated, advertisements offering new motor vehicles that state monthly payment amounts, sale prices, and rebates. In many instances, the advertisements represent that "College Graduate" or "1st Time Buyer" rebates are available in conjunction with a payment plan in which monthly payments are at one amount for the first 12 months and are approximately double that amount thereafter ("Half Payment Program"). In fact, these rebates are not available to purchasers who choose the Half Payment Program.

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PAR. 15. Respondents' aforesaid practice constitutes an unfair or deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT SIX

PAR. 16. Respondent Huling Buick, Inc., in the course and conduct of its business, has disseminated, or caused to be disseminated, advertisements that state a rate of a finance charge, but fail to state the rate as an "annual percentage rate," using that term or the abbreviation "APR."

PAR. 17. Respondent's aforesaid practice violates Section 144(c) of the TILA, 15 U.S.C. 1664(c), and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b).

EXHIBIT B

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Seattle Regional Office proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondents with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and its implementing Regulation Z, 12 CFR 226, and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and Regulation, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Huling Bros. Chevrolet, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4755 Fauntleroy Way S.W., Seattle, Washington.

2. Respondent Huling Buick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at 4545 Fauntleroy Way S.W., Seattle, Washington.

3. Respondent Huling Bros. Chrysler/Plymouth, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place

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Decision and Order

of business located at 4550 Fauntleroy Way S.W., Seattle, Washington.

4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Huling Bros. Chevrolet, Inc., a corporation, its successors and assigns, and its officers; Huling Buick, Inc., a corporation, its successors and assigns, and its officers; and Huling Bros. Chrysler/Plymouth, Inc., a corporation, its successors and assigns, and its officers; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667e, as amended, and in Regulation Z, 12 CFR Part 226, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to the annual percentage rate, the amount of any periodic payment amount, or the availability of any advertised credit term; the sale price; or the availability of any advertised rebate.

B. Stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term, and failing to calculate the rate in accordance with Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Sections 144 and 107 of the TILA, 15 U.S.C. 1664 and 1606, and Sections 226.24(b) and 226.22 of Regulation Z, 12 CFR 226.24(b) and 226.22)

C. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating

accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment; and
- (3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c))

D. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 142 of the TILA, 15 U.S.C. 1662, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a))

E. Failing to comply in any other respect with the Truth in Lending Act, 15 U.S.C. 1601-1667e, as amended, or its implementing regulation, Regulation Z, 12 CFR Part 226, as amended.

II.

It is further ordered, That respondents, and their successors and assigns, shall distribute a copy of this order to all present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order, and that respondents, and their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

III.

It is further ordered, That each respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate entity, 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 that may affect compliance obligations arising out of the order.

IV.

It is further ordered, That for five (5) years after the date of service of this order respondents, and their successors and assigns, shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

V.

It is further ordered, That respondents, and their successors and assigns, shall, within sixty (60) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on April 14, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

1554 CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3733. Complaint, April 14, 1997--Decision, April 14, 1997

This consent order prohibits, among other things, the California company, doing business as The Mellinger Company, and its president from making any unsubstantiated success, profitability, performance, benefits, efficacy or success rate claims with regard to a business opportunity product or service. The consent order also prohibits the respondents from using testimonials or endorsements that make deceptive or unsubstantiated representations.

Appearances

For the Commission: *Justin Dingfelder, Lemuel Dowdy and Jonathan Cowen.*

For the respondents: *Shirley Johnson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that 1554 Corporation, a corporation, and Brainerd L. Mellinger, III, individually as an officer of 1554 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 1554 Corporation is a California corporation, with its office and principal place of business located at 6100 Variel Ave., Woodland Hills, CA. Respondent 1554 Corporation has traded and done business as The Mellinger Company.

Respondent Brainerd L. Mellinger, III, is president 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, individually or in concert with others, created and disseminated advertisements for the Mellinger World Trade Mail Order Plan ("Mellinger Plan"), and have offered for sale

and sold the Mellinger Plan to consumers who respond to their advertisements.

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.

PAR. 4. Respondents' advertisements for the Mellinger World Trade Mail Order Plan include, but are not necessarily limited to, the attached Exhibits A-D. These advertisements contain the following statements:

A. A program-length television advertisement for the Mellinger Plan, identified as "Mellinger's Secret Treasures" (Exhibit A):

(1) Announcer: "How would you like to earn substantial income right from the comfort of your own home? . . . Living a luxurious lifestyle with long-term security for you and your family." (P. A1)

(2) Endorser: "Doesn't matter what age, what your background is, what your education is. The sooner you get started, the sooner you start making money." (P. A2)

(3) Host: "His name is Brainerd Mellinger III, and he makes it easier than ever for people to make riches they've only dreamed of." (P. A3)

(4) Endorser: "On my first customer my first day with the World Traders I made twelve thousand dollar profit." (P. A4)

(5) Host: "Brainerd, these folks are making a lot of money, and enjoying every minute of it." (P. A13)

(6) Brainerd Mellinger, III: "If you've ever dreamed of riches and living a luxurious lifestyle, give us a call right now." (P. A17)

(7) Endorser: "You will be successful. It's been proven time and time again." (P. A17)

(8) Endorser: "I started off with \$250 that my husband gave me, and last year I earned over \$35,000, and I did it all with the help of the Mellinger Company." (P. A21)

(9) Endorser: "Get involved with Mellinger, and if you stick with them they have the support team there for you, they can make something like this possible for you." (P. A23)

(10) Endorser: "Anybody today that really wants to work, and has the initiative to get out and try something new, this plan definitely makes it about as easy as pie." (P. A25)

(11) Announcer: "Kirk may not be a rocket scientist, but with the help of the Mellinger World Trade Plan he has launched a company with sky-rocketing profits. Today is a typical business day, and Kirk is shipping out more than 400 hats. The profits are all his." (P. A36)

(12) Endorser: "[A]nyone that gets involved with this is gonna really find [it] exciting, interesting, and create an income for themselves. It's fantastic." (P. A38)

(13) Host: "The Mellinger Plan makes it so easy to achieve financial independence. Why isn't everyone doing it?" (P. A42)

Brainerd Mellinger, III: "Good question. Well -- it's just that they don't know about the Mellinger Plan yet. They aren't aware that this fabulous opportunity for success

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and riches is waiting for them. And that's why I'm here today. I want to tell everyone that they can make money, like some of the folks you've seen on our show. The Mellinger company shows you how, step by step. And we make it simple and fun . . . " (P. A43)

B. A magazine advertisement for the Mellinger Plan (Exhibit B):
2 valuable New Reports Can Make You Rich! I'll send both to you FREE! You've seen me on T.V.! Now I'm ready to help you get a fast start! Discover How to Be Independent -- Be Your Own Boss -- Make Big Money in your own IMPORT/EXPORT MAIL ORDER BUSINESS! . . . Enjoy earnings probably far greater than you ever dreamed any job could pay.

* * *

Join these successful Men and Women! . . .

"Mellinger has the answers! I'm looking at \$25,000. year's income -- just 2 hours a day part-time." [endorser]

"Just one world trade transaction paid me \$5,000 profit! Yes...follow the Mellinger Plan!" [endorser]

C. Mellinger Internet site (<http://www.tradezone.com>) (Exhibit C):
SUCCESSFUL INTERNATIONAL TRADERS MEMBERS[.] HOW PLAN BROUGHT SUCCESS TO THEM! . . .

Having trouble sleeping one night, [endorser] turned on his TV and became enthralled by a Mellinger infomercial. A phone call brought him full details about the Mellinger Plan. "I was so impressed with what I saw, I immediately began following the Mellinger Plan and became a Member of International Traders. I began putting the Plan into practice and started showing Import products. In less than two months, I had generated well over \$2,000 in business." . . .

The Mellinger Plan provided exactly what [endorser] needed. . . . "I would tell you this works for you. It's very good for beginners like myself." She reported sales of \$1200. right away and with her early momentum she says she is looking now at earnings of \$6000. a month!

D. A pamphlet mailed to consumers who request information about the Mellinger Plan (Exhibit D):

START AT HOME...make money your very first day!

* * *

MEN & WOMEN--Welcome to your exciting, high-income, full-or part-time future in Import/Export/Mail Order. Follow the Mellinger Plan as it guides your every step. Nothing has been left to chance. Each easily followed step is based 100% upon many years of successful business experience!

* * *

SUCCESS STORIES in World Trade! Read these ACTUAL REPORTS of MONEY-MAKING . . .

Concentrating on imported sports equipment, [endorser] took in \$35,000.00 the first year, devoting only a few hours a day.

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not limited to the advertisements attached as Exhibits A-D, respondents have represented, directly or by implication, that:

A. Consumers who use the Mellinger Plan typically succeed in readily starting and operating profitable businesses;

B. Consumers who use the Mellinger Plan typically earn substantial income; and

C. Endorsements appearing in Exhibits A-D reflect the typical or ordinary experience of members of the public who have used the Mellinger Plan.

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-D, 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.

PAR. 8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

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EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

R- A1

DISCLAIMER GRAPHIC

FONT: TESTIMONIALS
USED IN THIS PROGRAM
REPRESENT BEST CASE
RESULTS. RESULTS WILL
VARY DEPENDING ON
INDIVIDUAL EFFORTS AND
PRODUCT SELECTION.

Narrator:

The following program is a paid
advertisement for the Mellinger World
Trade Mail Order Plan, by The Mellinger
Company.

TEASE:

COVER:
CU WOMAN COUNTING MONEY

COUPLE, WORKING AT
TABLE IN THEIR KITCHEN

YACHT

DREAM SHOTS:
MAN TAKING GOLF SWING

FAMILY & DOG IN POOL

ZOOM OUT FROM CU:
SHOT OF TREASURE CHEST
OVERFLOWING WITH
JEWELS, PEARLS AND
GOLD.

DISS. TO SHOT OF
TREASURE CHEST
OVERFLOWING WITH
MELLINGER IMPORTS.
ZOOM IN TO CU.

CU PAN ACROSS CHEST OF
IMPORTS.

GRAPHIC

FONT: SET A FREE
IMPORTS, OVER THE
WORLD

Narrator:

How would you like to earn substantial
income right from the comfort of your
own home? Working the hours you
want--part time or full time. Enjoying
the freedom of not having to answer to
a boss.

Living a luxurious lifestyle with
long-term security for you and your
family.

Well, you don't have to discover a
secret treasure to make your dreams
come true. Stay tuned because
we're going to reveal a modern day
treasure...that can put you on the road
to success and happiness. It's a
time-tested formula that's been used by
hundreds of thousands of people all
over the world.

We'll also tell you how you can receive
an exciting personal import absolutely
free with our shipping.

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MSC-1
Final On Air Script

8-A2

Flash FREE

TESTIMONIAL

PONT:

CAROLYN KAPLAN
INTERNATIONAL TRADER

Carolyn Kaplan:

"Doesn't matter what age, what your background is, what your education is. The sooner you get started, the sooner you start making money."

TESTIMONIAL

PONT:

ROY HANSON
INTERNATIONAL TRADER

Roy Hanson:

"The Mellinger Company has a plan set up. Step one, two, three, four, it's, it's so simple."

SHOW TITLE SEQUENCE:
CU TREASURE CHEST OF
IMPORTS

Narrator:

"It's all next on 'Mellinger's Secret Treasures.'"

INTRO

PAN ACROSS EURASIA MAP

Richard V/O:

700 years ago, a brave young merchant, named Marco Polo

SUPERIMPOSE VARIOUS
PICTURES OF MARCO POLO
OVER MAP

traveled 15,000 miles to discover the riches of the Orient.

PICTURE OF MARCO
RETURNED HOME W.
TREASURE

He came home with exotic treasures and opened up trade routes that helped merchants build untold fortunes.

RICHARD ANDERSON IN
KOWLOON LOCATION

Richard:

"Hello. I'm Richard Anderson, here in the hidden city of Hong Kong at latitude 22, 30, a modern day Marco Polo."

PONT:
RICHARD ANDERSON
FILM AND TELEVISION
STAR

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EXHIBIT A

"Mallinger's Secret Treasures" MET-1
Final On Air Script

p. A3

FAN ACROSS HONG KONG
SKYLINE

BRAINERD WALKS DOWN A
LANE OF STANLEY MARKET.

Richard V/O:

His name is Brainerd Mallinger the III,
and he

COVER OF BRAINERD IN
STANLEY MARKET STORE,
LOOKING AT CLOTHES
HANGERS

makes it easier than ever for people to
make riches they've only dreamed of.

BRAINERD W/ FAN

He goes on global product tours

FONT:
HONG KONG
STANLEY MARKET

searching the world over for sources of
exciting, low priced imports.

FONT:
ALL PRICES QUOTED
ARE BASED ON QUANTITY
FROM AN OVERSEAS
SUPPLIER AND ARE
SUBJECT TO CHANGE AND
AVAILABILITY.

Then shows you how to market them from
your home, at selling prices up to 11
times their cost and more!

BRAINERD AT STANLEY
MARKET FINDING MAGIC
RAZOR.

Richard V/O:

Look at what Brainerd's already found!

CU ON MAGIC RAZOR

First - a really handy item: The Magic

FONT:
BUY FOR.....\$1
SELL FOR.....\$11
GROSS PROFIT.....\$10

Razor. It's great for travel or at

home and sells in leading catalogs for

as much as thirteen dollars, but you

FONT: PROFIT MAY VARY
DUE TO OPERATING COSTS.

pay only a dollar. That's a 1001

markup.

BRAINERD IN STANLEY
MARKET W/ SITTIGUARI
SACKETS

Richard V/O:

Then look at these lovely pithouari

CU IN SITTIGUARI SACKETS

sacks - International Unisex handbags

CU FROM DIFFERENT ANGLE

any these splendid pithouari handbags for

FONT:
BUY FOR.....\$1
SELL FOR.....\$11
GROSS PROFIT.....\$10

only eight, five cents per set of two

and sell that for \$11 a set.

1108

Complaint

EXHIBIT A

Mellinger's Secret Treasures' WEST-1
 11/11/10 10:11:10

A4

GROSS PROFIT \$11.35

That's an 18 to 1 markup!

FONT:
 PROFIT MAY VARY DUE TO
 OPERATING COSTS.

TESTIMONIAL

Prince Ogunbanwo:

FONT:
 PRINCE ADEMOLA
 OGUNBANWO
 INTERNATIONAL TRADER

On my first customer my first day with
 the World Traders I made twelve
 thousand dollar profit.

BRAINERD W/ SAMURAI
 SWORDS

Richard V/O:

FONT:
 BUY FOR..... \$40 SELL
 FOR.....\$175 GROSS
 PROFIT \$135

And finally these detailed replicas of
 ancient Samurai swords. Intriguing
 conversation pieces that people will
 gladly pay \$175 for. But Mr.
 Mellinger's International Traders
 members buy these for only \$40.
 That's a \$135 gross profit on each set!

FONT: PROFIT MAY VARY
 DUE TO OPERATING COSTS.

END OF OPENINGMELLINGER SIX - SEGMENT ONE

RICHARD IN CHAIRMAN'S
 SUITE, GRAND HYATT HONG
 KONG.

Richard:

You know, we all dream of being
 wealthy and I'm here today with
 Brainerd Mellinger the third, to show
 you just how to make that dream come
 true in your own import export mail
 order business.

FULL OUT OF TWO HAND

Rashida to Brainerd

FONT:

Complaint

123 F.T.C.

EXHIBIT A

'Mellinger's Secret Treasures' MSL-1
 Final Op. A15 10/1/71

A5

HONG KONG

Well Brainerd, everyone assumes that
 starting a business is a big risk.
 What's different about the Mellinger
 World Trade Mail Order Plan? And why
 do so many people do so well?

BRAINERD

Brainerd:

FONT:
 BRAINERD L. MELLINGER
 III, PRESIDENT/C.E.O.
 THE MELLINGER COMPANY

The main thing is that my family's
 company has developed and perfected
 this formula over four generations.
 And we show you how to start with very
 little, just like my grandfather did,
 and make money right from the start.
 So there's virtually no down side.

SHOTS OF 4 GENERATIONS
 OF MELLINGERS

FONT: THE MELLINGERS

BRAINERD & RICHARD

You don't need any special business
 experience or education. We make it
 simple and fun.

RICHARD

Richard:

Okay. So, let's get started. What's
 the first secret of your business
 Success Formula?

BRAINERD

Brainerd:

FONT: MELLINGER
 BUSINESS SUCCESS SECRET
 1.
 SELL PRODUCTS AT HIGH
 MARKUPS. YOU KEEP ALL
 THE PROFITS

Well, number one is finding really good
 products you can mark up for profits.
 You know markup is the key.

RICHARD AND BRAINERD IN
 STANLEY MARKET

STANLEY 10-1-71

1108

Complaint

EXHIBIT A

"Mallinger's Secret Treasures" NAT-1
Final in All Script

A6

Richard:

Which is why we are here in Hong Kong
right.

Brainerd:

Exactly.

ARIEL OF HONG KONG
IMPORTS ON TABLE

Hong Kong is just one of the many
international markets where my global
product scouts find fascinating,
low cost products.

CU ON PUPPY

Brainerd:

Like this lifelike, plush puppy.
Puppy Barks

Richard:

It barks when you pet it!

RICHARD AND BRAINERD W.
PUPPY

Brainerd:

This retails for as much as twenty four
dollars, and you only pay \$6.50.
That's an easy \$17.50 profit.

PONT:
BUY FOR.....\$6.50
SELL FOR.....\$24.00
GROSS PROFIT \$17.50

PONT:
PROFIT MAY VARY DUE TO
OPERATING COSTS.

RICHARD

Richard:

That's incredible!

BRAINERD

Brainerd:

It is incredible! We offer you over
14,000 hand picked, easy-to-sell,
quality products to choose from! All
this without having to leave your home!
Full step by step guidance

PONT: OVER 14,000
QUALITY PRODUCTS

DRAWING COVORDS

CAROUSEL

ALSO SKIDS

Complaint

123 F.T.C.

EXHIBIT A

"Mallinger's Secret Treasures" MST-1
Final On Air Script

p. A7

RICHARD:

Richard:

So you can do everything in the
comforts of your own home.

RICHARD & BRAINERD

Brainerd:

Precisely! And many people prefer
working from home without any travel.
But if you've ever dreamed of world
travel,

this is a golden opportunity.

EXOTIC TRAVEL COVER
SHOTS
RIVER AT SUNSET

With your own import/export mail order
business you can explore exotic markets

INTERNATIONAL TRADERS
IN STANLEY MARKET
LOOKING AT SCARVES

around the world. And, in many cases,

INTERNATIONAL TRADERS
IN STANLEY MARKET
LOOKING AT BIRD CAGES

your travel is tax deductible as a
business expense.

NOTE: CONSULT YOUR
ACCOUNTANT FOR
ALLOWABLE DEDUCTIONS.

RICHARD

Richard:

Brainerd, aren't some Mallinger World
Trade members here with us in Hong
Kong?

IT MEMBERS W SUPPLIERS
& PRODUCTS

Brainerd V.O.:

Yes, and they're learning first hand
from my global

DIFFERENT SHOT OF IT
MEMBERS W SUPPLIERS

product source how to find the very
best deals on beautiful oriental
imports

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasure" MST-1
Final On Air Script

P. A3

BRAINERD SHAKING HANDS
WITH ALBERT CHAN

And meeting with some of our leading
Asian suppliers.

RICHARD & BRAINERD

Richard:

You know, Brainerd, this is such an
exciting, glamorous business. Do you
have to invest a lot of money to get
started?

BRAINERD

Brainerd:

Not at all, Richard.

RICHARD

Richard:

How's that possible?

BRAINERD

Brainerd:

MELLINGER EMPLOYEE
SORTING PRODUCT INTO
BOXES

Well, it's secret number 2 of the
Mellinger Business Success Formula,
called Drop Shipping.

PONT:
MELLINGER BUSINESS
SUCCESS SECRET #2:
DROP SHIPPING. NO NEED
TO STOCK PRODUCTS.

RICHARD & BRAINERD

Richard:

Drop shipping?

Brainerd:

Yes, that's how my father started. In a
garage with less than \$100 and went on
to make millions.

RICHARD

Richard:

Well, how does this drop shipping work?

RICHARD & BRAINERD

Brainerd:

BY TV ADVERT

Well, for example take this item.
Spice blends from the Orient.

SPRAY 1 (10) 1-4

Complaint

123 F.T.C.

EXHIBIT A

"Mallinger's Secret Treasures" MST-1
Final On Air Script

p. A9

It automatically takes four quick shots
in a row.

Richard:

Soy, this would be great for capturing
any action like sports or the kids at
play.

Brainerd:

Yes, and it costs only two dollars, but
you don't pay a cent until after you
sell it. You simply run an ad offering
it for \$15. Then when the checks come
pouring in you put the \$13 gross profit
right in your pocket--send the orders
and the \$2 cost per camera to the
supplier. Then the supplier sends the
cameras directly to your customers for
you.

Richard:

That's amazing! So you don't pay for
anything until it is sold?

Brainerd:

That's right. No inventory to buy, no
employees to pay. Before you know it
your business is expanding beyond your
wildest dreams.

Richard:

Like successful International Traders
Bernard Fred and Jacqui Ward.

BRAINERD

RICHARD & BRAINERD W/
CAMERA

CU ON CAMERA

PONT:
BUY FOR.....\$ 2.00
SELL FOR.....\$15.00
GROSS PROFIT.\$13.00

PONT:
\$2 COST DOES NOT
INCLUDE SHIPPING AND
DUTY CHARGES.

RICHARD

BRAINERD

BRAINERD & RICHARD

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

p. A10

Brainger:

Exactly.

FEATURE #1: FRED AND JACQUE WENZ:

WIDE SHOT, FRED AND
JACQUE WALKING ON THE
BEACH FACING CAMERA.

PONT: MELLINGER
SUCCESS PROFILE

Narrator:

For over 10 years, 52 year old Fred
Wenz was on the road. His business
kept him away from home and his wife
Jacque.

Jacque Wenz:

Besides the financial rewards that
we've gained from the Mellinger Plan,
and using it, I have my husband home
again.

DISSOLVE TO TWO SHOT OF
FRED AND JACQUE

PONT:
FRED AND JACQUE WENZ
INTERNATIONAL TRADERS

Fred Wenz:

It's really great being at home, but,
you know, all the travelling I used to
do puts a lot of wear and tear on the
body, and now I'm now able to spend
more quality time with my wife.

FRED AND JACQUE
WORKING TOGETHER AT
DESK

Narrator:

From his home in Marshfield,
Massachusetts, Fred has taken the
Mellinger Plan and has added his own
special twist that has been quite
successful.

FRED IS BY HIMSELF NOW

Fred Wenz:

Several years ago when we first started
endorsing at the Mellinger show in Las

VEGAS
TRADE SHOW

END OF SCRIPT

Complaint

123 F.T.C.

EXHIBIT A

"Mallinger's Secret Treasures" MST-1
Final On Air Script

P-All

FRED AND JACQUE
DISPLAYING JEWELRY AT
TRADE SHOW BOOTH

Vegas, was where we noticed that a lot of customers were asking how they can get started in buying merchandise without capital expenditure of large inventories. We said, lets take the Mallinger Plan and couple it with our product group.

FRED AND JACQUE
WORKING AT DESK
TOGETHER

Narrator:

Well, it worked. In fact, it was so successful that they decided to come up with a sure fire system to ensure success for their distributors.

CU ON PERFECT STARTER
KIT, PAN DOWN

Fred Wenz:

We then developed what we call the Perfect Starter Kit, for lack of a better name. The Starter Kit, there are two types. There's one that's got 40 pieces of jewelry. Another one's got 70 pieces of jewelry. And everything in there has been a proven factor that for mail order or distributors, party plans, you name it.

FRED, JACQUE AND
DAUGHTER W/ DISPLAY AT
TRADE SHOW BOOTH

CU PAN ACROSS KITS

Narrator:

Fred and Jacque's success grew to the point where they joined into partnership with Henry Palisad. Together they now own an efficient assembly plant and a successful showroom where they display their

FRED AND JACQUE
PACKING PRODUCT

FRED AND HENRY LOOKING
AT MAP IN OFFICE WALL

PAN OVER WORKERS IN
PLANT

PAN ACROSS SHOWROOM

STAY 2-11-45

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A12

CU ON JEWELRY

stunning jewelry. What's really convenient, Fred and Jacquie actually run the business right out of their home.

FRED AND JACQUIE
WORKING TOGETHER AT
DESK

FRED AND JACQUIE ON
COUCH TOGETHER

Fred Wenz:

One of the beauties about running a business out of your home is that you can do what you want, when you want, where you want, and how you want.

CU ON CALCULATOR

The profit margins are absolutely

CU TAKING PRODUCT OUT
OF BOX

fantastic, especially if you're directly importing. You can expect

FRED O/C

profits of up to 100%, which is

FONT: FRED WENZ
INTERNATIONAL TRADER

absolutely phenomenal. One of the best

things about the Mellinger World Trade Plan is that you do not have to have

any experience whatsoever. There is no

formal education required. You can do

it in the privacy of your own home.

FRED RECEIVING FAX

either full time or part time. And

FRED O/C

then the amazing part is, is that by

putting all of this effort on, you can

then go to your post office box or mail

box, and get all sorts of checks coming

in.

FRED AND JACQUIE
WALKING ON BEACH FRED
AND JACQUIE ON COUCH
TOGETHER

Jacquie Wenz:

I'm really thrilled at the fact that I

have my dream home now and we're

FONT: JACQUIE WENZ

STAY IN TOUCH

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A13

INTERNATIONAL TRADER

working together at home, and I don't have to wait every night for a telephone call in order to communicate with him. If I have a question or a problem I can now turn to him and just ask it.

RICHARD & BRAINERD

Richard:

Brainerd, these folks are making a lot of money, and enjoying every minute of it.

BRAINERD

Brainerd:

FONT: BRAINERD L. MELLINGER
III, PRESIDENT/C.E.O.,
THE MELLINGER COMPANY

The Mellinger World Trade Mail Order Plan shows you how, every single step of the way.

TESTIMONIAL

Carolyn Kaplan:

FONT: CAROLYN KAPLAN
INTERNATIONAL TRADER

This has given me life. It's made me happy and I feel good, and I'm making money.

TESTIMONIAL

Kathy Land:

FONT: KATHY LAND
INTERNATIONAL TRADER

See my smile? I'm just really excited about it, cause I know that there's nothing but money ahead.

TEASE:

RICHARD

Richard: Stay tuned for Mellinger's

FONT: THIS PROGRAM IS
A PAID ADVERTISEMENT
FOR THE MELLINGER
COMPANY

third moneymaking sector and learn how you can buy fascinating products at below wholesale prices

ARIEL IF KING KING
SKYLINE

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

p. A14

FONT: STAY TUNED FOR
MELLINGER'S 3RD MONEY
MAKING SECRET!

END OF SEGMENT 1

COMMERCIAL #1 (2:30):

800# DISPLAYED OVER
ANIMATED GRAPHIC.
DISSOLVE IN FLASHING
FONT:
CALL NOW FOR YOUR FREE
INFORMATION!

DVE IN DISPLAY SHOT OF
MATERIAL FROM MAILING
"A"
FONT: CALL FREE

SHOT OF "IMPORT/EXPORT
MAIL ORDER BUSINESS"
BOOKLET

SHOT OF "HOW TO START
IN MAIL ORDER" BOOKLET

FONT:
CALL NOW FOR YOUR FREE
SAMPLE IMPORT!

DISPLAY SHOT OF
MATERIAL
FLASHING FONT:
FREE!!!

TESTIMONIAL
DVE BOX WITH GLOSS
FONT:
MELLINGER
FONT:
1-800-300-1100

PRODUCT SHOT

FONT:

Narrator:

Call this toll free number right now
and we'll send you

everything you need to know about how
to get started with the Mellinger World
Trade Mail Order Plan.

Including, absolutely free, this
fascinating guide on the import/export
mail order business...

a special, condensed mini mail order
course...

Plus, your exciting free sample
import.

You get all three of these absolutely
free, with no obligation, if you call
now!

Fred Wenz:

To be very honest with you, I swear by
the Mellinger Plan. really, it has
given us everything that we wanted.

Narrator:

ETW 11-1108-1

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

F-A15

CALL FOR COMPLETE
DETAILS ON COST OF THE
MELLINGER PLAN

Once you receive the complete Mellinger
World Trade Mail Order Plan, you
automatically become a member

IT LOGO FLIES IN

of International Traders
with immediate access to

CATALOG SHOTS

over 24,000 products

FONT:
OVER 24,000 QUALITY
PRODUCTS

from around the world.

DVE IN SHOTS OF
IMPORTS.

Unique and exciting products that you
can market at substantial profits.

FONTS:
UNIQUE!
EXCITING!
INCREDIBLE PROFIT
MAKERS!

WENZ'S WORKING TOGETHER
AT DESK

Be your own boss. Working in the
comfort of your own home. Making extra
income -- spare time or full time.

FONT:
BE YOUR OWN BOSS!
CAROLYN KAPLAN COUNTING
MONEY

FONT:
MAKE EXTRA INCOME!

CURRENT FOOTAGE OF
MELLINGER BUILDING WITH
PEOPLE WAVING.

Mr. Mellinger's talented, dedicated
team of experts brings you

FONT:
OVER 45 YEARS OF
EXPERIENCE

MELLINGER PEOPLE AT
WORK

over 45 years of experience in the
import export mail order business.

MELLINGER PEOPLE
WORKING WITH 11 MEMBERS
IN PERSON AND OVER
PHONE

They'll give you the personal, step by
step guidance you need to succeed.

FONT:

8731 11/11

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final "On Air" Script

p. A16

HELP YOU EVERY STEP OF
THE WAY.

PAN OVER PRODUCT FILLED
CHEST help you select hot new products that
can generate substantial profits...

FONT: HELP YOU SELECT
NEW PRODUCTS

PAN ACROSS ADS IN BOOK show you how to advertise at little or
no cost...

FONT: ADVERTISE AT
LITTLE OR NO COST

ANSON W/ PRODUCT and how to market your products
effectively.

FONT:
AND MARKET YOUR
PRODUCTS EFFECTIVELY

MELLINGER PRINTING
PRESS TURNING OUT They'll even print your business cards
and stationery.

STATIONARY & BUSINESS
CARDS. FONT:
PRINT BUSINESS CARDS

BRAINERD MEETING IT And gladly answer any questions you may
have, in person or over the phone.

IT MEMBER ON PHONE

FONT:
ANSWER ANY QUESTIONS
YOU HAVE!

SHORT CUTS OF IT People all over the United States and
Canada have used the plan successfully.

MEMBERS FROM FEATURES

FONT: CALL NOW FOR starting with very little, with no
YOUR FREE SAMPLE IMPORT special education or background.

FONT:
1-800-300-0000

MAN OR WOMAN WALKS TO Get started now. Learn how to cut out
MAIL BOX, OPENS IT, AND the middleman.

THUMBES THROUGH PILE OF
ENVELOPES SMILING.

FONT:
OUT OUT THE MIDDLEMAN!

IT'S LOOKING AT CATALOG deal direct with the source ...

FONT: DEAL DIRECT
WITH THE SOURCE

END OF PAGE 1

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A17

TV CATALOG

buy below wholesale...

FONT: BUY BELOW
WHOLESALE

CU ADDING CHECKS ON
CALCULATOR

and make money right from the start...

FONT: MAKE MONEY
RIGHT FROM THE START

IT'S ON COUCH READING
BROCHURES

part time or full time.

BRAINERD FROM VICTORIA
PEAK.

Brainerd:

If you've ever dreamed of riches and
living a luxurious lifestyle, give us a
call right now.

TAG PAGE:

GET YOUR FREE SAMPLE
IMPORT!
CALL OR WRITE:

Narrator:

Call the toll free number on your
screen now.

THE MELLINGER CO.
6100 VARIEL AVE. DEPT B
WOODLAND HILLS,
CA 91367

Or write to us at: The Mellinger
Company, 6100 Variel Avenue, Woodland
Hills, California.

There's no obligation.

No salesman will call.

IF PHONE LINES ARE
BUSY, KEEP TRYING.

Take advantage of this incredible
opportunity, NOW!

1-800-800-3000

TESTIMONIAL
DVE BOX W/ GLOBE

Rev Hansen:

You will be successful. It's been
proven time and time again.

FONT:
1-800-800-3000

SEGMENT 2:

RICHARD & BRAINERD

Richard:

FONT:

MST-1 (11/1/74)

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P A18

HONG KONG

OK, we've learned two secrets of the
Mellinger success formula. What's the
third?

PONT:
MELLINGER BUSINESS
SUCCESS SECRET #3:
CUT OUT MIDDLE MEN.
BUY DIRECTLY FROM
SOURCE.

Brainerd:

Well, the third secret--and listen
carefully, this is really important--
you've got to cut out all the middle
men.

PONT: PRICE
COMPARISONS ARE BASED
ON COMPARABLE
QUANTITIES.

Richard:

Middle men.

Brainerd:

They can easily eat up most of your
profits. So we show you how to buy
directly from the source at below
wholesale prices.

RICHARD

Richard:

How can you find the source?

RICHARD & BRAINERD

Brainerd:

We do it for you by searching the world
over for new product ideas. When you
receive the Mellinger Plan and join
International Traders you immediately
have access to over 24,000 exciting
products.

Richard:

24,000 products?

BRAINERD

Brainerd:

All carefully chosen for their

END OF SCRIPT

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

S.A19

CU WONDER KNIFE	quality.
FONT: QUALITY	
CU TOY JEEP	easy salability,
FONT: SALABILITY	
CU PUPPY	mark-up
FONT: MARK UP	
CU AQUA SHOES	and profit.
FONT: PROFIT	
BRAINERD	And every month you'll receive
	information on many new product
	opportunities.
DROP SHIP DIRECTORY	Plus, International Traders Members
FONT: DIRECTORY OF	also receive a confidential directory
FOREIGN SUPPLIERS	listing hundreds of foreign suppliers.
BRAINERD	You easily contact them direct. There
	are no middle men. And we collect no
	commission.
FONT:	<u>Richard:</u>
BRAINERD L. MELLINGER	Now, wait a minute, the Mellinger
III, PRESIDENT/C.E.O.,	Company gets nothing?
THE MELLINGER COMPANY?	
RICHARD	<u>Brainerd:</u>
FONT: RICHARD	No commission to us. You get the
ANDERSON, FILM AND	suppliers' below wholesale prices
TELEVISION STAR	Nobody takes a cut.
BRAINERD	<u>Richard:</u>
FONT: FURTHER	O.K. So now you have your product.
INFORMATION ON THE COST	How do you turn this into a quick
OF THE MELLINGER PLAN	profit?
IS AVAILABLE WHEN YOU	<u>Brainerd:</u>
CALL.	Well,
RICHARD & BRAINERD	
FONT:	
MELLINGER BUSINESS	
SWISS REPORT #4:	
FREE ADVERTISING	

STAN 11-11-77

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Signal on film strip

A20

LISA IN OFFICE

POINT: LISA GARCIA
ADVERTISING MANAGER
THE MELLINGER CO.

CU ARTICLE ON FREE
ADVERTISING

LISA GARCIA

RICHARD & BRAINERD

that brings us an Success Secret Number

4. Free advertising.

We show you how to advertise your

product at little or no cost.

Lisa Garcia:

For example, one International Trader

member received a

free ad worth over \$2,000 in a national
magazine.

As an International Trader, I may be

able to do the same for you.

Richard: (to camera)

Talking to people who have used the

Mellinger Plan has shown me over and

over again that dreams do come true,

and almost anything is possible. Watch

this...

FEATURE #2: CAROLYN KAPLAN

CAROLYN WALKING THROUGH
GIFT SHOP

CAROLYN WALKING ONTO
HER BALCONY

POINT: MELLINGER
SUCCESS PROFILE

Carolyn:

This is African Gift shops. This is my
baby.

Narrator:

Not long ago, 40 year old Carolyn

Kaplan of Atlanta Georgia had her

entire life turned upside down when she

was diagnosed with severe recurring

muscular weakness and initially

rendered disabled.

END OF FILM

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

S-A21

CAROLYN

FONT: CAROLYN KAPLAN
INTERNATIONAL TRADER

Carolyn:

I was unemployable with the migraine headaches because I wasn't dependable. I didn't know when they were going to strike or how long they were going to last, so it put me in a situation where no employer would employ me, and I had to do something.

CU PERFUME BOTTLES IN
STORE

CU CHESS SET IN STORE

I started off with \$250 that my husband gave me, and last year I earned over \$15,000, and I did it all with the help of the Mellinger Company. I'm real proud of that.

CLIFFORD

FONT: CLIFFORD HUGHES
INTERNATIONAL TRADER

Clifford:

Once we found out she had learned about the Mellinger program, we saw how quickly she, her spirit picked up and how she just became, she had a zest for life. I think that one of the best programs out today is the Mellinger program through what it has done for her, my aunt, as brought her morale back up.

CAROLYN WORKING IN
STORE CLIFFORD

COVER OF AFRICAN GIFT
STORE

Narrator:

Carolyn started with one gift shop in Atlanta, but her business grew so rapidly that she needed to open an another shop in a different part of town.

CAROLYN IN STORE WITH
CUSTOMER

END OF EXHIBIT A

1108

Complaint

EXHIBIT A

"Mellinger's Hidden Treasures" MST-1
Final On All Script

p. A22

COVER OF INTERNATIONAL
GALLERIES STORE

Carolyn:

This is my newest shop, International
Galleries, which is just recently
opened.

CAROLYN

It's amazing to me how all this has
come together in such a short time.

CAROLYN COUNTING MONEY

I make money. I sell. No matter what
the economy is like, I sell.

CU ARTICLES: "US
FAMILIES DRIFTING
APART" "UNEMPLOYMENT ON
THE RISE"

Narrator:

Keeping families together in such
uncertain times is not an easy task.

CAROLYN WITH PRODUCT
FROM STORE

But Carolyn, with help from the
Mellinger company, has been able to do
just that by bringing her nephew

CLIFFORD WORKING

Clifford and her son Patrick into her
thriving business.

CLIFFORD AND PATRICK

Clifford:

I don't think people really understand,
actually, how easy the Mellinger Plan
has been to learn about basic business
functions. Since I started working
here I learned, I've been learning a
lot about just the import/export
business a lot. My aunt showed me the
plan and I just have, just really kind
of fallen in love with it. It's taught
me a lot.

STAY TUNED

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

S A23

CU ON JEWELRY ON
DISPLAY, TILT UP TO
CAROLYN

Carolyn:

I would advise anyone who's sitting
there thinking well, I have a job or
you know, I'm disabled or I'm confined
to a wheelchair, or whatever reason.
I'm a single mother. Listen.

PONT: YOUR RESULTS
MAY VARY.

Get involved with Mellinger, and if you
stick with them they have the support
team there for you, they can make
something like this possible for you.

RICHARD & BRAINERD

Richard:

Carolyn Kaplan demonstrates just what
we're attempting to say today.
BRAINERD, your company's doing
something very special. Allowing
people to do things that they've
dreamed of doing all their life.

BRAINERD

BRAINERD:

PONT: BRAINERD L.
MELLINGER III,
PRESIDENT/C.E.O.,
THE MELLINGER COMPANY

Yes, and it's the wonderful freedom
that comes from being your own boss,
the master of your own destiny. And we
show you exactly how to do it, step by
step.

MELLINGER CO. WAVE
OUTSIDE HEADQUARTERS

BRAINERD (voice over):

With The Mellinger Mail Order Plan
you're never alone.

BRAINERD

You ultimately become a member of
International Traders--

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final In Air Script

P. A24

WORLD MAP W. TRADE
ROUTES
IT LOGS

our huge world wide organization of
importers, exporters, and direct
marketers.

FONT: ORGANIZATION OF
IMPORTERS, EXPORTERS
AND DIRECT MARKETERS.

BRAINERD

Once you've joined this exclusive
group, top notch experts help you in
every phase of your business.

BRAINERD AND STAFF IN
OFFICE

CHRIS HARDENEROCK AND
CO-WORKER

FONT: WE HELP YOU
EVERY STEP OF THE WAY

LISA ON PHONE

Brainerd:

FONT: WE HELP YOU
EVERY STEP OF THE WAY

You can call, write, or visit.

BRAINERD WITH CLIENT IN
OFFICE

And we'll give you prompt, personalized
assistance.

ANSON IN OFFICE

Anson Jackson:

FONT:
ANSON JACKSON
WORLD TRADE CONSULTANT
THE MELLINGER COMPANY

Any member of International Traders can
pick up the phone and call me. I'm
here to work with them and help them
find the big money making products and
market them effectively and
inexpensively.

RICHARD & BRAINERD

Richard:

And how much time and effort does it
take to be a success at this?

Brainerd:

It's up to you. You can work full
time or start off in your spare time.

TESTIMONIAL

Jim Hiedler:

ONE ON SHOW CASE

The Mellinger Plan has enabled me to

REPT. 17-1349-

Complaint

123 F.T.C.

EXHIBIT A

"Mallinger's Secret Treasures" VST-1
Final On Air Script

P. A25

FONT: JIM BEIGLER
INTERNATIONAL TRADER

move in a total career change from
working for a large corporation to
being my own boss.

TESTIMONIAL

Mark Miller:

DVE IN BOX W/ GLOBE
FONT: MARK MILLER
INTERNATIONAL TRADER

Anybody today that really wants to
work, and has the initiative to get out
and try something new, this plan
definitely makes it about as easy as
pie.

FONT: RESULTS VARY
DEPENDING ON HOW MUCH
TIME INVESTED AND OTHER
FACTORS.

TEASE:

RICHARD

Richard:

FONT: THIS PROGRAM IS
A PAID ADVERTISEMENT
FOR THE MELLINGER
COMPANY

Don't go away. When we come back
Brainerd will reveal one of the most
important moneymaking secrets.

ARIEL SHOT OVER HONG
KONG SKYLINE

FONT: STAY TUNED FOR
MORE MONEY MAKING
SECRETS.

END OF SEGMENT 2

COMMERCIAL TWO

800# DISPLAYED OVER
ANIMATED GRAPHIC.
DISSOLVE IN FLASHING
FONT:
CALL NOW FOR YOUR FREE
INFORMATION!

Narrator:

Call this toll free number right now
and we'll send you

DVE IN DISPLAY SHOT OF
MATERIAL FROM MAILING
"A"
FONT: CALL FREE

everything you need to know about how
to get started with the Mallinger World
Trade Mail Order Plan.

45451 00011-004

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

p. A26

SHOT OF "IMPORT/EXPORT
MAIL ORDER BUSINESS"
BOOKLET

Including, absolutely free, this
fascinating guide on the import/export
mail order business...

SHOT OF "HOW TO START
IN MAIL ORDER" BOOKLET

a special, condensed mini mail order
course...

FONT:
CALL NOW FOR YOUR FREE
SAMPLE IMPORT!

Plus, your exciting free sample
import.

DISPLAY SHOT OF
MATERIAL
FLASHING FONT:
FREE!!!

You get all three of these absolutely
free, with no obligation, if you call
now!

TESTIMONIAL
DVE BOX WITH GLOSS
FONT:
MELLINGER
FONT:
1-800-203-0000

Ron Hart:
I'm creating my own job security.
That's what this is all about. This is
a way that you can control your own
destiny.

PRODUCT SHOT

Narrator:

FONT: CALL FOR
COMPLETE DETAILS ON
COST OF THE MELLINGER
PLAN

Once you receive the complete Mellinger
World Trade Mail Order Plan, you
automatically become a member

IT LOGO FLIES IN.

of International Traders
with immediate access to
over 24,000 products

CATALOG SHOTS

FONT: OVER 24,000
QUALITY PRODUCTS

from around the world.

DVE IN SHOTS OF
IMPORTS
FONTS:
UNIQUE
EXCITING

Unique and exciting products that you
can market at substantial profits

STAY LISTEN

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

p. A27

INCREIBLE PROFIT
MAKERS!

TESTIMONIAL
IVE BOX W GLOBE

FONT: MELLINGER

WENZ'S WORKING TOGETHER
AT DESK

FONT:
BE YOUR OWN BOSS!

CAROLYN KAPLAN COUNTING
MONEY

FONT:
MAKE EXTRA INCOME!

CURRENT FOOTAGE OF
MELLINGER BUILDING WITH
PEOPLE WAVING.

FONT:
OVER 45 YEARS OF
EXPERIENCE

MELLINGER PEOPLE AT
WORK.

MELLINGER PEOPLE
WORKING WITH IT MEMBERS
IN PERSON AND OVER
PHONE.

FONT:
HELP YOU EVERY STEP OF
THE WAY.

PAN OVER PRODUCT FILLED
CHEST

FONT: HELP YOU SELECT
NEW PRODUCTS

PAN ACROSS ADS IN BOOK

FONT: ADVERTISE AT
LITTLE AS NO COST

Toni Mahon:

I'm having a delightful time. I have
learned. I have learned so much more
than I could had I gone to college for
4 years.

Narrator:

Be your own boss. Working in the
comfort of your own home. Making extra
income -- spare time or full time.

Mr. Mellinger's talented, dedicated
team of experts brings you

over 45 years of experience in the
import/export mail order business.

They'll give you the personal, step by
step guidance you need to succeed...

help you select hot new products that
can generate substantial profits...

show you how to advertise at little or
no cost.

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A28

ANSON W. PRODUCT	and how to market your products
FONT: AND MARKET YOUR PRODUCTS EFFECTIVELY	effectively.
MELLINGER PRINTING PRESS TURNING OUT STATIONARY & BUSINESS CARDS.	They'll even print your business cards and stationary.
FONT: PRINT BUSINESS CARDS	
BRAINERD MEETING IT MEMBER IN OFFICE	And gladly answer any questions you may have, in person or over the phone.
IT MEMBER ON PHONE	
FONT: ANSWER ANY QUESTIONS YOU HAVE!	
SHORT CUTS OF IT MEMBERS FROM FEATURES	People all over the United States and Canada have used the plan successfully, starting with very little, with no special education or background.
FONT: CALL NOW FOR YOUR FREE SAMPLE IMPORT	Get started now. Learn how to cut out the middleman...
FONT: 1-800-000-0000	
MAN OR WOMAN WALKS TO MAIL BOX, OPENS IT, AND THUMBES THROUGH PILE OF ENVELOPES SMILING.	
FONT: CUT OUT THE MIDDLEMAN!	
IT'S LOOKING AT CATALOG	deal direct with the source...
FONT: DEAL DIRECT WITH THE SOURCE	
CU CATALOG	buy below wholesale...
FONT: BUY BELOW WHOLESALE	
CU ADDING CHECKS IN CALCULATOR	and make money right from the start...
FONT: MAKE MONEY RIGHT FROM THE START	
IT'S IN YOUR READING MATERIALS	part time or full time

SP-10 10000000

Complaint

123 F.T.C.

EXHIBIT A

"Mallinger's Secret Treasures" MST-1
Final On Air Script

P A29

BRAINERD FROM VICTORIA
PEAK.Brainerd:

If you've ever dreamed of riches and
living a luxurious lifestyle, give us a
call right now.

TAG PAGE:
GET YOUR FREE SAMPLE
IMPORT!
CALL OR WRITE:

Narrator:

Call the toll free number on your
screen now.

THE MALLINGER CO.
6100 VARIEL AVE. DEPT B
WOODLAND HILLS, CA
91367

Or write to us at: The Mallinger
Company, 6100 Variel Avenue, Woodland
Hills, California.

There's no obligation,
No salesman will call.

IF PHONE LINES ARE
BUSY, KEEP TRYING.

Take advantage of this incredible
opportunity, NOW!

1-800-800-0000

SEGMENT 3

RICHARD AND BRAINERD

Richard:

Welcome back to Mallinger's Secret
Treasures. I'm here in Hong Kong with
Brainerd Mallinger the Third, our
modern day Marco Polo, on one of his
global product tours.

RICHARD & BRAINERD

And he's revealing

ON FAN ACROSS DISPLAY
OF PLAN BOOKS

his secret formula in the
import export mail order business.

RICHARD AND BRAINERD

Now Brainerd, let's talk about
products. How do you know what's going
to sell and what's not?

MST-1 11-11-84

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

9 A30

BRAINERD

FONT:
MELLINGER BUSINESS
SUCCESS SECRET #1:
FINDING PRODUCTS THAT
SELL EASILY AND
QUICKLY.

RICHARD & BRAINERD

CU CN HAND AND GOLD
SNAKE BRACELET

CU CAROLYN HOLDING VASE

CU HANDS HOLDING GOLD
CLOCK

BRAINERD

CU CN AQUA SHOE

FONT:

BUY FOR..... \$3
SELL FOR..... \$25
GROSS PROFIT \$22

FONT:

PROFIT MAY VARY DUE TO
OPERATING COSTS.

RICHARD

FONT:
RICHARD ANDERSON
FILM AND TELEVISION
STAR

BRAINERD

FONT: BRAINERD L.
MELLINGER,
PRESIDENT C.B.C.
THE MELLINGER COMPANY
FONT:

Brainerd:

Well, Richard, that's very important.
The fifth secret of the Mellinger
Success Formula is finding really hot
products.

Brainerd V/O:

We look for quality products that are
unique,

novel,

and appealing to many people.

Brainerd:

Like these aqua shoes. They're one of
the hottest new items.

Richard:

You know, I've seen shoes like these in
stores and they sell up to \$40.

Brainerd:

But International Traders can sell them
for \$28 because they get them for only
\$3.

Richard:

Tell me, how do you find products like
that?

Brainerd:

All you have to do is follow the
Mellinger World Trade Mail Order Plan.
We give you everything you need to get
started fast.

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A31

RESULTS MAY VARY
DEPENDENT ON TIME
INVESTED AND OTHER
FACTORS.

The products, and step by step
guidance.

CHRIS AT SUPPLIER'S
LUNCHEON, HONG KONG

Chris Hardenbrook:

PONT:
CHRIS HARDENBROOK
IMPORT MANAGER
THE MELLINGER CO.

Hong Kong is just one of the great
international trade centers we travel
to in our search for reputable
suppliers of new moneymaking products.
We check it out for you - make sure the
supplier is reliable, has readily
available product, it's of the highest
quality, and is easily sellable.

BRAINERD LOOKING AT
JEWELRY IN STANLEY
MARKET

Richard: (To Camera)

BRAINERD LOOKING AT
MAGIC RAZOR IN STANLEY
MARKET

RICHARD

Now, we're going to jump from Hong Kong
to the United States because I want to
show you success in action.

PONT: LAS VEGAS

ESTABLISHING SHOT DOWN
BRIGHT LIGHTS OF VEGAS
STREET

Richard V/O:

WIDE SHOT OF TRADE SHOW

At this annual trade show/convention,
the Mellinger Company puts the whole
world of exciting products under one
roof.

LAS VEGAS FEATURE: BRAINERD & RICHARD ROAM THE FLOOR
LOOKING AT PRODUCTS, SPEAKING TO VENDORS. AT MEMBERS
COMMENT ON THEIR SUCCESSES.

RICHARD

Richard V.O.:

GRAPHIC OF TURNING
SLICES W/ LIVE'S NAMES OF
COUNTRIES FLYING OUT
FROM BEHIND IT

International Traders can pick up
exciting new money makers from

Asia Africa Europe Gall. South

America Ireland Egypt

1108

Complaint

EXHIBIT A

"Mallinger's Secret Treasures" MST-1
Final On Air Script

A32

BRAINERD & RICHARD AT
LAS VEGAS TRADE SHOW AT
EGYPTIAN PAPYRUS
DISPLAY

Brainerd:

Richard, look at this. Beautiful
Egyptian papyrus!

CU ON PAPYRUS

Richard:

Oh! That's beautiful! That's King Tut
and his wife on a hunting party.

FONT:
BUY FOR.....\$4
SELL FOR.....\$13
GROSS PROFIT.\$45

Brainerd:

That's right. You can buy this for
three dollars and ninety cents and sell
it for as much as fifty dollars.

FONT:
PROFIT MAY VARY DUE TO
OPERATING COSTS.

Richard:

Well that's a thirteen to one mark-up!

BRAINERD AND RICHARD AT
TRADE SHOW DISPLAY FOR
CALYPSO CUP

Richard:

Brainerd, what in the world is this?

Brainerd:

Spill Buster.

Richard:

Spill...?

Brainerd:

Buster.

Richard:

Buster.

Brainerd:

That's right. It's the best mobile
beverage holder in the market.

CU SPILLBUSTER

Richard:

This is amazing!

STAMP 10-11-61

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A33

BRAINERD AND RICHARD AT
TRADE SHOW DISPLAY FOR
CALYPSO CUP

Brainerd:

Yeah. It keeps beverages from spilling
in mobile homes,
cars and boats.

Richard:

Is it easy to install?

Brainerd:

A child could install it.

Richard:

Cost?

PONT:
BUY FOR.....\$ 9.00
SELL FOR....\$20.00
GROSS PROFIT.\$11.00

PONT: PROFIT MAY VARY
DUE TO OPERATING COST.

Brainerd:

\$9.00

Richard:

And, well, what do you sell it for?

Brainerd:

\$20.00

RICHARD AND BRAINERD

Richard:

Obviously, the Mellinger Trade Show in
Las Vegas was hugely successful and
fun. But you don't have to travel
beyond your mail box if you don't want
to. Isn't that right Brainerd?

Brainerd:

Right! You can do absolutely
everything in the comfort of your own
home.

BRAINERD

PONT: BRAINERD L.
MELLINGER,
PRESIDENT U.S.C.
THE MELLINGER COMPANY

COUPLE ON SOFA W. PLANT

Brainerd V.C.:

END OF TAPING

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MCT-1
Final On Air Script

P. A34

CU ON CATALOG - WANT
TURNING PAGES

The Mellinger Company puts the
treasures of the world right at your
finger tips.

FONT: OVER 24,000
QUALITY PRODUCTS

Every member of International Traders
has access to over 24,000 profit making
products.

PAN UP PAGE OF NEW
PRODUCTS

And we continually give you new ones
each month.

BRAINERD & RICHARD
RICHARD PICKS UP A COPY
OF "TRADE
OPPORTUNITIES"
MAGAZINE.

Richard:

Plus, International Trader Members also
receive "Trade Opportunities Magazine".

PAN SPREAD OF T.O.
MAGAZINES

Brainerd:

That's right Richard. You find out
about the hottest new products every
month in our magazine. And you won't
find this on any newsstand. It's an
exclusive publication with all kinds of
money making information, for members
only.

CU PAGE OF T.O.
MAGAZINE

FONT: AN EXCLUSIVE
PUBLICATION FOR MEMBERS
ONLY

Richard:

So you simply pick a product, run an ad
if you choose mail order, and you're on
your way.

And anyone can do it?

BRAINERD

Brainerd:

Anyone who's willing to follow our
simple step by step plan.

END OF T.O.

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On All Script

P. A35

PONT:
MELLINGER BUSINESS
SUCCESS SECRET #6:
LEARN FROM THE EXPERTS.
SAVE TIME AND MONEY.

And that's our 6th secret of the
Mellinger Success Formula. Learn from
the experts, not from your own
mistakes.

BRAINERD & RICHARD

Richard:

Well, mistakes can be expensive and
time consuming.

PONT:
1-800-000-0000

Brainerd:

They sure can. And with our plan you
don't need to start from scratch. All
you have to do is pick up the phone and
call us right now.

We'll show you how to make money right
from the start.

FEATURE #3: KIRK YAGER

JAG LEAVING DRIVEWAY

Rodney Benn V/O:

PONT: MELLINGER
SUCCESS PROFILE

So, Kirk, you started your business at
the age of nineteen. Now, let's be
honest. Were you some kind of a wild
kid or something in school?

INTERIOR SHOT - KIRK
AND RODNEY DRIVING IN
JAG

Kirk Yager:

No, not really. I played sports and
had a good time, and nothing, just went
to school.

PONT: RODNEY BENN

Rodney:

Now be honest. How were your grades
like?

Kirk:

Average. Average grades.

END 1-800-000-0000

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
 Final On Air Script

p. A36

Rodnev:

Amazing. What made you start the business in the first place?

Kirk:

Well, I was looking for a good business program, and I ran across the Mellinger program with imported items, and mailed off for it, and was able to get into some real easy businesses with imported items.

Rodnev:

Let's talk about the Mellinger Plan itself. So, what was it like? Did you think it was easy, that something just about anybody could follow?

Kirk:

Oh, definitely.

JAG TURNING INTO
 DRIVEWAY

You know, I have one year of college and I'm no genius.

Rodnev:

No rocket scientist.

Kirk:

No, no rocket scientist.

Narrator:

Kirk may not be a rocket scientist, but with the help of the Mellinger World Trade Plan he has launched a company with skyrocketing profits. Today is a typical business day and

END 1147-11

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MET-1
Final On Air Script

P- A37

FONT: YOUR RESULTS
MAY VARY

RODNEY AND KIRK GOING
TO BOXES OF HATS

RODNEY AND KIRK BY
BOXES OF PRODUCT

Kirk is shipping out more than 400
hats. The profits are all his.

Rodney:

Well, this must be the product.

Kirk:

Yeah, we have the pitch or the solar fan
hat has a solar voltaic cell on top.

Rodney:

So this is a solar cell that collects
the sun's rays and turns it into
electricity?

Kirk:

Yeah, exactly. Or you have a battery
backup for shade or night time. Yeah,
and what it does is with a moistened
sponge here, it works just like an
induct cold system on your head. It's
fantastic.

RODNEY AND KIRK

Rodney:

Ah ha. It's a great idea.

Kirk:

Oh yeah.

CU KIRK

It's one of the best items I've found,
I've found. you know, just basically
through one of the Mellinger programs.

CU RODNEY

Rodney:

Really? What was it like when the
business money started to roll in?

END (11/18/84)

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

S A38

RODNEY AND KIRK BY POOL

FONT: THIS PROGRAM IS
A PAID ADVERTISEMENT
FOR THE MELLINGER
COMPANY

KIRK AND FAMILY
SWIMMING IN POOL

Kirk:

Oh, it was fantastic. You know, I'm
able to spend a lot more time with my
family, and go on vacations...
and enjoy outings, and dinners, and
swimming, and boating, you know...

Rodney:

Having a fuller life.

Kirk:

Exactly. Enjoying a lot of, you know,
activities.

CU KIRK

FONT: KIRK YAGER
INTERNATIONAL TRADER

Brainerd Mellinger's World Trade
Program has been very beneficial to
myself and my family, and I think that
anyone that gets involved with this is
gonna really find exciting,
interesting, and create an income for
themselves. It's fantastic. So, my
advice would be to give it a try. You
know, That's all I can say is give it a
try.

END OF SEGMENT 1COMMERCIAL THREE

800# DISPLAYED OVER
ANIMATED GRAPHIC
DISCLOSE IN FLASHING
FONT:
CALL NOW FOR YOUR FREE
INFORMATION!

Narrator:

Call this toll free number right now
and we'll send you

COPY 11-11-11

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MET-1
Final On Air Script

9 A39

DVE IN DISPLAY SHOT OF MATERIAL FROM MAILING "A" FONT: CALL FREE SHOT OF "IMPORT/EXPORT MAIL ORDER BUSINESS" BOOKLET SHOT OF "HOW TO START IN MAIL ORDER" BOOKLET FONT: CALL NOW FOR YOUR FREE SAMPLE IMPORT! DISPLAY SHOT OF MATERIAL FLASHING FONT: FREE!!! TESTIMONIAL DVE BOX WITH GLOBE FONT: MELLINGER FONT: 1-800-000-0000 PRODUCT SHOT FONT: CALL FOR COMPLETE DETAILS ON COST OF THE MELLINGER PLAN IT LOGO FLIES IN. CATALOG SHOTS FONT: OVER 24,000 QUALITY PRODUCTS	everything you need to know about how to get started with the Mellinger World Trade Mail Order Plan. Including, absolutely free, this fascinating guide on the import export mail order business... a special, condensed mini mail order course... Plus, your exciting free sample import. You get all three of these absolutely free, with no obligation, if you call now! <u>Bernard Alexander:</u> It's very easy, everything is spelled out from A to Z. You just follow the information and direction they give you. <u>Narrator:</u> Once you receive the complete Mellinger World Trade Mail Order Plan, you automatically become a member of International Traders with immediate access to over 24,000 products from around the world
--	---

SEP 10-1984

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

9 A40

DVE IN SHOTS OF
IMPORTS,
FONTS:
UNIQUE!
EXCITING!
INCREDIBLE PROFIT
MAKERS!

Unique and exciting products that you
can market at substantial profits.

TESTIMONIAL
DVE BCK W. GLOBE

Nabil Assad:

FONT: MELLINGER

The Mellinger Program, it changed my
life. It made a professional out of
me. It taught me one thing, to work
smart, don't work hard.

WENZ'S WORKING TOGETHER
AT DESK FONT:
BE YOUR OWN BOSS!

Narrator:

CAROLYN KAPLAN COUNTING
MONEY

Be your own boss. Working in the
comfort of your own home. Making extra
income -- spare time or full time.

FONT:
MAKE EXTRA INCOME!

CURRENT FOOTAGE OF
MELLINGER BUILDING WITH
PEOPLE WAVING.

Mr. Mellinger's talented, dedicated
team of experts brings you

FONT:
OVER 45 YEARS OF
EXPERIENCE

MELLINGER PEOPLE AT
WORK.

over 45 years of experience in the
import/export mail order business.

MELLINGER PEOPLE
WORKING WITH IT MEMBERS
IN PERSON AND OVER
PHONE.

They'll give you the personal, step by
step guidance you need to succeed...

FONT:
HELP YOU EVERY STEP OF
THE WAY.

PAN OVER PRODUCT FILLED
Chest

help you select hot new products that
can generate substantial profits...

FONT: HELP YOU SELECT
NEW PRODUCTS

PAN ACROSS ADS IN BOOK

show you how to advertise at little or
no cost

END OF PAGE

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

S-A41

FONT: ADVERTISE AT LITTLE OR NO COST	
ANSON W/ PRODUCT	and how to market your products effectively.
FONT: AND MARKET YOUR PRODUCTS EFFECTIVELY	
MELLINGER PRINTING PRESS TURNING OUT STATIONARY & BUSINESS CARDS.	They'll even print your business cards and stationary.
FONT: PRINT BUSINESS CARDS	
BRAINERD MEETING IT MEMBER IN OFFICE	And gladly answer any questions you may have, in person or over the phone.
IT MEMBER ON PHONE	
FONT: ANSWER ANY QUESTIONS YOU HAVE!	
SHORT CUTS OF IT MEMBERS FROM FEATURES	People all over the United States and Canada have used the plan successfully, starting with very little, with no special education or background.
FONT: CALL NOW FOR YOUR FREE SAMPLE IMPORT	
FONT: 1-800-800-0000	Get started now. Learn how to cut out the middleman...
MAN OR WOMAN WALKS TO MAIL BOX, OPENS IT, AND THUMBS THROUGH FILE OF ENVELOPES SMILING.	
FONT: CUT OUT THE MIDDLEMAN!	deal direct with the source...
IT'S LOOKING AT CATALOG	
FONT: DEAL DIRECT WITH THE SOURCE	buy below wholesale...
CU CATALOG	
FONT: BUY BELOW WHOLESALE	and make money right from the start.
CU ADDING CHECKS IN CALCULATOR	
FONT:	

encl 11-11-84

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Signal On Air Script

P. A42

MAKE MONEY RIGHT FROM
THE START

IT'S ON COUCH READING
BROCHURES

BRAINERD FROM VICTORIA
PEAK.

TAG PAGE:
GET YOUR FREE SAMPLE
IMPORT!
CALL OR WRITE:

THE MELLINGER CO.
6100 VARIEL AVE. DEPT B
WOODLAND HILLS,
CA 91367

IF PHONE LINES ARE
BUSY, KEEP TRYING.

1-800-800-8000

part time or full time.

Brainerd:

If you've ever dreamed of riches and
living a luxurious lifestyle, give us a
call right now.

Narrator:

Call the toll free number on your
screen now.

Or write to us at: The Mellinger
Company, 6100 Variel Avenue, Woodland
Hills, California.

There's no obligation.

No salesman will call.

CLOSE

RICHARD AND BRAINERD AT
KOWLOON LOCATION.

Richard:

You know, this is an exciting
opportunity. Now
Brainerd, you have told us the six
secret treasures of the Mellinger
Business Success Formula. I've got just
one last question for you. The
Mellinger Plan makes it so easy to
achieve financial independence.

END 11-11-80

Complaint

123 F.T.C.

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

E- A43

Why isn't everyone doing it?

Brainerd:

Good question.

Well... it's just that they don't know about the Mellinger Plan yet. They aren't aware that this fabulous opportunity for success and riches is waiting for them. And that's why I'm here today.

BRAINERD

I want to tell everyone

CAROLYN AND CLIFFORD IN
STORE

that they can make money, like some of the folks you've seen on our show. The Mellinger Company shows you how, step by step.

JACQUE AND FRED ON
BEACH

And we make it simple and fun, but the first step is up to you.

FONT:
1-800-000-0000

Pick up the phone and dial the toll free number on your screen now.

There's absolutely no obligation. As soon as you call, the Mellinger Company is behind you every step of the way. And we'll get you started on the roads to riches--fast. Our operators are standing by 24 hours a day for your convenience. So call now!

TESTIMONIAL

FONT:
1-800-000-0000

Ray Hansen:

If you want medical advice you go to a doctor. If you want legal advice you go to an attorney.

enav 10-00-80

1108

Complaint

EXHIBIT A

"Mellinger's Secret Treasures" MST-1
Final On Air Script

P. A44

If you want mail order advice you go to
the Mellinger Company.

TESTIMONIAL

FONT:
1-800-000-0000

Carolyn Kaplan:

The Mellinger Company really has opened
up many new avenues of my life. My
family is the world, and it's just
great.

TESTIMONIAL

FONT:
1-800-000-0000

Kirk Yager:

Anyone that gets involved with this is
gonna really find it exciting,
interesting and create an income for
themselves that's fantastic, so, my
advice would be to give it a try.

DISCLAIMER GRAPHIC

Narrator:

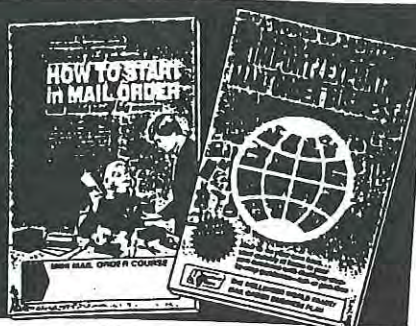
The preceding program was a paid
advertisement for The Mellinger World
Trade Mail Order Plan by The Mellinger
Company.

Complaint

123 F.T.C.

EXHIBIT B

2 valuable New Reports
**Can Make
 You Rich!**
 I'll send
 both to you **FREE!**



BRAINERD L. MELLINGER III
 President/CEO, The Mellinger Co.

Fourth generation of internationally respected World Trade/Mail Order family. The Mellinger Co. started by our founder in a rented garage with barely \$100. Our 45 years of successful World Trade/Mail Order experience is your time-proven guide to profits. Follow Mellinger methods, global contacts, and profit secrets to a prosperous business of your own. Mail coupon for all facts...discover how to start quickly, surely!

Discover How to Be Independent — Be Your Own Boss — Make Big Money in your own **IMPORT/EXPORT MAIL ORDER BUSINESS!..**

Deal Direct
 with leading suppliers
 and keep ALL profits!

Buy Below Wholesale
 Rock-bottom prices pay
 fantastic markups!

Profit big with exciting import products!

MEN-WOMEN... you'll never get rich working for somebody else! Your answer is being your own boss in your own business! World Trade/Mail Order is the one business you can still "start on shoestring"! Enjoy earnings probably far greater than you ever dreamed any job could pay. The Mellinger World Trade/Mail Order home business plan guides you step by step. Plan based and backed by four generations of Mellinger family global success! We travel the world, discovering dazzling new import product and handcraft values you'll turn into quick, steady profits. Start with choice of 24,221 of today's hottest import moneymakers. Always deal direct—no middlemen—keep all profits!

**Join these successful
 Men and Women!**

"My biggest day's sales has been \$15,535.50 and the largest single sale was \$1,122. This Plan has made a change in my life."

Ann M. Moncey

"Mellinger has the answer! I'm looking at \$25,000 year's income—just 2 hours a day part-time!"

Alan Peterson

"Just one world trade transaction paid me \$3,000 profit! You...follow the Mellinger Plan!"

Glen Campbell

"Following the Mellinger Plan I opened my own gift shop. Plus, made \$12,000. Mail Order 'reality'!"

Mame Ciron

"I was full-time now my wife works part-time. The hours are long, but there is great satisfaction associated with being directly responsible for actions taken by my customers and the rewards when these actions are successful. I anticipate sales of more than \$50,000 in the coming year."

David Schneider



**START WITH CHOICE OF
 24,221
 HIGH PROFIT IMPORTS!**

Personal Guidance

You're never alone! Mellinger Personal Consultants help at every step. Be invited to regional Mellinger Seminars for extra incentive.

**ADDED
 EARNINGS**

Now make even more money with Mellinger Plan. Deal direct in U.S. made products at lowest rock-bottom prices...keep all profit! No "buying losses!"

START FAST FROM HOME...Full-Time or Part-Time!

No employees! No rent! Almost no overhead! Actually make first import transaction 10 minutes after Plan arrives. Can operate without product investment. Plan reveals exactly how to sell by Mail Order or many other high profit ways. Receive free membership in International Traders organization...immediately puts you in direct contact with suppliers overseas. Age, past experience not important. Ideal for husband and wife team or retirement!

FIND OUT! I'll send 2 reports, Free Sample Import and Condensed Mail Order Course—all free!
 Discover how to turn imports we find into really big money. Read my 2 complete reports. Marvel at free sample import I'll send! No obligation. No salesman will call. Mail certificate today!

**This Certificate Good for
 ONE SAMPLE IMPORT—FREE**

IMPORTANT:
 Initial Below (name)
 by agree to limit my
 request to ONLY
 one Free Sample
 Import. I am aware
 of this limit.

NAME _____
 ADDRESS _____
 CITY _____
 STATE _____
 ZIP _____

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Complaint

EXHIBIT C

Mellinger Company

<http://www.noboss.com/mellingr.html>PRIME-CATEGORY: Consumer ServicesCATEGORY: Import/Export

SOURCE: The Mellinger Company

OFFER: become a member of International Traders, gain introduction and access to hundreds of carefully screened foreign suppliers carrying over 20,000 imports plus gain information regarding profit potential as export agent for domestic manufacturers.

COST: \$198 or payments of \$15 to start. \$18.90 for 12 months.

THE PACKAGE: Receive 20 Section Mellinger World Trade/Mail Order Plan, Supplement and 11-piece Visualizer Kit. When paid in full, receive 3 Year International Traders Membership, Free sample Imports, Trade Agreements, Drop Ship Directory, Trade Opportunities Magazine for 3 years (published bimonthly) and sample portfolio of business forms. Free personal telephone consultation available to members. Visa/Mastercard payment accepted.

In addition, the Platinum Profession Training includes round-trip air fare transportation and hotel accommodations at a 4-star hotel while attending 3 days of factory training and Master Certificate as a Professional Glass Repair Technician.

Bonus Book "How To Run Mail Order Advertising" for orders within 14 days of receipt of information.

MARKETING TECHNIQUE: sell imports by mail. Members-only Drop-Ship Plan enables you to start without product investment.

MISCELLANEOUS: Mellinger family active in world trade and mail order for over 90 years. You deal directly with overseas suppliers, cut out middlemen and keep all profits. International Traders Trade Show Convention in Las Vegas held annually for International Traders members.

TYPICAL EARNINGS: Examples of earnings of individual members (1) borrowed \$500 to start, made \$45,000 after 6 months, (2) first year brought \$30,000; recently had sales of \$41,920 in a single day, (3) first year sales of \$55,000; now serve 250 customers are 'trying for a million'.

GEOGRAPHIC AVAILABILITY: USA

ADDITIONAL INFORMATION: For full details on this Business Opportunity simply.

REQUEST TO BE SENT DETAILED INFORMATION

or you can write :

The Mellinger Company 6100 Variel Avenue, Dept NOBOSS Woodland Hills, CA 91367

6100 Variel Avenue, Dept NOBOSS
Woodland Hills, CA 91367

NOTE: this "Listing" has NOT been reviewed-for-accuracy by the Source

TO TOP

Complaint

123 F.T.C.

EXHIBIT D



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Complaint

EXHIBIT D

4 Generations of Mellinger experience guide you to Success and Fortune!

B.L. Mellinger III
President/CEO, The Mellinger Co.

In the pages of this book, I invite you to discover how the Mellinger World Trade/Mail Order Plan has helped me and probably more money than you ever dreamed. Proudly, I can tell you how the plan has helped me and my family to build a global business organization that has added this success to the lives of many ambitious men and women of all ages and backgrounds. I look forward to helping you get your fair, profitable share in World Trade/Mail Order!

B.L. Mellinger III

The Mellinger family has been directly active in World Trade/Mail Order for nearly 80 years! Starting with Great Grandfather Louis Mellinger, our family has directed the flow of millions upon millions of dollars of goods to buyers through the mails. The Mellinger family plays a key role in making World Trade/Mail Order a profitable career for ambitious men and women. You enjoy the best of both the vast experience as you follow Mellinger guidance.

As you begin following the Mellinger Plan and become a Member of International Traders, we put you at once in direct contact with leading suppliers overseas offering you thousands of fast-selling imports below wholesale. We show you to cut out middlemen so you keep all profits. And we guide you step-by-step in marketing your imports for big profits in Mail Order and many other ways. This is the International Traders way to business success!

The MELLINGER

WORLD TRADE MAIL ORDER BUSINESS PLAN

The most respected Mail Order leads you to security and independence

B.L. MELLINGER JR.

Founder, the Mellinger Plan, International Import/Export Business Plan, Mail Order; he quickly built a multimillion dollar business. You will profit big with guidance established by this World Trade/Mail Order planner.

B.L. MELLINGER SR.

In the early 1920s, Mellinger built and operated one of America's most prosperous Mail Order/Direct Selling firms. Retiring wealthy, he lent a price-leading, every experience from which newcomers benefit greatly today.

LOUIS G. MELLINGER

Early in the century, he founded a business future in World Trade/Mail Order. He guided his son into a career where the Mellinger family became global leaders in international trade expansion and international business.

GOLD CHANGE FOR PROFITS

DOLLS FROM MANY COUNTRIES

MAXIMUM PROFITS WITH MULTIPURPOSE RADIO LIGHT

WATCHES — LOW IMPORT PRICES — ALL STYLES

KING TUT PAPYRUS SCROLL

"A timeless art treasure of the ancients"

Start fast in your own profitable HOME IMPORT/EXPORT MAIL ORDER BUSINESS

MEN & WOMEN—Welcome to your exciting, high-income, full or part time future in Import/Export/Mail Order! Follow the Mellinger Plan and it guides you every step. Nothing has been left to chance. Factually followed step is based 100% upon many years of successful experience. Your Import/Export/Mail Order business is handled in a person, family or retirement operation. Age, location, past experience doesn't matter! Unlike most new enterprises, you will almost no overhead... and with tiny capital. The Mellinger Plan offers this exceptional opportunity to you... now!

Start with choice of 24,221 fantastic import bargains!

BUY BELOW WHOLESALE

Always deal direct—keep ALL profits!

MELLINGER PRODUCT SCOUTS across the world open doors to hundreds of carefully screened foreign suppliers. Members of International Traders (Membership is free when you follow the Mellinger Plan) immediately have access to over 20,000 of today's most startling import values. The Mellinger Plan guides you in marketing your import selections by Mail Order as well as many other ways for quick, easy profit! Deal in one import or many. Even buy one at a time. You always buy below wholesale. You always deal direct—cutting out all middlemen... so you keep all profits!

Start without product investment!

The Mellinger family developed and refined a unique, step-by-step plan to guide you by today's international Traders. Members ideal for the new import with limited capital. The Mellinger Plan shows exactly how to start in the very day you receive the Mellinger Plan Order form. Ship suppliers are selected and shipped.

EXHIBIT D



Priceless Mellinger
worldwide supplier
contacts help you
CASH IN FAST!

Men and women enjoying greatest success in World Franchise/Mail Order... are those offering new products FIRST! A valuable benefit of the Mailinger Plan is FREE Membership in International Traders. This exclusive worldwide organization immediately puts you in direct touch with leading innovative suppliers abroad ready to do business with you!

Managing Executives and School Travel
widely, visiting suppliers, factories and handicraft centers... negotiating best below-wholesale prices! I, T. Members get name of product discovered quickly! You turn over the job of product searching to the experts!

Membership starts you at once with free import samples plus everything needed to turn your samples into profitable orders. Next, you get exclusive Trade Agreements with top overseas suppliers, offering hundreds of fast-moving imports you can deal in right away.

You receive *Trade Opportunities* magazine (published bi-monthly)... available only to I.T. Members. Each issue reveals brand-new product discoveries. You contact suppliers directly. Every penny of profit is yours to keep!

Fantastic bargains to be turned at once into big profits! With the global organization working night and day, International Traders Members have almost unlimited sources of dazzling new imports.

World Trade/Mail Order

The Woman's Role

in World Trade/Mail Order

show you... especially imports needing the "feminine touch." Husband/wife teams have created many highly successful businesses.

Enjoy all the benefits of being your own boss in your own part-time or full-time home business

**START WITH CHOICE OF 24,221
TODAY'S HOTTEST NEW TV SERIES**

100+ 3 MILLION NEW PRODUCTS!
Hundreds more discovered every month!

PROFITS... SECURITY... INDEPENDENCE! How often have you talked about getting into your own business? Now think seriously about your opportunity to start... quickly... in your own home Import/Export/ Mail Order business. No employees to hire or pay. Little or no investment.

products. Even before you present job openings with advertising in *Entrepreneur*, you can get a head start by posting openings in spare hours. Use e-mail or webinars to alert. For your first mailing, possible start, the Mailings Plan reveals how to handle the mailing. Everything you will do is based 100% on positive, proven practical "don'ts." Our founder started with almost nothing, determined to "make it on his own." The draw on experience at his successful foodservice. His first-aid methods are the way to follow in the Mailings Plan. You can start in the garage or at the kitchen table. Our family did avoid unusual newsmen's costly mistakes thanks to the Mailings Plan. Remember... dealing DIRECT means you keep all the profits. More money to save and spend with. Creatively centered members in Africa, Italy, Austria, Germany, Latin America, Asia, Australia and many other lands... please refer to business with international. (read Members, we find the impact. No pick them. The Mailings Plan is *now* how to succeed by mail and many other ways. You can't get rich working for someone else. You CAN make it big being your own boss in your own business as so many IT Members have proved!

Your bi-monthly *Trade Opportunities* magazine brings contacts with hundreds of suppliers. Many can be sources for personal use. Save on offers of watches, cameras, furniture, tools, electronics, etc. Always save the International Traders way!

Products like these you buy DIRECT:

Products like these you buy DIRECT

COMPUTERS
SECURITY PRODUCTS
AUTO ACCESSORIES
CHRISTMAS GIFTS
COSMETICS
CUTLERY SETS
ELECTRONIC GAMES
ATHLETIC GEAR
CERAMICS

DIAMONDS
BEER STEINS
DINNERWARE
GERMAN CLOCKS
TELESCOPES
FISHING RODS
SPINNING REELS
WATCHES
RADIOS

DIAMONDS
BEER STEINS
DINNERWARE
GERMAN CLOCKS
TELESCOPES
FISHING RODS
SPINNING REELS
WATCHES
RADIOS

**Turn Import Values
Like These into
Immediate
Big Profits!**



TRAVEL OPPORTUNITY

If you like travel to go abroad on your own and know product or service, plan local travel expenses. Consider complete details. Contact business with level to hire South America. Member Europe contacts. recognize the supplier's attitude in welcome. ship, arrive in welcome. The assure a warm contact for sales. Ifs riding individual career. Tg provides useful information.

1108

Complaint

EXHIBIT D

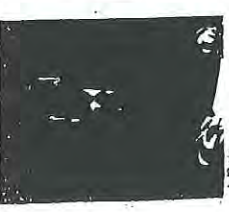
The MELLINGER

WORLD TRADE MAIL ORDER BUSINESS PLAN

You are never alone

When you follow the Mellinger Plan

The Mellinger Team is ready to help you make money! We are some of the key international traders and women, totally dedicated to helping ambitious men and women get a fast start to World Trade/Mail Order profits. Experts in all aspects of World Trade/Mail Order work for your success. Discover what this team can do for you... send for the complete Mellinger Plan to examine seven full days in your own home!



A. J. MELLINGER III
President/CEO, The Mellinger Co.
Drawing upon wide foreign travel and four generations of Mellinger family accomplishment, he brings expert guidance you can turn at once into profit. He contributes personally to Trade Opportunities magazine.



CHRIS HARDENSTOCK
Import Manager
Supervises vast corps of Mellinger Global Product Sources. One of the world's most trusted and most experienced on import product sources.



LISA M. GARCIA
Advertising Manager
Her advice guides you in advertising. Her tips are the key to peak Mail Order sales and profits. Lisa is always ready with answers.



PATT COLLINS
World Trade Consultant
Whether you need advice on just starting out, or have a question in one particular area, Patt has your answer. You may call or write any time.



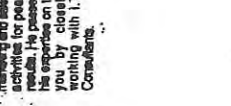
LAURA SELBY
World Trade Consultant
Ask Laura, and know you are getting the most accurate answers to your questions. You may contact her by phone or call for an appointment.



KRISTIN LARSON
Office Manager
Mrs. Larson's many special skills keep The Mellinger Co. operating at top efficiency. She will direct your call to appropriate departments.



JOHN O'BRIEN
Sales Director
John manages all marketing and sales activities for peak results. He passes his expertise on to you by closely working with I.T. Consultants.



JOHN MORROW
Publications
Benefit from his wide contacts with important publishers. Learn from him when, where, how to place your ads for profitable results.



PATT COLLINS
World Trade Consultant
Whether you need advice on just starting out, or have a question in one particular area, Patt has your answer. You may call or write any time.



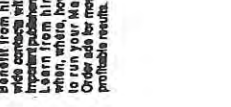
LAURA SELBY
World Trade Consultant
Ask Laura, and know you are getting the most accurate answers to your questions. You may contact her by phone or call for an appointment.



KRISTIN LARSON
Office Manager
Mrs. Larson's many special skills keep The Mellinger Co. operating at top efficiency. She will direct your call to appropriate departments.



JOHN O'BRIEN
Sales Director
John manages all marketing and sales activities for peak results. He passes his expertise on to you by closely working with I.T. Consultants.



JOHN MORROW
Publications
Benefit from his wide contacts with important publishers. Learn from him when, where, how to place your ads for profitable results.

Take a tour of the vast

International Traders

WORLD HEADQUARTERS

Your guide: famed motion picture/TV star and I.T. Member Richard Anderson



Personal help and service you can't find anywhere else.

Complaint

123 F.T.C.

EXHIBIT D



There's a sure way to judge a product or service. Just ask the opinion of users. The opinion of users is the opinion of the world. They are not the usual "testimonial" type. They show the confidence coming from being well informed. The same confidence that has made the World Trade Mail Order Plan and the World Trade Mail Order Service the most successful of international traders available to you!

W. R. Allen, Jr.



John and Margaret Evans

After eleven years as an executive for a steamship line, Mr. Evans decided to start his own business. He contacted the Mellinger Plan and, following the lead of the Mellinger Plan, he developed a successful business in the mail order field. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business.

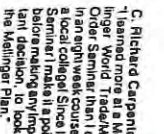


Nicola Allen
This 26-year-old former private secretary knew exactly what she wanted when she contacted the Mellinger Co. "I wanted a business and I wanted to make money!" In two months after starting, she was making \$45,000.00 per year. She is now a member of the Mellinger Plan and is enjoying a very successful business. She is now a member of the Mellinger Plan and is enjoying a very successful business. She is now a member of the Mellinger Plan and is enjoying a very successful business.



SUCCESS STORIES in World Trade!

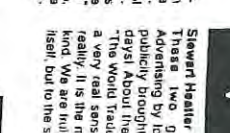
Read these ACTUAL REPORTS of MONEY-
MAKING... told by Members of
INTERNATIONAL TRADERS



Ademola Ogunbanwo
Using advice from the Mellinger Plan and the World Trade Mail Order Service, Mr. Ogunbanwo has developed a successful business in the mail order field. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business.



David Stollenberg
After eleven years as an executive for a steamship line, Mr. Stollenberg decided to start his own business. He contacted the Mellinger Plan and, following the lead of the Mellinger Plan, he developed a successful business in the mail order field. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business.



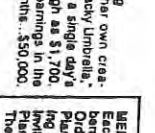
Brian Winch
Mr. Winch used the Mellinger Plan and the World Trade Mail Order Service to develop a successful business in the mail order field. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business. He is now a member of the Mellinger Plan and is enjoying a very successful business.



Stewart Heister & Tony Schwartz
These two gentlemen received free advertising by following the Mellinger Plan. They are now enjoying a very successful business in the mail order field. They are now enjoying a very successful business in the mail order field. They are now enjoying a very successful business in the mail order field.



Pat Altmong
Marketing her own creation, the "Vicky Universal," Pat reports a single day's sales as high as \$1,700. Estimated earnings in the next 12 months: \$50,000. to \$80,000.



MEN—WOMEN
Each of these successful 17 members started as a World Trade Mail Order newcomer. The Mellinger Plan changed their lives... bringing success, money, security. We invite you to examine the Mellinger Plan for full details. Discover what the Plan holds for you!



Why Imports are best for Mail Order!



Imported products bring you two vital requirements for Mail Order success... low cost and direct appeal. Many imports come from countries where goods are sold for \$4 a day. Cost is low. You make giant profits, match up prices many times. Imports come from countries of different backgrounds and cultures. They offer newness and uniqueness appeal. Their low prices, fresh ideas and top quality are snapped up by Mail Order buyers.

Mail Order is the ideal business to start in your home... with only a tiny investment. You can operate from anywhere... in hours you choose. Go after orders from coast to coast... which means your prospect for profit is just about unlimited. Discover this thrill of opening piles of envelopes containing orders and money!



Why Imports are best for Mail Order!



Why Imports are best for Mail Order!



EXHIBIT D

**COMPARISON
PROVES**

PROVES **MELLINGER WORLD TRADE/**
MAIL ORDER BUSINESS PLAN Gives you everything
you need for quick

The Mellinger Plan comes from four highly successful generations of one family — a name instantly associated with World Trade and Mail Order. When you look at the facts, when you ask questions... you discover quickly why so many ambitious men and women succeed by following the Mellinger Plan. Compare... then decide.

ASK THESE QUESTIONS—INSIST UPON ANSWERS—THEN DECIDE

QUESTIONS	correct answer	wrong answer	more correct answer	more wrong answer
Can you start with at least \$4,000 (property)?	No	No	No	Yes
Can you choose from 100s of real products every other month?	No	No	No	Yes
Will you have global sources product suppliers?	No	No	No	Yes
Will you have lot-size constraints in inventory quantities?	No	No	No	Yes
Will you be invited to Personal World Trade and Mail Order Network?	No	No	No	Yes
Will you be invited to an annual Trade Convention each year (one possibility with suppliers)?	No	No	No	Yes
Will you have to pay a fee for the "brokerage" of buying products?	Yes	No	Yes	Yes
Will your name be given to leading business suppliers, operating closer to customers than you?	No	No	No	Yes
Will you get weekly checklist of products and copy, phone, sales survey?	Yes	No	No	Yes
Will you get Web Membership in International Trade Association organization?	No	No	No	Yes
Will you get actual sample reports for lead leads?	Yes	No	No	Yes
Can you order samples of product for resale (franchise, business, investment, start)?	No	No	No	Yes
Can you get FREE Lead Order and in national magazine just mailed to customers?	Yes	No	No	Yes
Will you get a direct copy of "Real Opportunities Magazine" (about 1000 products and price lists)?	No	No	No	Yes
Will you get able to lead directly school, college, get equity investment?	No	No	No	Yes
Will you be able to buy foreign products at special, direct prices?	No	No	No	Yes
Can you also attract investment in products?	No	No	No	Yes

Dramatic world changes open amazing opportunities for Exporters. From flower seeds to bullfrogs, from a few dollars to millions! The Mellinger Plan shows how to make it happen, and manufacturers of products needed in other countries. We tell you what products are needed, when needed, then you Exporters can make money. **Don't miss this!** **Call today!**

EXPORTS BOOMING!
Get your
share...

Your very
first day

**Start Importing -
Start Making Money**
*A Complete Business Plan -
How it Works for You...*

The day you open the Mellinger World Trade/Mail Order Plan, you can make your first Import transaction. Do it within 10 minutes! That's a fact! Instantly, you get the feel of this exciting business. You get everything needed to make money fast, including free Membership in International Traders. And, you are in direct contact with suppliers all over the world! We show you how to get high-profit orders by mail, from stores and individuals, at swap meets . . . many ways to make money. THE MELLINGER PLAN is a complete business plan you put to work from the day the mail carrier delivers it!

Personal Step-by-Step guidance

It's like having experienced friends at your side! If you have a question about suppliers, products, advertising, printing, shipping... anything about your business... just pick up the phone. A skilled counselor is ready to help. Also you will be invited to personally conducted Mellingers Seminars near your home for individual guidance!

FREE Specialty Merchandise Catalogs



Sources for U.S. Manufacturers

As a Member of International Traders, you may contact domestic manufacturers for products in which you can deal. Products like cosmetics, vitamins, clothing, tools, auto and garden supplies... take in many millions of dollars annually in Mail Order. Cash in on this bonanza with Mellinger contacts.

We show you how to set up shop without paying rent or employees...how you can use the very same Plan that developed Mellinger World Trade/Mail Order business bring you in many millions of dollars!

EXHIBIT D

need to know to Start Fast for Big Profits
day you join INTERNATIONAL TRADERS

PLUS...all these additional Mellinger aids for a quick, easy start in your business!

Profitable Marketing of Imports

Plan gives guidance for doing profitable business by Mail Order and many other ways to turn imports into big money. Direct Selling, Swap Meets, Party Plan, Cart Merchandising and Fund Raising are just some of the ways you can boost your earnings.

11-Piece World Trade Visualizer Kit

Complete set of forms used in World Trade Includes Quotation and Foreign Order Forms, Bill of Lading, Certificate of Origin, Export Declaration, Consular Invoice, common U.S. and Canadian Duties. Easy to understand as you see them.

World Trade Membership Certificate

World Trade Membership Certificate
As you join International Traders, you receive a beautiful Certificate certifying your entrance into World Trade/Mail Order. Frame and hang it on your wall... an impressive symbol of your career. Display your Certificate proudly to all who visit your business.

Big Portfolio of Business Forms

Big Portfolio of Business Forms
Carrying on your business with foreign suppliers and customers, you will need printed forms . . . letterheads, envelopes, invoices and purchase forms. A large sample assortment is included with I.T. Membership. You may order supplies at big discount.

**Your Personal I. T. Member Subscription
to TRADE OPPORTUNITIES Magazine**

Every other month as an International Traders Member, you receive your own personal copy of your official magazine. Features trade leads for hundreds of newest import products, helpful articles by Mellinger World TradeMail Order experts, and names and addresses of overseas firms seeking export products. *Trade Opportunities* magazine is available only to I.T. Members for their exclusive benefit and profit.

Everything you
—all this is yours the

Many Imports we discover are available to you in small quantities — even one at a time. You can start by ordering samples or just a few Imports. As the money rolls in, you can expand, ordering larger quantities at even lower, direct, below-wholesale prices. Compare your import bargains with department store prices. Think of this giant marketplace! You can start your small business at home, supplying stores, friends and others seeking exciting new products but don't know where to find them!

FREE SAMPLE IMPORTS

with I.T. Membership. Show and start taking orders the day they arrive!

These actual sample imports are a **Wellington Plan PLUS**. We send them to you for one important reason... to give you an instant taste to profit. Show your samples and take orders right away. Let people see these unusual imports from faraway places... get their reaction of delight and wonder! With each import comes full supplier ordering directions which help you introduce other imports in the high-profit lines from which they are selected. These imports give you a quick alert in your newly established World Trade/Mail Order business.

Make DROP SHIPMENTS

Here's how this unique plan works:

- (1) Merely show samples for pictures when you call.
- (2) Collect the full sales order.
- (3) Mail order to supplier.
- (4) Supplier ships to you.
- (5) Air mail order to supplier.
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your business goals and needs are what we'll be talking about. We meet informally near your home. We get to know each other right away like a family gathering. We sit down together as we answer and discuss your questions. You get advance news of hot new imports and how to sell them. Only I.T. Members are invited to attend. Plan to join us!

Yours FREE
as a member of



6 Valuable Exclusive Trade Agreements

You don't have to invest a penny in merchandise

Through your preferred international Freighters, you receive competitive freight agreements for thousands of shipments from major overseas suppliers in leading coastal trade centers. Every detail is revealed. So complete are these agreements, you should immediately be ready to make profitable sales. Get information for freight ship costs on single imports as well as quantity prices for the entire line. Exact "door-to-door" shipping bids are included.

Personal Consultation and Guidance

One of the important services included with the Muller Plan is the privilege of consulting with our staff on all aspects of your business progress. Our staff of skilled specialists is ready to help you. Call on us for individual guidance in importing, exporting, advertising, sales, record keeping, Mail Order, and related topics. This service alone may be worth many times the cost of your Plan.

You are invited
TO MR. MELLINGER'S
PERSONAL SEMINARS
NEAR YOUR HOME

EXHIBIT D



MR. MELLINGER ANSWERS YOUR QUESTIONS



These are questions most often asked when I meet with International Trade Members at my Seminars. Perhaps you have questions like these. I believe my answers will help you...

Breinard L. Mellinger III
President/CEO
The Mellinger Co.
Chairman, International Traders



Q: You say I can start immediately. How?

A: The day you receive the Mellinger Plan, you get exact, easily followed instructions for making your first import transaction. You could be making your first supplier contact within 10 minutes.

Q: How soon can I start making money?

A: The minute you become a Member of the Mellinger Plan, you can start making money. With these, easy-to-follow supplier introductions I include, you can start taking profitable orders at once. You can operate on my Drop Ship Plan. You can collect your profit even before paying for products.

Q: How do I hear about new products?

A: Every other month, you receive Trade Opportunities (exclusive) for I.T. Members... plus money-making ideas, ideas and support needs.

Q: Do I need previous experience?

A: Not at all! The Mellinger Plan is a complete home business plan. Follow it and you have everything you need to start and operate your business. Successful I.T. Members come from all walks of life... all ages... all kinds of backgrounds. The only thing you need to make money is what's really important!

Q: Does Mellinger import and export?

A: Indeed! Our warehouse receives almost daily shipments from abroad, filling orders for contacts who have depended upon us for decades. Our World Trade facilities place us in an enviable position to inform I.T. Members about what's really going on.

Q: Is my I.T. Membership renewable?

A: Yes, you can renew your Membership. We have many Members with I.T. service records of 25 years or more.

Q: Do I need a lot of capital to start?

A: Probably no other business can be started with less capital... and pay off so big! Following the Mellinger Plan, you can start with no investment in products. Later, as you grow bigger, you can stock your products for quick delivery.

Q: Can I start without quitting my job?

A: Yes, most newcomers start at home in spare hours. Keep present income while building your World Trade/Mail Order business. Consider going full-time only when you are ready.

Q: What if I have questions?

A: It's unlikely because The Plan is so up-to-date and revised constantly. But, if a question does come up, the Mellinger Co. (don't call it in person) will promptly answer your question by phone or in person.

Q: Do you check suppliers personally?

A: Mellinger Executives and Product Scout visit suppliers and factories in overseas trade centers. We spend large amounts of money to make sure you see a product offered in Trade Opportunities. We make sure the supplier has been carefully checked first!

Q: Can I deduct foreign travel from my taxes?

A: As an active I.T. Member, you are in business. The tax laws permit deduction of business-related travel for the purpose of meeting and dealing with overseas suppliers... or any business. Remember, you do not have to export unless you want to. The Mellinger Plan does the hard work of product searching for you.

Q: What are the opportunities for women?

A: Exactly the same as for men! I.T. Membership includes a large proportion of women and husband-wife teams working full-time and full-time income!

Now—let us send you this 5-Volume World Trade/Mail Order Plan

Examine the Plan 7 Full Days Before You Decide

In these pages, you have read many facts about exciting opportunities for starting your own Import/Export/Mail Order business from home. You have read about successful men and women who profit from these exciting full-time following the Mellinger Plan. You've seen how we help you get started... how we invite you to join International Traders for exclusive direct-below-wholesale import offers. But we do not ask you to make a decision on this information alone. See

The Plan for yourself... read it... discover how complete and easy it is to follow. We invite you to send for the Mellinger World Trade/Mail Order Plan (all 5 volumes) to examine for 7 full days in the quiet of your home. Then... and only then... decide if this is the opportunity for profits, security and personal success you have always looked for. We know from generations of experience we can help you with fortune in your own business. But it is up to you who must decide!

Seeing is believing... and understanding! That's why we will send you the Mellinger Plan on a 7-day examination. Examine The Plan... find out what it can do for you!

Here is just a partial list of subjects and guidance you'll discover in the Mellinger Plan. We invite you to inspect the complete Plan... see everything for yourself!

- WELCOME TO WORLD TRADE/MAIL ORDER
- TURNING IMPORTS INTO PROFIT
- HOW TO IMPORT BY DIRECT MAIL
- STARTING AN IMPORT MAIL ORDER BUSINESS
- HOW TO MAKE UP LOW-COST MAIL ORDERS
- HOW, WHEN, WHERE TO RUN MAIL ORDER ADS
- HOW TO SELL BY DIRECT MAIL
- BELLING IMPORTS THROUGH DIRECT SALES REPRESENTATIVES
- WHEN PROVERBIAL WANTS TO MARKET IMPORTS
- HOW TO START WITHOUT PRODUCT INVESTMENT
- HOW TO SECURE AN EXPORT AGENT
- EASY BUSINESS AND EASY REVENUE
- WORLD TRADE CONFERENCE
- HOW TO HANDLE MAIL ORDERS
- HOW TO GET PROFESSIONAL AD HELP FREE
- FREE ADVERTISING IN NATIONAL PUBLICATIONS
- MEETING WITH SUPPLIERS FROM OVERSEAS
- HOW TO PRICE IMPORTS FOR TOP PROFITS
- COMPLETE WORLD TRADE REFERENCE SECTION



Mail 7-Day
Home Inspection
Request... NOW

Complaint

123 F.T.C.

EXHIBIT D



Follow The Mellinger Plan to World Trade/Mail Order Profits

We are ready now to help you get your fast start in your own profitable business.

THIS IS YOUR DAY OF DECISION

There comes a time when success hinges on a decision... a change in life's direction. Perhaps you are at that turning point now...

How often have you heard people say—"If only I had gone into real estate before prices started shooting up." Or "If I had only known how well this or that would sell... I could have made a fortune." Usually decisions like that call for risk and big investment that may not turn out at all. I am ready to remove the risk from your decision today. It's like having your cake and eating it, too.

Your decision... today... to enter the world of World Trade/Mail Order is ONLY TO LOOK AT THE MELLINGER PLAN. I do not want you to obligate yourself in any way whatsoever. Just look and consider. This could be your opportunity to look back in years to come and

say, "I got my start the right way... struck it rich... not only in money, but in all the good things of life!"

You will be taking your first all-important step by filling out and mailing the enclosed Home Inspection Request. In return, I will send the Mellinger World Trade/Mail Order Business Plan to inspect and discuss for seven full days.

We take the risk... you have a whole world of opportunity to gain. All that stands between you and an active role in this great and exciting business... is your decision to look at the Mellinger Plan. Make that decision today. Mail your Home Inspection Request now!

W. Mellinger

Start small at home... as others did...
move ahead when you are ready



MAIL HOME INSPECTION REQUEST NOW ... IMMEDIATE ATTENTION ASSURED Only Mellinger gives you this MONEY-BACK AGREEMENT

It's only fair and right! Purchase of a product or service should come with an agreement to refund your money if you are not satisfied. The Mellinger Co. does this without question... for a very important reason. We want you to be sure you are not only pleased with the Mellinger Plan but that you know you can be a success. Read the Money-Back Guarantee. It is offered for your protection.

THE MELLINGER CO.
6100 Varrel Avenue, Woodland Hills, CA 91367-3779 U.S.A.

POSITIVE MONEY-BACK GUARANTEE

Order your Mellinger World Trade/Mail Order Plan with the understanding that you can examine it in your home for 7 days after it has been delivered. If, within that time, you decide for some reason not wish to keep The Plan, simply mail it back to us by insured parcel post and we will refund your inspection deposit in full.

The Mellinger Co.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent 1554 Corporation is a California corporation, with its office and principal place of business located at 6100 Variel Ave., Woodland Hills, CA. Respondent 1554 Corporation has traded and done business as The Mellinger Company. Respondent Brainerd L. Mellinger, III, is president 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 the draft complaint. His principal office or place of business is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

Decision and Order

123 F.T.C.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Mellinger Plan*" shall mean the Mellinger World Trade Mail Order Plan.

2. "*Business opportunity*" shall mean an activity engaged in for the purpose of making a profit.

3. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has 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.

I.

It is ordered, That respondents 1554 Corporation, a corporation, its successors and assigns, and its officers, and Brainerd L. Mellinger, III, 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 advertising, offering for sale, sale or distribution of the Mellinger Plan, or any other product or service concerning business opportunities, 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:

A. That consumers who use such product or service typically succeed in readily starting and operating profitable businesses;

B. That consumers who use such product or service typically earn substantial income; or

C. Otherwise concerning the performance, benefits, efficacy or success rate of any such product or service,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

It is further ordered, That respondents 1554 Corporation, a corporation, its successors and assigns, and its officers, and Brainerd L. Mellinger, III, 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 advertising, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in Section 255(b), Part 255, Title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no express or implied representations which would be deceptive or unsubstantiated if made directly by the respondents; or

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such representation is true and unless, at the time of making the representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. Provided, however, respondents may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondents disclose clearly, prominently, and in close proximity to the endorsement:

1. What the generally expected performance would be in the depicted circumstances; or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve; *i.e.*, that consumers should not expect to experience similar results.

III.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents, their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All advertisements and promotional materials setting forth any representation covered by this order;
2. All materials that were relied upon to substantiate any representation covered by this order; and
3. All test reports, studies, surveys, demonstrations or other evidence in their possession or control, or of which they have knowledge, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers or governmental entities.

IV.

It is further ordered, That:

A. Respondent 1554 Corporation shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation 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; and

B. Respondent Brainerd L. Mellinger, III, shall, for a period of three (3) years from the date of service of this order, promptly notify the Commission of the discontinuance of his present business or employment, or his affiliation with a new business or employment, with each such notice to include his new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That respondents, their successors and assigns, shall forthwith distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order, and shall obtain from each such person or entity a signed statement acknowledging receipt of the order.

VI.

It is further ordered, That this order will terminate on April 14, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII.

It is further ordered, That respondents, their successors and assigns, shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

Complaint

123 F.T.C.

IN THE MATTER OF

HERB GORDON AUTO WORLD, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, THE TRUTH IN LENDING ACT, REGULATION Z, THE CONSUMER LEASING ACT AND REGULATION M

Docket C-3734. Complaint, April 15, 1997--Decision, April 15, 1997

This consent order prohibits, among other things, the Maryland company and its seven dealerships from obscuring important cost information in fine or unreadable print, from advertising financed purchase or leasing terms that are not available to consumers, and from misrepresenting the terms of financing or leasing any vehicle, the existence of the amount of any balloon payment, or the existence, number or amount of payments for financed purchases. The consent order requires the respondents to make all the disclosures required by the Truth in Lending Act, Regulation Z, Consumer Leasing Act, and Regulation M, and to ensure that the disclosures are noticeable, readable, and comprehensible to an ordinary customer.

Appearances

For the Commission: *Carole L. Reynolds.*

For the respondents: *Charles M. English, Jr., Ober, Kaler, Grimes & Shriver, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, ("respondent") has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon

Volvo, and Herb Gordon Used Cars, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3121-3161 Automobile Blvd., Silver Spring, Maryland.

PAR. 2. In the ordinary course and conduct of its business, and at least since January 1, 1994, respondent has been engaged in the dissemination of advertisements that promote, directly or indirectly, credit sales and other extensions of other than open end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit," are defined in the TILA and Regulation Z. In the ordinary course and conduct of its business, and at least since January 1, 1994, respondent has been engaged in the dissemination of advertisements that promote, directly or indirectly, consumer leases, as the terms "advertisement," and "consumer lease," are defined in the CLA and Regulation M.

PAR. 3. The acts and practices of respondent alleged in this complaint have been and are in or affecting commerce, as "commerce" is defined in the FTC Act.

COUNT ONE

PAR. 4. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated print advertisements that state initial, low monthly payment amounts, such as "\$163" per month, and promote the "luxury of low payments" ("Gold Key Plus advertisements"). In fine print, respondent's Gold Key Plus advertisements, *inter alia*, state an initial number of payments, a downpayment and another amount described as a "purchase option." Respondent's Gold Key Plus advertisements misrepresent that the additional amount is optional and fail to disclose that the financing to be signed at purchase requires the consumer to make a substantial balloon payment at the conclusion of the initial payments, which is a mandatory obligation.

PAR. 5. Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Complaint

123 F.T.C.

COUNT TWO

PAR. 6. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements that state initial, low monthly payment amounts and promote the "luxury of low payments." In fine print, respondent's Gold Key Plus advertisements, *inter alia*, state an initial number of payments, a downpayment and another amount described as a "purchase option." Respondent's Gold Key Plus advertisements fail to accurately state the terms of repayment, by failing to disclose that the additional amount is a final payment and by inaccurately stating that the amount is optional when, in fact, it is mandatory, based on the financing to be signed at purchase.

PAR. 7. Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT THREE

PAR. 8. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements, *inter alia*, that state initial, low monthly payment amounts and promote the "luxury of low payments." Respondent's Gold Key Plus advertisements fail to disclose the annual percentage rate for the financing, using that term or the abbreviation "APR."

PAR. 9. Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), and a violation of Section 144(d) of the TILA, 15 U.S.C. 1664(d) and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT FOUR

PAR. 10. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibit A, has disseminated or caused to be disseminated Gold Key Plus advertisements that state initial, low monthly payment amounts and boldly promote the "luxury of low payments." In fine print, respondent's Gold Key Plus advertisements, *inter alia*, state an initial number of payments, a downpayment and another amount described as a "purchase option" (the "disclaimer"). The disclaimer in

respondent's Gold Key Plus advertisements is virtually unreadable and incomprehensible to ordinary consumers because of the extremely small typesize and is not clear and conspicuous.

PAR. 11. Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a) and a violation of Section 226.24 of Regulation Z, 12 CFR 226.24, as more fully set out in Section 226.24-1 of the Federal Reserve Board's Official Staff Commentary to Regulation Z ("Commentary"), 12 CFR 226.24-1, Supp. 1.

COUNT FIVE

PAR. 12. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated print advertisements that boldly state "\$95 down with low monthly payments for the first 12 months" and radio and televised advertisements that boldly state "\$95 down and payments as low as \$155 a month for the first 12 months" ("Drive For 95 advertisements"). Respondent's Drive For 95 print, radio and televised advertisements also state various initial, low monthly payment amounts, such as "\$155" a month. Thereafter, respondent's Drive For 95 print, radio and televised advertisements, *inter alia*, state "balance of 48 payments will be higher than 1st 12 months" and "cost per \$1,000 borrowed \$20.52." Respondent's Drive For 95 advertisements misrepresent and fail to accurately disclose the amount of the second series of installment payments required at the conclusion of the initial payments, based on the financing to be signed at purchase.

PAR. 13. Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT SIX

PAR. 14. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated Drive For 95 print advertisements that state "\$95 down with low monthly payments for the first 12 months" and Drive For 95 radio and televised advertisements that state "\$95 down and payments as low as \$155 a month for the 1st 12 months." Respondent's Drive For 95 print, radio

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and televised advertisements also state various initial, low monthly payment amounts, such as "\$155" a month. Thereafter, respondent's Drive For 95 print, radio and televised advertisements, *inter alia*, state "balance of 48 payments will be higher than 1st 12 months" and "cost per \$1,000 borrowed \$20.52." Respondent's Drive For 95 advertisements fail to accurately disclose the terms of repayment, by failing to accurately state the amount of the second series of installment payments required at the conclusion of the initial payments, based on the financing to be signed at purchase.

PAR. 15. Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT SEVEN

PAR. 16. Respondent, in the course and conduct of its business, in numerous instances including but not limited to Exhibits B-1, B-2 and B-3, has disseminated or caused to be disseminated Drive For 95 print advertisements that state "\$95 down with low monthly payments for the first 12 months" and Drive For 95 radio and televised advertisements that state "\$95 down and \$155 a month for the 1st 12 months." Respondent's Drive For 95 print, radio and televised advertisements also state various initial, low monthly payment amounts. In fine print in the print advertisements, in fine print for a short duration in the televised advertisements, and orally for a short duration in the radio advertisements, respondent's Drive For 95 advertisements, *inter alia*, state "balance of 48 payments will be higher than 1st 12 months," "cost per \$1,000 borrowed \$20.52," and an annual percentage rate (the "disclaimer"). The disclaimer in respondent's Drive For 95 advertisements is virtually incomprehensible to ordinary consumers and is not clear and conspicuous because of the small typesize in the print and televised advertisements and because of the short duration in the radio and televised advertisements.

PAR. 17. Respondent's aforesaid practice constitutes a deceptive act or practice, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a), and a violation of Section 226.24 of Regulation Z, 12 CFR 226.24, as more fully set out in Section 226.24-1 of the Commentary, 12 CFR 226.24-1, Supp. 1.

COUNT EIGHT

PAR. 18. Respondent, in the course and conduct of its business, in numerous instances has disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, or the amount of any payment, but fail to state all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

PAR. 19. Respondent's aforesaid practice violates Section 144(d) of the TILA, 15 U.S.C. 1664(d), and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c).

COUNT NINE

PAR. 20. Respondent, in the course and conduct of its business, in numerous instances has disseminated or caused to be disseminated advertisements that state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, but fail to state all of the terms required by Regulation M, as applicable and as follows: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the number, amount, due dates or periods of scheduled payments, and the total of such payments under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term.

PAR. 21. Respondent's aforesaid practice violates Section 184 of the CLA, 15 U.S.C. 1667c, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c).

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EXHIBIT A

Exhibit A

G44 SATURDAY, JANUARY 29, 1994 THE WASHINGTON POST

1465 Automobiles, Domestic 1465 Automobiles, Domestic 1465 Automobiles, Domestic 1465 Automobiles, Domestic

HERB GORDON DODGE

(301) 890-3040

Say Hello to **NEON**

In Stock Now Starting At **\$8975***

PRIDE of OWNERSHIP—Luxury of LOW PAYMENTS

'94 CARAVAN  7 Pass., Dual Air Bags, A/C, Power Windows, Cassette & Luggage Rack. \$259 Mo. 48 Months (Two)	'94 GRAND CARAVAN  V-6, 7 Pass., Dual Air Bags, A/C, TR, Cruise, Cassette & Luggage Rack. \$284 Mo. 48 Months (Two)	'94 RAM PICKUP  4x4, 3-Ton, 1500 Sales, Magnum V-8, Std. Poles, Tires, Cooler, Side Rear Windows & Stereo. \$298 Mo. 48 Months (One)
'94 SHADOW  5 Spd., A/C, Air Bag, Dual Mirrors, Rear Defroster & Cassette. \$163 Mo. 48 Months (Two)	'94 SHADOW ES  5 Spd., V-6, Air Bag, A/C, Power Door Locks & Mirrors, Mags, Rear Spoiler, Rear Defroster & Cassette. \$196 Mo. 48 Months (Two)	CONVERSION VANS  5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 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1360th, 1361st, 1362nd, 1363rd, 1364th, 1365th, 1366th, 1367th, 1368th, 1369th, 1370th, 1371st, 1372nd, 1373rd, 1374th, 1375th, 1376th, 1377th, 1378th, 1379th, 1380th, 1381st, 1382nd, 1383rd, 1384th, 1385th, 1386th, 1387th, 1388th, 1389th, 1390th, 1391st, 1392nd, 1393rd, 1394th, 1395th, 1396th, 1397th, 1398th, 1399th, 1400th, 1401st, 1402nd, 1403rd, 1404th, 1405th, 1406th, 1407th, 1408th, 1409th, 1410th, 1411st, 1412nd, 1413th, 1414th, 1415th, 1416th, 1417th, 1418th, 1419th, 1420th, 1421st, 1422nd, 1423rd, 1424th, 1425th, 1426th, 1427th, 1428th, 1429th, 1430th, 1431st, 1432nd, 1433rd, 1434th, 1435th, 1436th, 1437th, 1438th, 1439th, 1440th, 1441st, 1442nd, 1443rd, 1444th, 1445th, 1446th, 1447th, 1448th, 1449th, 1450th, 1451st, 1452nd, 1453rd, 1454th, 1455th, 1456th, 1457th, 1458th, 1459th, 1460th, 1461st, 1462nd, 1463rd, 1464th, 1465th, 1466th, 1467th, 1468th, 1469th, 1470th, 1471st, 1472nd, 1473rd, 1474th, 1475th, 1476th, 1477th, 1478th, 1479th, 1480th, 1481st, 1482nd, 1483rd, 1484th, 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1610th, 1611st, 1612nd, 1613th, 1614th, 1615th, 1616th, 1617th, 1618th, 1619th, 1620th, 1621st, 1622nd, 1623rd, 1624th, 1625th, 1626th, 1627th, 1628th, 1629th, 1630th, 1631st, 1632nd, 1633rd, 1634th, 1635th, 1636th, 1637th, 1638th, 1639th, 1640th, 1641st, 1642nd, 1643rd, 1644th, 1645th, 1646th, 1647th, 1648th, 1649th, 1650th, 1651st, 1652nd, 1653rd, 1654th, 1655th, 1656th, 1657th, 1658th, 1659th, 1660th, 1661st, 1662nd, 1663rd, 1664th, 1665th, 1666th, 1667th, 1668th, 1669th, 1670th, 1671st, 1672nd, 1673rd, 1674th, 1675th, 1676th, 1677th, 1678th, 1679th, 1680th, 1681st, 1682nd, 1683rd, 1684th, 1685th, 1686th, 1687th, 1688th, 1689th, 1690th, 1691st, 1692nd, 1693rd, 1694th, 1695th, 1696th, 1697th, 1698th, 1699th, 1700th, 1701st, 1702nd, 1703rd, 1704th, 1705th, 1706th, 1707th, 1708th, 1709th, 1710th, 1711st, 1712nd, 1713th, 1714th, 1715th, 1716th, 1717th, 1718th, 1719th, 1720th, 1721st, 1722nd, 1723rd, 1724th, 1725th, 1726th, 1727th, 1728th, 1729th, 1730th, 1731st, 1732nd, 1733rd, 1734th, 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1172

Complaint

EXHIBIT B

EXHIBIT D1
(Exhibit D2 is an audio tape, and Exhibit D3 is a videotape)

DO NOT WRITE ON THIS COUPON. IT IS INTENDED FOR RETURN TO THE ORIGINAL OFFICE.
RETURN IT WITH THESE COPIES TO ORIGINAL OFFICE.

HERB GORDON AUTO WORLD
PRESENTS
THE DRIVE FOR
\$9500 DOWN
HUGE 20 MILLION DOLLAR INVENTORY
WITH
LOW MONTHLY PAYMENTS
THIS IS NOT A LEASE! THIS IS YOUR CHANCE TO BUY!
For The First 12 Months*...

ANY NISSAN	\$155.00 PER MONTH 1ST 12 MONTHS
ANY DODGE	\$155.00 PER MONTH 1ST 12 MONTHS
ANY OLDSMOBILE	\$165.00 PER MONTH 1ST 12 MONTHS
ANY VOLVO	\$195.00 PER MONTH 1ST 12 MONTHS
ANY MERCEDES-BENZ C220	\$295.00 PER MONTH 1ST 12 MONTHS

Montgomery
Auto Sales Park
Route 29 & Briggs
Chasey Road
Silver Spring, Maryland

HERB GORDON AUTO WORLD
MONDAY THRU FRIDAY 9:00 AM - 9:00 PM
SATURDAY 9:00 AM - 6:00 PM
301-890-8200

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge the respondent with violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and its implementing Regulation Z, 12 CFR 226, the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* and its implementing Regulation M, 12 CFR 213 and the Federal Trade Commission Act, 15 U.S.C. 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts and Regulation, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3121-3161 Automobile Blvd., Silver Spring, Maryland.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

"Clearly and conspicuously" as used herein shall mean:

(a) In a television or videotaped advertisement, the required disclosures made in the audio portion of the advertisement shall be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer. The required disclosures made in the video portion of the advertisement shall appear on the screen in a size, shade, contrast, prominence and location, and for a duration, as to be readily noticeable, readable and comprehensible to an ordinary consumer.

(b) In a radio advertisement, the required disclosures shall be delivered in a volume, cadence and location, and for a duration, as to be readily noticeable, hearable and comprehensible to an ordinary consumer.

(c) In a print advertisement (including but not limited to mail solicitations), the required disclosures shall appear in a size, shade, contrast, prominence and location as to be readily noticeable, readable and comprehensible to an ordinary consumer.

Nothing contrary to, inconsistent with or in mitigation of the required disclosures shall be used in any advertisement.

I.

It is ordered, That respondent Herb Gordon Auto World, Inc. dba Herb Gordon Auto World, Herb Gordon Dodge, Herb Gordon Mercedes-Benz, Herb Gordon Nissan, Herb Gordon Oldsmobile, Herb Gordon Volvo, and Herb Gordon Used Cars, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote directly or indirectly any extension of consumer credit, as "advertisement" and "consumer credit" are defined in the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the terms of financing the purchase of a vehicle, including but not limited to whether there may be a balloon payment or second series of installment payments, and the amount of any balloon payment or the number and amount of any second series of installment payments.

B. Stating any number or amount of payment(s) required to repay the debt, without stating accurately, clearly and conspicuously, all of the terms required by Regulation Z, as follows, and as amended:

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment, including the amount of any balloon payment, or the number and amount of any second series of installment payments; and
- (3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction that fact must also be disclosed.

(Section 144(d) of the TILA, 15 U.S.C. 1664(d), as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended, as more fully set out in Section 226.24(c) of the Federal Reserve Board's Official Staff Commentary to Regulation Z (hereinafter referred to as "Commentary"), 12 CFR 226.24(c), Supp. 1, as amended).

C. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows, and as amended:

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment, and
- (3) The annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144(d) of the TILA, 15 U.S.C. 1664(d), as amended, and Section 226.24(c) of Regulation Z, 12 CFR 226.24(c)), as amended, as more fully set out in Section 226.24(c) of the Commentary, 12 CFR 226.24(c), Supp. 1, as amended).

D. Stating a rate of finance charge without stating the rate as an "annual percentage rate" using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(Section 144(c) of the TILA, 15 U.S.C. 1664(c), as amended, and Section 226.24(b) of Regulation Z, 12 CFR 226.24(b), as amended, as more fully set out in Section 226.24(b) of the Commentary, 12 CFR 226.24(b), Supp. 1, as amended).

E. Failing to state only those terms that actually are or will be arranged or offered by the creditor, in any advertisement for credit that states specific credit terms, as required by Regulation Z.

(Section 142 of the TILA, 15 U.S.C. 1662, as amended, and Section 226.24(a) of Regulation Z, 12 CFR 226.24(a), as amended).

F. Failing to comply in any other respect with Regulation Z and the TILA.

(Regulation Z, 12 CFR 226, as amended, and the TILA, 15 U.S.C. 1601-1667, as amended).

II.

It is ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote or assist directly or indirectly any consumer lease, as "advertisement" and "consumer lease" are defined in the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the costs or terms of leasing a vehicle.

B. Stating the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed, clearly and conspicuously, as applicable, as required by Regulation M, as amended:

(1) That the transaction advertised is a lease;

(2) The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;

(3) The number, amounts, due dates or periods of scheduled payments and the total of such payments under the lease;

(4) A statement of whether or not the lessee has the option to purchase the leased property and at what price and time (the method of determining the price may be substituted for disclosure of the price); and

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

For all lease advertisements, respondent may comply with the requirements of this subparagraph by utilizing Section 184(a) of the CLA, 15 U.S.C. 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 ("Omnibus Act"), Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) (to be codified at 15 U.S.C. 1667c(a)) ("Section 184(a) of the revised CLA"), as amended, or by utilizing Section 213.7(d) of revised Regulation M, 61 Fed. Reg. 52246, 52261 (Oct. 7, 1996) (to be codified at 12 CFR 213.7(d)) ("revised Regulation M"), as amended. For radio lease advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(b) of the CLA, 15 U.S.C. 1667c(b), as amended by Title II, Section 2605 of the Omnibus Act (to be codified at 15 U.S.C. 1667c(c)) ("Section 184(c) of the revised CLA"), as amended, or by utilizing Section 213.7(f) of revised Regulation M (to be codified at 12 CFR 213.7(f)), as amended. For television lease advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of revised Regulation M, as amended.

(Sections 184(a)-(b) of the CLA, 15 U.S.C. 1667c(a)-(b), as amended, and Section 213.5(c) of Regulation M, 12 CFR 213.5(c), as amended).

C. Stating that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases

or will lease such property at those amounts or terms, as required by Regulation M.

(Section 213.5(a) of Regulation M, 12 CFR 213.5(a), as amended).

D. Failing to comply in any other respect with Regulation M and the CLA.

Respondent may comply with the requirements of this subparagraph by utilizing revised Regulation M, 61 Fed. Reg. 52246 (Oct. 7, 1996) (to be codified at 12 CFR 213), as amended.

(Regulation M, 12 CFR 213, as amended, and the CLA, 15 U.S.C. 1667-1667e, as amended).

III.

It is further ordered, That respondent, its successors and assigns shall distribute a copy of this order to any present or future officers, agents, representatives, and employees having responsibility with respect to the subject matter of this order and secure from each such person a signed statement acknowledging receipt of said order.

IV.

It is further ordered, That respondent, its successors and assigns shall promptly notify the Commission at least thirty (30) days prior to any proposed change in the corporate entity 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 out of the order.

V.

It is further ordered, That for five years after the date of service of this order respondent, its successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI.

It is further ordered, That respondent, its successors and assigns shall, within sixty (60) days of the date of service of this order, file

with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

It is further ordered, That this order will terminate on April 15, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

THE MONEY TREE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT,
THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT

Docket C-3735. Complaint, April 28, 1997--Decision, April 28, 1997

This consent order requires, among other things, the Georgia company and its officer to offer customers the chance to cancel the credit-life, credit-disability, or accidental death and dismemberment insurance they purchased, and to obtain cash refunds or credit which could amount to as much as \$1.2 million. The consent order prohibits the respondents from requiring consumers to sign statements that such purchases are voluntary, if they are required to obtain the loan; from referring to credit-related insurance or auto club membership without telling consumers their loan applications have been approved and the amount of the approved loans; and requires the respondents to disclose to consumers that such coverage is optional and to have those consumers sign a form acknowledging that fact and the amount the extras will cost if they choose to purchase them. The consent order also prohibits violations of the Fair Credit Reporting Act provisions regarding disclosures to consumers when their credit reports influence the denial of credit.

Appearances

For the Commission: *Thomas Kane, Rolando Berrelez and William Haynes.*

For the respondents: *Sheldon Feldman, Weil, Gotshal & Manges, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Money Tree, Inc., a corporation, and Vance R. Martin, individually and as an officer of The Money Tree, Inc. ("respondents"), have violated the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681-1681t, as amended, and that The Money Tree, Inc. has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

1. Respondent The Money Tree, Inc., which also does business as Money To Lend, Inc. and Money To Lend, is a Georgia corporation, with its office and principal place of business located at 114 South

Broad Street, Bainbridge, Georgia, and operates offices throughout Georgia and Alabama.

2. Respondent Vance R. Martin is the sole owner and president of The Money Tree, Inc. 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 place of business is the same as that of the corporate respondent.

3. Respondent The Money Tree, Inc. has engaged in the business of offering "consumer credit" to the public and is a "creditor" as those terms are defined in the Truth in Lending Act and Regulation Z.

4. Respondent The Money Tree, Inc. makes short-term installment loans to primarily low-income consumers. The loans are often for amounts between \$150 and \$400.

5. 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 FTC Act.

COUNT I: TRUTH IN LENDING ACT

6. Respondent The Money Tree, Inc., in the course and conduct of its business, has, on numerous occasions, required consumers to purchase a combination of credit-life, credit accident and health, credit accident and sickness, or accidental death and dismemberment insurance and/or an auto club membership (collectively referred to as "the extras") in connection with an extension of credit. On average, The Money Tree, Inc.'s customers paid approximately \$80.00 for the extras, plus interest.

7. Respondent The Money Tree, Inc. has not included the cost of the extras in the finance charge and the annual percentage rate disclosed to consumers, and has wrongfully included the cost of the extras in the amount financed disclosed to consumers.

8. Respondent The Money Tree, Inc.'s aforesaid acts and practices violate Sections 106, 107, and 128 of the TILA, 15 U.S.C. 1605, 1606, and 1638, as amended, respectively, and Sections 226.4, 226.4(d), 226.22 and 226.18(b), (d) and (e) of Regulation Z, 12 CFR 226.4, 226.4(d), 226.22 and 226.18(b), (d) and (e), respectively, and constitute unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT II: SECTION 5 OF THE FTC ACT

9. Respondents The Money Tree, Inc. and Vance R. Martin, in the course and conduct of their business, have, on numerous occasions, in connection with extensions of credit, induced consumers to execute statements indicating that they have voluntarily chosen certain "extras" when, in fact, the purchase of some combination of such extras was required to obtain credit with The Money Tree, Inc. The "extras" consisted of credit-life insurance, credit accident and health insurance, credit accident and sickness insurance, accidental death and dismemberment insurance, and an auto club membership.

10. Respondents' aforesaid acts and practices have caused substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.

11. Therefore, the acts and practices of respondents alleged in paragraph ten were, and are, unfair or deceptive in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

COUNT III: FAIR CREDIT REPORTING ACT

12. For purposes of this count, the terms "consumer," "consumer report," and "consumer reporting agency" are defined as set forth in Sections 603(c), (d) and (f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), (d) and (f).

13. Respondents The Money Tree, Inc. and Vance R. Martin, in the course and conduct of their business, have, on numerous occasions when respondents have denied credit to a consumer either in whole or in part because of information contained in a consumer report from a consumer reporting agency, failed to:

a. Advise the consumer, at the time when the consumer was informed of such adverse action, that the adverse action was based in whole or in part on information contained in a consumer report; and

b. Supply the consumer with the name and address of the consumer reporting agency that furnished the consumer report.

14. Respondents' aforesaid acts and practices violate Section 615(a) of the FCRA, 15 U.S.C. 1681m(a). Pursuant to Section 621 of the FCRA, 15 U.S.C. 1681s, respondents' violations of the FCRA constitute unfair or deceptive acts and practices, in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, the Truth in Lending Act and its implementing Regulation Z, and the Fair Credit Reporting Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts and Regulations, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Money Tree, Inc., which also does business as Money To Lend, Inc. and Money To Lend, is a Georgia corporation, with its office and principal place of business located at 114 South Broad Street, Bainbridge, Georgia, and operates offices throughout Georgia and Alabama.

2. Respondent Vance R. Martin is the sole owner and president of The Money Tree, Inc. He formulates, directs, and controls the policies, acts and practices of said corporation, and his principal office and place of business is the same as that of The Money Tree, Inc.

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 FTC Act.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent The Money Tree, Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any closed-end credit transaction originated by respondent, shall:

A. Make all disclosures, determined in accordance with Sections 106 and 107 of the Truth in Lending Act, 15 U.S.C. 1605 and 1606, and Sections 226.4 and 226.22 of Regulation Z, 12 CFR 226.4 and 226.22, in the manner, form and amount required by Sections 226.17, 226.18, 226.19 and 226.20 of Regulation Z, 12 CFR 226.17, 226.18, 226.19 and 226.20.

B. Include in the finance charge and the annual percentage rate disclosed to the consumer, as required by Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.4(d), 226.22 and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4(d), 226.22, and 226.18(d) and (e), the premiums for credit-life, credit accident and health, credit accident and sickness, or accidental death and dismemberment insurance (hereinafter referred to collectively as "credit-related insurance") or auto club memberships that consumers are required to purchase in connection with an extension of credit.

C. Exclude from the amount financed disclosed to the consumer, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b), credit-related insurance premiums or auto club membership fees that consumers are required to purchase in connection with an extension of credit.

II.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and its officers, and respondent Vance R. Martin, individually and as an officer of the corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any closed-end credit transaction originated by respondents:

A. Shall not require consumers to sign or initial a statement that credit-related insurance, auto club membership, or any other ancillary product or service has been voluntarily chosen if the consumer's purchase of such insurance, auto club membership, or ancillary product was required;

B. Shall not misrepresent, orally or otherwise, directly or indirectly, that consumers who obtain a loan from respondents will receive credit-related insurance or an auto club membership at no additional cost to the consumer; and

C. Shall not misrepresent, orally or otherwise, directly or indirectly, that the consumer's failure to elect credit-related insurance or auto club membership will result in delay in processing the loan or distributing the proceeds.

III.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and its officers, and respondent Vance R. Martin, individually and as an officer of the corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any closed-end credit transaction originated by respondents:

A. Shall not, when credit-related insurance premiums and/or auto club membership fees are not included in the finance charge, refer in any way to the availability of such coverage, either orally or in writing, without at the same time disclosing orally:

(1) That the consumer has already been approved for the loan and the amount of the loan;

(2) That credit-related insurance and/or auto club memberships are optional;

(3) That the consumer's decision about insurance or auto club membership does not affect the amount of the consumer's loan or whether the consumer receives a loan;

(4) The amount of the premium or fee for each credit-related insurance or auto club membership; and

(5) That respondents will add the premiums and fees for the credit-related insurance and auto club membership to the consumer's loan amount.

B. Shall, when credit-related insurance premiums and/or auto club membership fees are not included in the finance charge:

(1) Present to the consumer as the first document at the time of closing, a separate, voluntary insurance election form ("Voluntary Insurance Election Form") that sets forth clearly and prominently the following information:

(a) A statement that the consumer has already been approved for the loan;

(b) A statement that the consumer does not have to purchase credit-related insurance or auto club membership to obtain the loan;

(c) A statement that the consumer's decision about credit-related insurance or auto club membership will not affect the amount of the consumer's loan or whether the consumer receives a loan;

(d) Each option (*i.e.*, type of credit-related insurance or auto club membership) available to the consumer;

(e) The amount of the premium or fee for each credit-related insurance or auto club membership;

(f) A statement that, if the consumer decides to buy credit-related insurance or an auto club membership, the consumer will have to pay the amounts listed in (e) above;

(g) A statement that, if the consumer decides to buy credit-related insurance or an auto club membership, respondents will add the insurance premiums and membership fees to the consumer's loan amount;

(h) A signature and date line for each option set forth in (d) above for the consumer to indicate his/her election; and

(i) A statement that, if the consumer does not want to buy one of the products listed on the document described in this section, they should not place their signature on the line next to the product.

(2) Make the disclosures required by paragraph III(B)(1) on a separate document entitled "Voluntary Insurance Election Form" that contains no other printed or written material. The disclosures required by subparagraphs III(B)(1)(a) through (c) shall not be smaller than 12-point type. A form substantially in conformance with Appendix A herein will be considered to be in compliance with the provisions of this paragraph and paragraph III(B)(1). Respondents shall maintain the original form for two years following its execution and provide the consumer with an executed copy thereof.

(3) Provide, without marking or otherwise instructing a consumer where to sign or date the form, the separate Voluntary Insurance Election Form required by paragraph III(B)(1) in advance of the consumer's free and independent choice for such insurance.

IV.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and respondent Vance R. Martin shall, on an annual basis, submit a written report, stating, for each branch office of The Money Tree, Inc., the penetration rate for direct loans of each product or service sold to loan applicants and purchased in connection with any credit transaction, including: credit-life insurance, credit accident and health insurance, credit accident and sickness insurance, accidental death and dismemberment insurance, and auto club memberships.

Such reports shall be submitted each year to the Commission's Division of Enforcement, Bureau of Consumer Protection, on the anniversary of the date this order is entered, for a period of five (5) years following the effective date of this order and thereafter upon request. The reports shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C.

For purposes of this section, the term "penetration rate" means the percentage of all loans or contracts eligible for credit-related insurance or auto club membership on which charges for such insurance or auto club membership are made. In reporting penetration rates the respondents must state separately the total number and dollar amount of loan contracts entered into which were eligible for credit-related insurance or auto club membership, stated separately for credit-life, credit accident and health, credit accident and sickness,

and accidental death and dismemberment insurance, and auto club membership.

V.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and respondent Vance R. Martin shall, for five (5) years from the date of issuance of this order, maintain and upon request immediately make available to the Federal Trade Commission for inspection and copying, all documents demonstrating compliance with this order.

VI.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and its officers, and respondent Vance R. Martin, individually and as an officer of the corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, shall comply with all provisions of the Consumer Redress Program as described in Appendices B, C, D, E, F, G and H.

VII.

It is further ordered, That during the sixty (60) day period described in Appendix B during which consumers are given the opportunity to cancel credit-related insurance, respondent The Money Tree, Inc., a corporation, respondent Vance R. Martin, or their employees or agents, and staff of the Federal Trade Commission shall not otherwise communicate directly with the consumers on the List, orally or in writing, concerning the redress program, except to refer such consumers to a taped 800-number message provided by the independent agent, which shall not deviate in substance from the document attached hereto as Appendix G, entitled "Script to Be Read Into 800-Number Voice Message."

VIII.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and its officers, and respondent Vance R. Martin, individually and as an officer of the corporation, and respondents' agents, representatives, and employees,

in connection with any closed-end credit transaction originated by respondents, shall, when respondents deny credit to a consumer or the charge for such credit is increased either in whole or in part because of information contained in a consumer report from a consumer reporting agency:

A. Advise the consumer, at the time when the consumer is informed of the adverse action, that such action is based in whole or in part on information contained in a consumer report; and

B. Supply the consumer with the name and address of the consumer reporting agency that furnished the consumer report.

IX.

It is further ordered, That respondent The Money Tree, Inc., its successors and assigns, and respondent Vance R. Martin shall, for a period of five (5) years following the date of service of this order, deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future agents, representatives, and employees having responsibility with respect to the subject matter of this order and shall secure from each such person a signed statement acknowledging receipt of the order. Respondents shall maintain and make available upon reasonable request by representatives of the Federal Trade Commission copies of said signed statements. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

It is further ordered, That respondent The Money Tree, Inc., its successors and assigns, and respondent Vance R. Martin shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents

learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C.

XI.

It is further ordered, That respondent Vance R. Martin, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment relating to the extension of consumer credit. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th & Pennsylvania Avenue, Washington, D.C.

XII.

It is further ordered, That respondent The Money Tree, Inc., a corporation, its successors and assigns, and its officers, and respondent Vance R. Martin shall, within one hundred and eighty (180) days of the date of 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.

XIII.

This order will terminate on April 28, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint has never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

VOLUNTARY INSURANCE ELECTION FORM

YOU HAVE ALREADY BEEN APPROVED FOR THIS LOAN.

YOU DO NOT HAVE TO PURCHASE CREDIT-LIFE, CREDIT-DISABILITY ("ACCIDENT AND HEALTH," "ACCIDENT AND SICKNESS," OR "UNEMPLOYMENT"), ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE, OR AN AUTO CLUB MEMBERSHIP TO OBTAIN THIS LOAN.

YOUR DECISION ABOUT INSURANCE OR AUTO CLUB MEMBERSHIP DOES NOT AFFECT THE AMOUNT OF YOUR LOAN OR WHETHER YOU WILL RECEIVE A LOAN.

Your choices are shown below. If you decide to buy insurance or an auto club membership, you will pay the amounts listed below. The Money Tree, Inc. will add the premiums and membership fee to your loan amount.

IF YOU DO NOT WANT TO BUY ONE OF THESE PRODUCTS, DO NOT PLACE YOUR SIGNATURE NEXT TO THAT PRODUCT ON THE LINES BELOW.

I/We have chosen the following option(s)

DATE: _____

Type	Cost to You	Signature
Credit-Life Insurance	\$ _____	I want credit-life insurance _____ Signature _____ Co-borrower
Credit-Disability Insurance	\$ _____	I want credit-disability insurance _____ Signature _____ Co-borrower

Accidental Death and Dismemberment ("AD&D") Insurance	\$ _____	I want AD&D insurance _____ Signature _____ Co-borrower
Auto Club Membership	\$ _____	I want auto club membership _____ Signature _____ Co-Borrower

APPENDIX B

Consumer Redress Program

1. Within 5 days after the date the order is issued, Money Tree shall deliver to the independent agent on magnetic tape or some other electronic medium the following loan data concerning all consumers who are obligated to make monthly payments to Money Tree as of the date the order is issued and whose loans were consummated during the two-year period ending on the date the order is issued ("open loan customers"):

- a. Data pertaining to the first consumer named on the loan contract ("primary borrower"):
 - Date of Loan Closing
 - Account Number
 - Contract Number
 - Branch Number
 - Branch State
 - First Name and Middle Initial
 - Last Name
 - Address
 - City
 - State
 - Zip
 - Amount Financed
 - Credit-Life Insurance Premium Amount
 - Credit-Disability Insurance Premium Amount
 - Accidental Death & Disability Insurance Premium Amount
 - Date Loan Is Expected to Terminate
 - Monthly Payment Amount
 - Number of Monthly Payments
- b. Data pertaining to all subsequent consumers named on the loan contract ("co-borrowers"):
 - Account Number
 - Contract Number
 - Branch Number
 - Branch State
 - First Name and Middle Initial
 - Last Name
 - Address

- City
- State
- Zip
- c. Data pertaining to co-signers:
 - Account Number
 - Contract Number
 - Branch Number
 - Branch State
 - First Name and Middle Initial
 - Last Name
 - Address
 - City
 - State
 - Zip
- d. Data pertaining to consumers who have canceled or received a benefit from one or more insurance products:
 - Account Number
 - Contract Number
 - Branch Number
 - Branch State
 - Insurance Type (L/A/D) (representing "Life," "Accident & Health," and "Accidental Death & Dismemberment" insurance)
 - Benefit/Canceled (B/C)

Money Tree will also provide as soon as possible any additional information that the independent agent reasonably needs to carry out the redress program described in this Appendix. Money Tree shall deliver all data and information described in this paragraph to the independent agent in a clean format compatible with the independent agent's computers.

2. During the period when the order is published in the Federal Register for notice and comment, Money Tree shall cooperate fully with the independent agent to conduct a test run that permits the independent agent to mail the letters described later in this Appendix as soon as possible.

3. After receiving from Money Tree all the data and other information described in Paragraph 1, the independent agent shall create a list ("the List") of eligible consumers who meet the following criteria:

a. Purchased one or more of the three types of credit-related insurance (as "credit-related insurance" is defined in the order) through Money Tree, the charge for which was not included in the finance charge computed for that loan; and

b. Have not voluntarily canceled the coverage ("canceled") or had an insurance claim paid to them or paid on their behalf ("received a benefit") from each policy written through Money Tree. For purposes of this subsection, consumers who obtained more than one credit-related insurance policy from Money Tree shall not be excluded from the List unless they canceled or received a benefit from each of those policies.

4. For each consumer excluded from the List because they either canceled or received a benefit from one or more of their credit-related insurance policies, Money Tree shall provide to the Associate Director for Credit Practices, within

sixty (60) days of the date the order is issued, the consumer's name, the consumer's address, the Money Tree account number, the Money Tree contract number, and the claim number assigned by the independent agent. At the same time, Money Tree shall provide a copy of the front of the check from the insurance company made payable to the consumer (in the case of the accidental death & dismemberment insurance) or made payable to the consumer and Money Tree (in the case of credit life insurance and credit disability insurance), to be accompanied by an affidavit from Money Tree authenticating such copies.

5. For each consumer on the List, the independent agent shall apply the formula in the document attached to the order as Appendix C to determine the amount of the premiums and related finance charges that were charged to the consumer's account for each credit-related insurance purchased through Money Tree ("amounts paid by the consumer").

6. For each consumer on the List, the independent agent shall create the Money Tree Insurance Cancellation Form ("Cancellation Form"), a copy of which is attached as Appendix D. The Cancellation Form shall include (a) the consumer's name and address, (b) the consumer's Money Tree account number, (c) the consumer's Money Tree contract number, (d) the claim number assigned to the consumer by the independent agent, (e) the date the letter was mailed, (f) the "return deadline" date, and (g) the amounts paid by the consumer for any of the three insurance products.

7. If the independent agent has no difficulty translating the data described in paragraph 1 that it receives from Money Tree, the independent agent shall mail, as soon as possible and no later than thirty (30) calendar days after receiving all the data described in paragraph 1 above, to all or nearly all consumers on the List by first class mail through the U.S. Postal Service, a Cancellation Form and the letter explaining the Cancellation Form attached to this order as Appendix E ("Redress Letter"), unless this deadline cannot be met due to unforeseen occurrences (*e.g.*, fire in the independent agent's plant) ("the First Mailing"). The independent agent shall include with the Cancellation Form and the Redress Letter a return envelope addressed to the independent agent. If the independent agent is unable to mail Cancellation Forms and Redress Letters to a small percentage of consumers on the List by the 30-day deadline, the independent agent shall send the Cancellation Form and the Redress Letter to those consumers within five (5) additional days, *i.e.*, thirty-five (35) days after the independent agent receives all data described in paragraph 1 ("the Second Mailing").

8. The Cancellation Form must be signed by all borrowers before the credit-related insurance shall be canceled. On any transaction with two or more borrowers where the borrowers reside at different addresses, the independent agent shall mail the Cancellation Form and the Redress Letter to each borrower's address by first-class mail through the U.S. Postal Service.

9. For any transactions for which a co-signer was involved, the independent agent shall mail a copy of the corresponding Cancellation Form and the Redress Letter to the co-signer(s) with the word "COPY" stamped in red on the Cancellation Form and the Redress Letter.

10. If any Cancellation Form, other than a copy to a co-signer, is returned as undeliverable, the independent agent shall request that Money Tree provide the independent agent with any current information in Money Tree's possession that may be needed to send a follow-up Redress Letter to the consumer. The

independent agent will send one additional Cancellation Form and Redress Letter to the consumer's place of business, relatives, or any other location at which the consumer may be contacted ("the Re-Mailing"). If Money Tree is unable to provide an additional address, the independent agent, or a sub-contractor of the independent agent, shall perform an address search to attempt to locate the consumer. The one additional Cancellation Form and Redress Letter that the independent agent sends in the Re-Mailing shall include the date of the Re-Mailing and the new return deadline date, which shall be thirty (30) days after the date of the Re-Mailing, or the original return deadline date, whichever is later.

11. All consumers who meet the following criteria shall be entitled to a credit toward their outstanding loan balance:

a. Return the Cancellation Form in an envelope with a postmark date before the return deadline date stated on their Cancellation Form, or if the postmark is illegible, the Cancellation Form is received by the independent agent no later than five (5) days after the return deadline date; and

b. Indicate by a signature or signatures that they did not wish to purchase one or more credit-related insurance coverage and would like their insurance canceled and their account credited.

12. If a co-borrower fails to sign the Cancellation Form before it is returned to the independent agent, the deadline date for that co-borrower shall be extended by thirty (30) days. The independent agent shall re-mail the Cancellation Form and the Redress Letter to the co-borrower as soon as possible ("Co-Borrower Re-Mailing") with a copy of the letter attached to this order as Appendix F ("Notice to Co-Borrowers"). If the co-borrowers do not reside at the same address, the independent agent shall send the Co-Borrower Re-Mailing to the address of each co-borrower.

13. The independent agent shall determine the amount of the credit that Money Tree shall pay to each consumer ("credit amount") by adding together the amounts for those items listed on the Cancellation Form that the consumer has indicated he or she did not wish to purchase.

14. The independent agent shall transmit to Money Tree a list ("Credit List") containing the names of all consumers eligible to receive a credit under this Consumer Redress Program and all data necessary for Money Tree to apply the credit amount to the consumers' outstanding loan balances. For each consumer, the data shall include the consumer's full name, address, Money Tree branch number, Money Tree account number and contract number, claim number assigned by the independent agent, insurance product(s) to be canceled, and total amount to be credited to the consumer's account. The independent agent shall deliver the Credit List to Money Tree in five (5) installments, each delivery separated by fourteen (14) days. The independent agent shall deliver the first installment so that it is received by Money Tree fourteen (14) days after the independent agent sends the First Mailing. The second installment shall be received by Money Tree twenty-eight (28) days after the independent agent sends the First Mailing. The third installment shall be received forty-two (42) days after the First Mailing; the fourth installment shall be received fifty-six (56) days after the First Mailing; and the fifth installment shall be received seventy (70) days after the First Mailing. The first installment shall include the names of all eligible consumers whose Cancellation Forms were received by the independent agent between the date of the First

Mailing and the date the first installment is due. Each successive installment shall include the names of all eligible consumers whose Cancellation Forms were received by the independent agent since the previous installment.

15. For any consumer who has neither paid off nor refinanced his or her loan between the date the order is issued and the date Money Tree receives the Credit List installment on which the consumer's name is listed, Money Tree shall reduce the consumer's last monthly payment by the credit amount or, if the credit amount exceeds the last monthly payment, all payments necessary to accommodate the credit. If the credit amount exceeds the outstanding loan balance, Money Tree shall, within fifteen (15) days of the date Money Tree receives the Credit List installment on which the consumer's name is listed, refund the excess in one lump sum payment by delivering a check to the consumer either in person or by first-class mail through the U.S. Postal Service. No payment checks shall have a void date earlier than ninety (90) days after the date the check was issued.

16. For any consumer who makes his or her last loan payment between the date the order is issued and the date Money Tree receives the Credit List installment on which the consumer's name is listed, Money Tree shall, within fifteen (15) days after receiving that Credit List installment, refund the credit amount, less any refund already made by virtue of the prepayment of the loan that was current on the date the order was issued, in one lump sum payment by delivering a check for the credit amount either in person or by first-class mail through the U.S. Postal Service. No payment checks shall have a void date earlier than ninety (90) days after the date the check was issued. Money Tree shall document any deductions from the credit amount for refunds already made.

17. For any consumer who refinances his or her loan between the date the order is issued and the date Money Tree receives the Credit List installment on which the consumer's name is listed, Money Tree shall reduce the consumer's last monthly payment on the new, refinanced loan by the credit amount, less any refund already made by virtue of the prepayment of the loan that was current on the date the order was issued, or, if the credit amount exceeds the last monthly payment, all payments necessary to accommodate the credit. If the credit amount exceeds the outstanding loan balance on the refinanced loan as of the date Money Tree receives the Credit List from the independent agent, Money Tree shall, within fifteen (15) days after receiving the Credit List, refund the excess in one lump sum payment by delivering a check to the consumer either in person or by first-class mail through the U.S. Postal Service. No payment checks shall have a void date earlier than ninety (90) days after the date the check was issued. Money Tree shall document any deductions from the credit amount for refunds already made by providing a copy of the loan contract for the refinanced loan.

18. Within fifteen (15) calendar days after receiving each Credit List installment from the independent agent, Money Tree shall send a notice with language identical to that in the document entitled "Notice to Customers" (attached to the order as Appendix H) to all consumers listed on the Credit List installment who refinanced between the date the order was issued and the date Money Tree received the Credit List installment that includes their name. All blank lines on the Notice to Consumers shall be filled in by Money Tree. Money Tree shall deliver the Notice to Consumers either in person or by first-class mail through the U.S. Postal Service.

19. For any consumer who refinances his or her loan once between the date the order is issued and the date Money Tree receives the Credit List installment on which the consumer's name is listed, and then a second time after Money Tree receives that Credit List installment, Money Tree shall give the consumer a check for the credit amount during the loan closing of the second refinancing.

20. For any consumer who refinances his or her loan twice between the date the order is issued and the date Money Tree receives the Credit List installment on which the consumer's name is listed, Money Tree shall, within fifteen (15) days after receiving that Credit List installment, refund the credit amount in one lump sum payment by delivering a check for the credit amount either in person or by first-class mail through the U.S. Postal Service. No payment checks shall have a void date earlier than ninety (90) days after the date the check was issued.

21. Within thirty (30) days after receiving each Credit List installment, Money Tree shall deliver to the independent agent a list of consumers on that Credit List installment to whom Money Tree delivered a check pursuant to paragraphs 15, 16, 17, 19 and 20 of this Appendix. The list of consumers shall include the consumer's name, the consumer's address, the Money Tree account number and contract number, the claim number assigned by the independent agent, the number of the check Money Tree issued, and the amount of the check.

22. Money Tree shall not cancel the insurance of any consumer until Money Tree has received the Credit List installment stating which insurance products the consumer wishes to cancel. If a consumer refinances the loan that is open at the time the order is issued, Money Tree shall cancel only the insurance paid for with the loan that is open at the time the order is issued. If the consumer pays for insurance in connection with the refinanced loan, that insurance shall remain in force.

23. Between 10 and 13 months after the date the order is issued, Money Tree shall provide the independent agent with a report that includes the following (all computerized lists described in this section shall include Money Tree account numbers, Money Tree contract numbers, and the claim numbers assigned by the independent agent):

a. A computerized list of all consumers who received credit toward their outstanding loan balance; the amount of credit each of these consumers received; the amount that each of these consumers received, if any, in the form of a check; and the check number of that check;

b. A computerized list of all consumers who received a check and the check number and amount that each of these consumers received, including check number, name and address;

c. Check registers that include name, address, check numbers, Money Tree account numbers, Money Tree contract numbers, and the amount of the check for each consumer to whom Money Tree delivered a check, either in person or by mail;

d. Checking account statements documenting all checks cashed by consumers; and

e. A computerized list of consumers who, despite returning their Cancellation Form to the independent agent and indicating that they did not wish to purchase one or more of the three types of insurance, received neither a credit nor a check from Money Tree. For each of these consumers, Money Tree shall state on the list why the consumer did not receive a credit or a check.

24. Money Tree shall bear all costs for the administration of the redress program described in this Appendix.

APPENDIX C

Formula for Calculating Redress

Terms Used

- ToP = "Total of payments" stated on loan note or Truth in Lending disclosure statement (collectively referred to as "TILA disclosure")
- AF = "Amount financed" stated on TILA disclosure
- CL = Premium for credit-life insurance stated on TILA disclosure
- CD = Premium for credit-disability insurance (referred to on TILA disclosure forms as "credit A&S" for Georgia loans and "credit A&H" for Alabama loans) stated on TILA disclosure
- AD = Premium for accidental death & dismemberment ("AD&D") insurance (designated by the name "Thomas Jefferson" or the name of some other insurance company) stated on TILA disclosure

Performing the Calculations

The amount that the independent agent shall include in the Money Tree Insurance Cancellation Form for each of the three insurance products (credit-life, credit-disability, and accidental death & dismemberment insurance) shall be determined as follows:

1. Using the TILA disclosure, identify premiums and fees charged to the consumer for CL, CD, and AD ("insurance products");
2. Determine the "repayment factor" by dividing ToP by AF;
3. For each of the insurance products listed on the consumer's TILA disclosure, multiply the charge for the insurance product by the repayment factor to obtain the amount to include for that insurance product.

Thus, if a consumer's TILA disclosure indicates a charge for credit-life insurance, the amount that the independent agent should include in the Money Tree Insurance Cancellation Form for that product equals the following:

$$CL \times (ToP / AF)$$

EXAMPLE:

TILA disclosure included the following data:

$$ToP = \$850.00$$

$$AF = \$703.63$$

$$CL = \$10.37$$

$$AD = \$156.00$$

$$\text{Repayment factor} = 850.00 \div 703.63 = 1.208$$

$$\text{Amount to include for credit-life} = 10.37 \times 1.208 = \$12.53$$

$$\text{Amount to include for AD\&D} = 156.00 \times 1.208 = \$188.45$$

Because the TILA disclosure included no charges for credit-disability insurance, the Money Tree Insurance Cancellation Form would not mention that product.

Decision and Order

123 F.T.C.

APPENDIX D

[Name and Address of
Independent Agent]

[Borrower's Name]

Claim Number: _____

[Address]

[City, State and Zip Code]

Mailing Date: _____

Account Number: _____

Contract Number: _____

Return Deadline: _____

Money Tree Insurance Cancellation Form

If you want to cancel any of the following insurance products because you did not want them when you got the loan from The Money Tree, sign this form above your printed name and make sure that your co-borrower, if any, also signs the form. This form must be returned with a postmark no later than _____ [the Return Deadline]. [Form will include only those insurance products for which the consumer was charged.]

Credit-Life Insurance

You paid \$_____ for credit-life insurance.

I did not want credit-life insurance. Please cancel my credit-life insurance and credit my account for the amount listed above.

Joseph Smith_____
Date_____
Mary Smith_____
Date

Credit-Disability Insurance

You paid \$_____ for credit-disability insurance (called "Credit A&H" or "Credit A&S" on your loan contract).

I did not want credit-disability insurance. Please cancel my credit-disability insurance and credit my account for the amount listed above.

Joseph Smith_____
Date_____
Mary Smith_____
Date

Accidental Death and Dismemberment Insurance

You paid \$_____ for accidental death and dismemberment insurance.

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Decision and Order

I did not want accidental death and dismemberment insurance. Please cancel my accidental death and dismemberment insurance and credit my account for the amount listed above.

Joseph Smith

Date

Mary Smith

Date

APPENDIX E

[Money Tree Letterhead]

Dear Money Tree Customer:

When you got your loan from us, you bought one or more of the following insurance products:

1. Credit-life insurance
2. Credit-disability insurance (called "Credit A&H" or "Credit A&S" on your loan contract)
3. Accidental death and dismemberment insurance

The amount(s) you paid for the product(s) are shown on the enclosed Money Tree Insurance Cancellation Form ("Cancellation Form").

In settlement of an action brought by the Federal Trade Commission, The Money Tree, Inc. is offering you an opportunity to cancel one or all of the types of insurance if you did not want them when you got the loan from us.

If you cancel any of the insurance, your last monthly payment will be reduced by the amount listed shown on the attached Cancellation Form for any insurance you choose to cancel. If the amount you would receive as a credit is larger than your last monthly payment, you will not have to make the last monthly payment, and your second-to-last payment will be reduced. If you have already made your last payment on this loan but did not want one or more of the insurance products listed above that you paid for, and if you do not have a new loan with us at the time, we will send you a refund check for that amount. If you have refinanced your loan and still owe Money Tree on the new, refinanced loan, the credit described above will be applied at the end of your refinanced loan.

What is credit-life insurance, and what happens if I cancel it?

It depends on whether you got your loan from one of our offices in Alabama or from one of our offices in Georgia or Louisiana. In Alabama, if you have credit-life insurance with your loan and you die before your loan is paid off, the insurance company will pay Money Tree the part of the loan amount that you have not yet paid. In Georgia and Louisiana, if you have credit-life insurance with your loan and you die before your loan is paid off, the insurance company will pay Money Tree the amount that you have not yet paid and give the remainder of the payoff amount, if there is any, to the person you named as your beneficiary when you got the loan.

If you cancel your insurance now and die before your Money Tree loan is paid off, the insurance company will not finish paying off the loan.

What is credit-disability insurance, and what happens if I cancel it?

If you have credit-disability insurance with your loan and become disabled and unable to work before your loan is paid off, the insurance company will make your monthly loan payments to Money Tree, based on the number of days you are disabled. If you cancel your credit-disability insurance now, you will have to make the monthly payments.

What is accidental death and dismemberment insurance, and what happens if I cancel it?

If you paid for accidental death and dismemberment insurance when you got your loan with us, the insurance company will pay the person you named as a beneficiary on the insurance forms if you die accidentally. If, instead of dying, you lose a body part (such as an eye, arm or leg), the insurance company will pay you the amount of money stated in the insurance policy. If you cancel the insurance now, you will not be covered if you die accidentally or are dismembered accidentally.

If you want to keep all the insurance products that you bought, you do not have to do anything. Your insurance coverage will continue as before.

If you did not want one or more of the insurance products when we made the loan to you and you want to cancel one or more of the insurance products, please sign and date the enclosed Money Tree Insurance Cancellation Form next to any product you want to cancel. Then return it to [Independent Agent] in the return envelope provided. If you want to cancel one insurance product but keep another one, you should sign your name next to only the one(s) that you want to cancel. The Cancellation Form must be put in the mail and postmarked by the Return Deadline shown on the Cancellation Form. **THIS IS THE ONLY CHANCE YOU WILL HAVE TO RESPOND TO THIS OFFER.**

If there is more than one borrower on your loan, make sure that each borrower signs the Cancellation Form. (This does not include people who co-signed -- or guaranteed -- the loan.) Unless all borrowers sign the form, the insurance will not be canceled and the cost of the insurance will not be credited toward your account.

If you have any questions concerning this letter, please contact [Independent Agent] at this toll-free number: 1- 800-xxx-xxxx. Please do not contact us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a credit toward your account. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Vance R. Martin, President
The Money Tree, Inc.

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Decision and Order

APPENDIX F

[Money Tree Letterhead]

[Borrower's Name] Claim Number: _____
[Address] _____
[City, State and Zip Code] Mailing Date: _____
Account Number: _____
Contract Number: _____ Return Deadline: _____

Notice to Co-Borrower

Dear [Co-Borrower's Name]:

Our records show that you and [__ Name of Other Co-Borrower __] are co-borrowers on a loan with The Money Tree. Your co-borrower requested that we cancel the credit-life [and/or credit-disability, accidental death and dismemberment] insurance listed on the enclosed Money Tree Insurance Cancellation Form and give you a credit toward your loan balance because you and the co-borrower did not want the insurance when you took out a loan with us.

Before we can cancel the insurance and credit your loan balance for the amount you paid, we need your signature on the Cancellation Form also. If you did not want the insurance products listed on the Cancellation Form and you wish to cancel the insurance and receive a credit toward your loan balance, please sign the Cancellation Form and return it to [__ Independent Agent __] in the return envelope provided. The return envelope must be postmarked by [__ Return Deadline date __] or the insurance will not be canceled and you will not receive a credit.

If you have any questions concerning this letter, please contact [__ Independent Agent __] at this toll-free number: xxx-xxx-xxxx. Please do not contact us.

You must keep paying your monthly installments on your loan from us, even if you cancel the insurance and request a credit toward your account. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Vance R. Martin, President
The Money Tree, Inc.

APPENDIX G

Script to Be Read Into 800-Number Voice Message

You have reached the toll-free, question-and-answer line for Money Tree and Money To Lend customers. If you have questions about the letter you recently received from Money Tree, please remain on the line and listen to the following taped series of questions and answers. Listening to the entire series will take approximately five minutes. You are free to hang up at any time, of course, if your question, or questions, are answered before the end of the tape. There will not be an opportunity to speak to a live operator at the end of the tape.

1. Q. Why did I get this letter?
A. It was sent to all recent customers of Money Tree who were charged for the insurance mentioned in the letter. Money Tree agreed to send the letter to settle an action brought by the Federal Trade Commission, a federal agency in Washington, D.C. Money Tree denies any wrongdoing.
2. Q. What was the action about?
A. The FTC alleged that Money Tree violated the Truth in Lending Act by requiring its customers to purchase certain types of insurance but failing to include the cost of the insurance in the finance charge and the annual percentage rate as required by the Act. Money Tree's position is that all such charges were voluntary.
3. Q. What is credit-life insurance?
A. If you got your loan in Alabama and you die before your loan is paid off, the insurance company will pay Money Tree the part of the loan amount that you have not yet paid. If you got your loan in Georgia or Louisiana and you die before your loan is paid off, the insurance company will pay Money Tree the amount you still owe and pay your beneficiary the difference between the coverage amount and the payoff amount of your loan.
4. Q. I don't understand.
A. For example, if you died when the balance due on your loan was \$500, the insurance company would pay Money Tree \$500. Your estate would not owe Money Tree any more money.
5. Q. What if I already have a life insurance policy?
A. Your life insurance benefits may be large enough to cover your loan with Money Tree. The credit-life insurance purchased through Money Tree is in addition to any other life insurance you may have.
6. Q. What is credit-disability insurance?
A. It is insurance that provides financial protection in case you become sick or injured. If you become totally disabled and cannot work for some period (more than three days in a row in Georgia or more than two weeks in a row in Alabama and Louisiana), the insurance company will make your monthly payments to Money Tree for you, based on the number of days you are out of work due to illness. Of course, once you are able to return to work, the insurance company no longer makes these payments.
7. Q. What is accidental death and dismemberment insurance?
A. If you have this insurance and you die accidentally, the insurance company will pay the face amount of the policy to the beneficiary. If you are injured and lose the use of some part of your body (such as an eye, arm, or leg), the insurance will pay you an amount specified in the policy.
8. Q. What does this letter mean? Why am I being given the chance to cancel my insurance?
A. Money Tree states that it does not require borrowers to buy insurance. This opportunity to cancel is being offered to you in case you did not wish to buy insurance when you got the loan.
9. Q. What should I do if I want to cancel the insurance?
A. Sign the Cancellation Form on the lines next to whichever type(s) of insurance you wish to cancel. Then place the Cancellation Form in the return envelope provided, place a stamp on the envelope, and put it in the

mail by the Return Deadline printed on the Cancellation Form. If there was more than one borrower on the loan, each of you must sign the Form.

10. Q. What should I do if I want to keep the insurance?
A. You do not have to do anything. Your insurance coverage will remain in force.
11. Q. What happens to my loan if I cancel the insurance?
A. If you cancel, your last monthly payment will be reduced by the amount shown on the Cancellation Form for any insurance you choose to cancel. If you have already made your last payment and you do not have a loan with Money Tree right now, Money Tree will send you a refund check for the amount on the Cancellation Form. If you have refinanced your loan, you will receive a credit on your new, refinanced loan.
12. Q. If I cancel the credit-life insurance and then die before the loan is paid in full, what will happen?
A. If you are the principal borrower, you will not have credit-life insurance through Money Tree to pay off your loan.
13. Q. If I cancel the credit-disability insurance and then get sick or become disabled before the loan is paid in full, what will happen?
A. If you are the principal borrower and you cannot work because of sickness or disability for some specified period of time (more than three days in a row in Georgia or more than two weeks in a row in Alabama), you will not have insurance through Money Tree to make your monthly payments and you would still have to make the monthly payments.
14. Q. If I cancel the accidental death and dismemberment policy, what will happen?
A. The insurance company will not pay the person named in the policy as your beneficiary if you die accidentally. Also, if you are injured and lose the use of a body part, you will not receive the payment specified in the policy.
15. Q. If I cancel the insurance, will Money Tree be willing to lend to me in the future?
A. Canceling the insurance will not affect your ability to get credit from Money Tree in the future.

You have reached the end of the question-and-answer line for Money Tree and Money Tree customers. We hope you found it helpful. Thank you for calling.

APPENDIX H

[Money Tree Letterhead]

[Consumer's Name]

[Address]

[City, State and Zip Code]

Claim Number: _____

Account Number: _____

Contract Number: _____

Notice to Customers

Dear Money Tree Customer:

Decision and Order

123 F.T.C.

In response to a letter from us, you recently sent a Money Tree Insurance Cancellation Form to [__Independent Agent__]. On that Cancellation Form you indicated that you did not want one or more of the following insurance products when you got your former loan from us, which has now been refinanced:

1. Credit-life insurance
2. Credit-disability insurance (called "Credit A&H" or "Credit A&S" on your loan contract)
3. Accidental death and dismemberment insurance

On the Cancellation Form, you requested that we cancel one or more of the insurance products and give you a credit toward your outstanding loan balance. Since that loan was paid off when you refinanced, we have applied the credit to your new, refinanced loan.

The amount for which we have credited your loan balance is the following:

\$ _____

Because of this credit, your final loan payment will be smaller. You will pay this amount:

\$ _____

If the credit amount is larger than the amount of your final loan payment, you will not have to make your final loan payment at all, and your next-to-last payment will also be smaller. You will pay this amount for your next-to-last payment:

\$ _____

If your credit amount is larger than your last two monthly payments combined, this is the number of monthly payments you may skip:

You do not have to pay the final ____ monthly payments.

Even though you have canceled one or more of your insurance coverages, you must keep making your monthly installments on your loan until the loan is fully paid. If this notice states that you owe nothing for one or more of your final payments, you do not have to make those payments, but you do have to make all earlier payments.

We hope this explanation has been helpful. We value you as a customer and hope to serve your financial needs in the future.

Sincerely,

Vance R. Martin, President
The Money Tree, Inc.

IN THE MATTER OF

NATIONWIDE SYNDICATIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3736. Complaint, April 28, 1997--Decision, April 28, 1997*

This consent order prohibits, among other things, the Illinois company and its president from representing that NightSafe Glasses or any substantially similar product makes driving safer or improves night vision, and requires them to have competent and reliable scientific evidence to substantiate claims about the efficacy, performance, benefits or safety of such products. The consent order also prohibits the use of the trade name "NightSafe" or any other trade name that implies the use of such product makes night driving safer. In addition, the respondents will pay \$125,000 in consumer redress.

Appearances

For the Commission: *Karen Dodge.*

For the respondents: *David A. Clanton, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nationwide Syndications, Inc., a corporation, and Thomas W. Karon, individually and as an officer of said corporations, ("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 Nationwide Syndications, Inc. is an Illinois corporation with its principal office or place of business at 223 Applebee St., Barrington, Illinois.

Respondent Thomas W. Karon is an officer of Nationwide Syndications, Inc. 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 Nationwide Syndications, Inc.

PAR. 2. Respondents have advertised, labeled, offered for sale, sold, and distributed night driving glasses, including NightSafe Glasses, and other products to consumers. This product is a "device"

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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.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements, including product labeling, for NightSafe Glasses, including but not necessarily limited to the attached Exhibits A through C. These advertisements and product labeling contain the following statements and depictions:

A. DRIVE SAFER AT NIGHT, IN RAIN, SNOW, SLEET, EVEN FOG.
Order your NightSafe Glasses Today!

* * *

WITH...

NightSafe Glasses, your night vision actually improves! . . .

[Photograph of front end of vehicle in sharp focus.]

WITHOUT...

[Photograph of front end of vehicle out of focus.]

* * *

WHAT A DIFFERENCE! Experience an incredible improvement in your night vision with NightSafe Glasses--the glasses that make driving safer and more relaxing. Thousands of drivers find them welcome traveling companions. You will too--objects appear sharper and better defined . . . No matter what the weather--rain, snow, sleet, fog or haze--you'll feel safer and more confident with NightSafe Glasses.

. . . ADVANCED OPTICAL TECHNOLOGY. NightSafe Glasses were perfected after years of optical experimentation and laboratory testing. The UV400 lenses block harmful ultraviolet rays and bring incredible clarity and sharpness to otherwise distorted images. (Exhibit A).

B. SEE THE DIFFERENCE FOR YOURSELF!

[Photograph of oncoming traffic in sharp focus.]

With NightSafe Glasses.

[Photograph of oncoming traffic out of focus.]

Without NightSafe Glasses.

NightSafe Glasses help improve night vision instantly. . . . You'll see better in rain, snow, sleet and fog, and drive more safely. With NightSafe Glasses everything appears sharper, clearer and brighter. Contrast is enhanced. Actually helps you see better at night--no matter what the weather!

* * *

NIGHTSAFE GLASSES DRIVE SAFER AT NIGHT--NO MATTER WHAT THE WEATHER!

* * *

A remarkable difference...NightSafe Glasses improve your vision instantly Everything appears sharper, clearer, brighter, with more definition. You'll see better than you ever thought possible.

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Complaint

... Laboratory tested and proven NightSafe Glasses really work. The innovative UV400 lenses block harmful ultraviolet rays and cut through dense haze. . . .

NightSafe helps improve your night vision

You won't believe your eyes...NightSafe lets you drive at night as confidently as during the day. Just slip them on and you'll notice an immediate difference. Hazy objects appear crisp and clear. And bright, blinding lights will be a thing of the past. You will drive relaxed with renewed confidence. (Exhibit B).

C. Enhance your night vision with NightSafe Glasses.

* * *

[Photograph of oncoming traffic out of focus.]

Without NightSafe Glasses...

[Photograph of oncoming traffic in sharp focus.]

With NightSafe Glasses!

* * *

NightSafe Glasses give you clearer, sharper images...especially in rain, sleet or snow when driving is most hazardous. That's why professional drivers, pilots and other who rely on their vision, rely on NightSafe Glasses. And why you should, too. Protect yourself and your passengers with NightSafe. (Exhibit C).

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

A. NightSafe Glasses improve night vision.

B. Laboratory tests prove that NightSafe Glasses improve night vision.

PAR. 6. In truth and in fact:

A. NightSafe Glasses do not improve night vision.

B. Laboratory tests do not prove that NightSafe Glasses improve night vision.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the trade name NightSafe Glasses and the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through C, respondents have represented, directly or by implication, that NightSafe Glasses make night driving safe or safer.

PAR. 8. In truth and in fact, NightSafe Glasses do not make night driving safer. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the trade name and the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five and seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 10. In truth and in fact, at the time they made the representations set forth in paragraphs five and seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. 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.

Complaint

EXHIBIT A



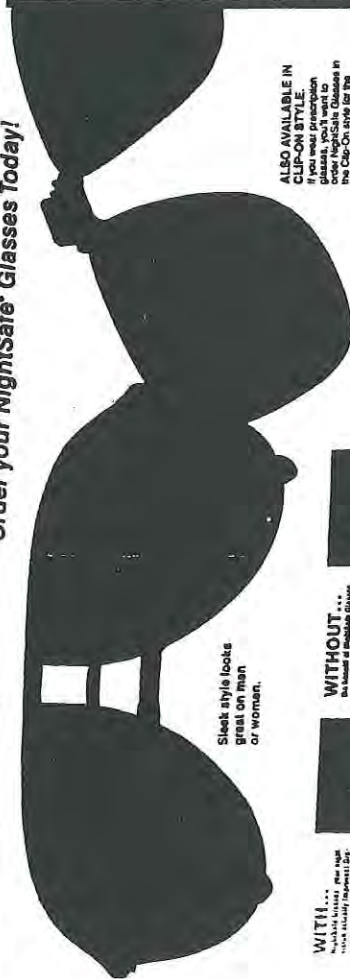
Complaint

123 F.T.C.

EXHIBIT A

DRIVE SAFER AT NIGHT, IN RAIN, SNOW, SLEET, EVEN FOG.

Order your NightSafe® Glasses Today!



Sleek style looks great on men or women.

WITH...

NightSafe® glasses give you the most advanced protection from glare, rain, snow, sleet, fog or even hazardous headlights.



WITHOUT...
The glare from headlights, rain, snow, sleet, fog or even hazardous headlights.



WHAT A DIFFERENCE! Experience an incredible improvement in your night vision with NightSafe Glasses—the glasses that make driving safer and more relaxing. Thousands of drivers find them welcome traveling companions. You will too—glare and harsh reflections. No matter what the weather—rain, snow, sleet, fog or hazardous headlights—NightSafe Glasses give you the most advanced protection from glare, rain, snow, sleet, fog or even hazardous headlights.

SLEEK HIGH FASHION PLUS ADVANCED OPTICAL TECHNOLOGY. NightSafe Glasses were perfected after years of optical experimentation and laboratory tests. The UV400™ lenses block harmful, ultraviolet rays and bring incredible clarity and sharpness to otherwise distorted images. Dramatically cuts down on blinding glare from approaching headlights, street signs, street lamps and rain-slick pavements. With the look of the most expensive designer glasses, NightSafe Glasses are manufactured under the strictest laboratory standards using the latest and highest quality materials.

Made in Taiwan.

ALSO AVAILABLE IN CLIP-ON STYLE.

For those who already wear prescription glasses, you'll want to order NightSafe Glasses in the Clip-On style for the most complete night driving protection.

GLASSES OR CLIP-ONS, BUY ANY 2 AND SAVE \$5!

ITEM	PRICE	SHIPPING/HANDLING
1 PAIR NIGHTSAFE GLASSES OR CLIP-ONS	19.95	2.95
2 PAIR NIGHTSAFE IN EITHER STYLE	34.90	7.95

GUARANTEED FOR A LIFETIME!
If you are not 100% satisfied with the clear night vision of NightSafe Glasses, return them for a full refund. No return charges. For ANY REASON, within 30 days of purchase. Complete details included with your order.

WARRANTY:
A pair of NightSafe Glasses is guaranteed to last for a lifetime. If you are not 100% satisfied with the clear night vision of NightSafe Glasses, return them for a full refund. No return charges. For ANY REASON, within 30 days of purchase. Complete details included with your order.



Read what NightSafe owners have to say:

"I have waited a long time to be able to drive at night without the 'glare' from other headlights blinding my eyes and usually giving me an instant headache. Now I can drive at night with ease and the design of the glasses looks great too!"
—R.L. Spolans, WA

"Thank you for the glasses that you sent us. I'm using them for a couple of weeks, our driver's license was renewed and they really helped them when driving at night."
—S.S. Edison, NJ

"Thanks for sending such an ingenious product that will save my eyes and my sanity. It's so much less stressful and much safer too! You're great!"
—K.H. Mission Viejo, CA

"We love the NightSafe glasses we just received. Would like more for gifts..."
—C.C. Clarks, CA

EXHIBIT B

TRY NIGHTSAFE
JUST ONCE.

DRIVE WITH NEW
CONFIDENCE
AFTER DARK.



A remarkable difference...NightSafe Glasses improve your night vision instantly, by reducing the glare from auto headlights, electric signs, street lamps and wet, slick pavements. No more squinting or straining to see. Everything appears sharper, clearer, brighter, with more definition. You'll see better than you ever thought possible.

Advanced optics cut through dangerous glare. Laboratory tested and proven NightSafe Glasses really work. The innovative UV400™ lenses block harmful ultraviolet rays and cut through dense haze. NightSafe also blocks dangerous glare from oncoming headlights, electric signs, street lamps, and rain soaked streets. NightSafe helps improve your night vision and reduces eye fatigue and strain.

You won't believe your eyes. NightSafe lets you drive at night as confidently as during the day. Just slip them on and you'll notice an immediate difference. Hazy

objects appear crisp and clear. And bright, blinding lights will be a thing of the past. You will drive relaxed with renewed confidence.

Also available in Clip-On style. If you wear prescription glasses, you'll want to order NightSafe Glasses in the Clip-On style for the same great night driving protection.

Guaranteed for life. You'll never have to be without NightSafe Glasses. We guarantee to replace them **FREE** for any reason, without question. So why not try NightSafe Glasses and join the thousands of satisfied users.

Try them and see... Order your NightSafe Glasses today and see how they dramatically improve your night vision, even in the worst, most dangerous driving conditions. We think you'll agree that NightSafe Glasses are a real breakthrough in night vision.

GLASSES OR CLIP-ONS, BUY ANY 2 AND SAVE \$5

Description	Monthly		No. of Months	Total Price	
	Payment*	Y/Y*		Payments*	Y/Y*
1 Pwr NightSals Glasses or Clo-Ons	\$3.99*	\$.79*	5	\$19.95*	\$3.99*
2 Pwr NightSals in Filler Stubs	\$5.99*	\$1.50*	5	\$34.95*	\$7.99*

* Find any remarkable sales and use the

Monday 12th

LIFETIME WARRANTY

A copy of the warranty will be packed with the merchandise while it is shipped. If you wish you may obtain a true copy in advance by writing to: Migration Merchandise Center, 223 Appleton Street, Barrington, IL 60010.



Marathon Oil Company NightSafe Glasses
Mail Today for your 15-Day Free Home Trial

YES! Please send me the merchandise indicated below. I must be completely satisfied or I may return the merchandise by Insured Parcel Post or UPS within 15 days and owe nothing. My return postage and insurance costs will be refunded. The purchases will be charged to your Marathon Oil Company credit card account and unless a single payment is requested, I will be set-up on interest-free monthly installments.

SEND NO MONEY NOW!

☐ Check here if you prefer a single payment of the total deferred price plus applicable sales and use taxes.

Indicate Choice	Item No.	Description
	123	NightSate Glasses
	124	NightSate Goggles
	125	2 "NightSate Glasses - SAVE \$5.00"
	126	2 "NightSate Goggles - SAVE \$5.00"

Please enter your Marathon Credit Card Number here

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Name _____ (Do not forget)

Address _____ Zip _____

City _____ State _____ Zip _____

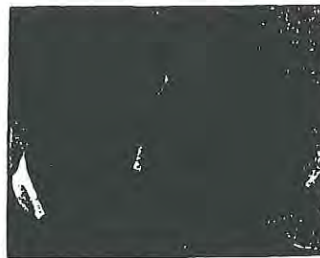
Signature _____
*oil used without full signature.

15-Day Home Trial Offer: Examine the NightSafes Glasses in your own home for 15 days. No obligation. If within 15 days you are not completely satisfied, return it by insured Priority Mail to PPS and we'll absolutely nothing. All expenses shipping, handling and insurance costs.

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Complaint

EXHIBIT C

***Read what NightSafe owners have to say:***

• "I have waited a long time to be able to drive at night without the 'glare' from other headlights hurting my eyes and usually giving me an inevitable headache! You've got a great product here, and the design of the glasses looks great too!"

—R.L., Spokane, WA

• "Thank you for the glasses that you sent us. After using them for a couple of weeks, our drivers loved them, because they really helped them when driving at night!"

—S.S., Edison, NJ

• "Thanks for inventing such an ingenious product that will make my nighttime driving ventures so much less stressful and much safer too! You're great!"

—K.H., Mission Viejo, CA

• "We love the NightSafe glasses we just received. Would like more for gifts..."

—C.C., Clovis, CA

Order your NightSafe Glasses Today!

FOR FASTER DELIVERY, CALL TOLL-FREE 1-800-222-6161. Open 24 hours!

Complaint

123 F.T.C.

EXHIBIT C

Enhance your night vision with NightSafe® Glasses.



It's Incredible!
These sleek NightSafe Glasses actually enhance your night vision by reducing the glare from headlights, electric signs, street lamps and rain-slick pavements. No more squinting or straining to see. NightSafe Glasses give you sharper images, while reducing the glare from bright lights. So you can see clearly.

Without NightSafe Glasses... With NightSafe Glasses!
Helps eliminate confusing and dangerous "halo" effects of oncoming lights.

NightSafe Glasses give you clearer, sharper images... especially in rain, sleet or snow when driving is most hazardous. That's why professional drivers, pilots and others who rely on their vision, rely on NightSafe Glasses. And why you should, too. Protect yourself and your passengers with NightSafe.

Order your NightSafe Glasses today!

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the complaint that the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nationwide Syndications, Inc. is an Illinois corporation with its principal office or place of business at 223 Applebee Street, Barrington, Illinois.

2. Respondent Thomas W. Karon is an officer of Nationwide Syndications, Inc. 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 Nationwide Syndications, Inc.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. The term "*substantially similar product*" means any eyeglasses with tinted lenses.

2. The term "*competent and reliable scientific evidence*" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has 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.

I.

It is ordered, That respondents, Nationwide Syndications, Inc., a corporation, its successors and assigns, and its officers, and Thomas W. Karon, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of NightSafe Glasses 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:

- A. Such product makes night driving safe or safer; or
- B. Such product improves night vision.

II.

It is further ordered, That respondents, Nationwide Syndications, Inc., a corporation, its successors and assigns, and its officers, and Thomas W. Karon, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of NightSafe Glasses 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 misrepresenting, in any manner, directly or by implication, the efficacy, performance, safety, or benefits of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

It is further ordered, That respondent, Nationwide Syndications, Inc., a corporation, its successors and assigns, and its officers, and Thomas W. Karon, 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 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, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV.

It is further ordered, That respondent, Nationwide Syndications, Inc., a corporation, its successors and assigns, and its officers, and Thomas W. Karon, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of NightSafe Glasses 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 using the name "NightSafe," or any other name, in a manner that represents, directly or by implication, that such product makes night driving safe or safer.

V.

It is further ordered, That respondents, Nationwide Syndications, Inc., its successors and assigns, and Thomas W. Karon, 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

Director of the Chicago Regional Office, Federal Trade Commission, 55 East Monroe, Suite 1860, Chicago, Illinois, the sum of one hundred and twenty five thousand dollars (\$125,000). This payment shall constitute full and complete satisfaction of all claims for redress by the Commission, under the Federal Trade Commission Act or any other applicable rule of law, for conduct covered by the order which occurred prior to the date of service of this order. Respondents shall make this payment no later than ten (10) days following the date of service 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 NightSafe Glasses 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. Respondents 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.

VI.

It is further ordered, That respondents shall provide the names and addresses of each individual who purchased NightSafe Glasses or any substantially similar product (hereafter "NightSafe Glasses") from Nationwide Syndications, Inc., or each individual who purchased NightSafe Glasses from any of the retailers, credit card companies, or any other person, partnership or corporation to whom Nationwide Syndications, Inc. sold NightSafe Glasses for resale, and whose names and addresses are in the possession of Nationwide Syndications, Inc. or Thomas W. Karon or can reasonably be obtained from the agents or representatives involved in fulfilling orders on behalf of Nationwide Syndications, Inc., to the Federal Trade Commission no later than ten (10) days after the date of service of this order. The respondents shall provide these names and addresses to the Commission in a format consistent with the Commission's Standards for Production/Acceptance of Magnetically

Recorded Information as set forth in Appendix A. The Commission may, in its sole discretion, provide notification to the purchasers of NightSafe Glasses to inform the purchasers of the safety information contained in Appendix B. The funds paid by respondents, pursuant to paragraph V of this order, may, in the discretion of the Commission, be used by the Commission to pay any of the costs associated with providing this notification to purchasers of NightSafe Glasses.

VII.

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

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

VIII.

It is further ordered, That respondents Nationwide Syndications, Inc. shall:

A. Within thirty (30) days after the date of service of this order, deliver a copy of this order to each of the corporate respondent's officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

B. For a period of ten (10) years after the date of service of this order, deliver a copy of this order to each of the corporate respondent's future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this order, within three (3) days after the person assumes such position.

IX.

It is further ordered, That respondents Nationwide Syndications, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as a 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 under this order.

X.

It is further ordered, That respondent Thomas W. Karon shall, for a period of ten (10) years after the date of issuance of this order, notify the Commission within thirty (30) days of discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

XI.

This order will terminate on April 28, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though

the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XII.

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

APPENDIX A

Federal Trade Commission Standards for Production/Acceptance of Magnetically Recorded Information

The Federal Trade Commission utilizes standards for information transfer adopted by the National Institute for Standards and Technology and in compliance with the International Standards Organization guidelines for information exchange.

The Commission encourages the use and exchange of magnetic media as a cost-effective, resource conscious alternative to printed materials.

The Commission will accept magnetic media in the following formats:

- (A) Magnetic storage media:
- (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI. No internal labels should be written.
 - (2) 5.25 inch IBM-compatible format diskettes.
 - (3) 3.5 inch IBM-compatible format micro floppy diskettes.
 - (4) Local Area Network backup cassettes or cartridges by pre-authorization only. (Contact (202)326-2280 for authorization.)

(B) File structures: (1) Sequential Access Method (SAM) files only. All indexed file structures must be dumped down into SAM format in primary-key order. Micro-computer (IBM-compatible) file structures should be in ASCII-comma-separated format.

(C) Record structures: Fixed length records only. Maximum block size for data is 32,000 bytes for data submitted on 9-track tapes. All data in the record is to be provided as it would appear in printed format: (*e.g.*) unpacked, printed decimal points, signed if relevant.

(D) Documentation: Brief documentation of each file on the tape or diskette must be provided. This information should include the following: (1) File name, (2) What tape/diskette file resides on, (3) Position of file on tape or diskette, (4)

Number of records contained in the file, (5) The length of each record, (6) The record layout: (a) field name

(b) field size in bytes

(c) field data type (numeric/alpha-numeric/dollar/logical/date/etc.)

File layout documentation should be included in the same package as the tape/diskettes when sent.

(E) Shipping: Magnetic media must be shipped clearly marked: MAGNETIC MEDIA DO NOT X-RAY. Data received unmarked can not be accepted by our computer center. Media should be sent to the following address:

Federal Trade Commission

Computer Operations Center, Room-192

6th & Pa. Ave. N.W.

Washington, DC 20580

Attn: Litigation & Customer Support

(F) Technical Support: The Litigation & Customer Support Consulting staff is available at (202) 326-2200 to answer your technical questions regarding production of data for the Commission from 8:30 am to 6:00 pm EST.

APPENDIX B

Please note this important safety information:

The NightSafe Glasses you purchased do not improve your vision while driving at night. In fact, these glasses may impair your vision while driving at night. This means that you should not wear NightSafe Glasses while driving at night.

Although NightSafe Glasses may impair your vision while driving at night, they may be used during the daytime as sunglasses.

IN THE MATTER OF

SPLITFIRE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3737. Complaint, April 28, 1997--Decision, April 28, 1997

This consent order prohibits, among other things, the Illinois spark plugs manufacturer from making fuel economy, emissions, horsepower, or cost savings claims without competent and reliable scientific evidence to support them. The consent order also prohibits misrepresentations regarding the existence, contents, validity, results, conclusions or interpretations of any test or study. In addition, the consent order requires the respondent to possess competent and reliable scientific evidence to substantiate claims in endorsements or testimonials.

Appearances

For the Commission: *Laura Fremont and Matthew Gold.*

For the respondent: *Edward Geltman, Squire, Sanders & Dempsey, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that SplitFire, Inc., a corporation ("respondent"), has 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:

1. Respondent SplitFire, Inc. is an Illinois corporation with its principal office or place of business at 4065 Commercial Avenue, Northbrook, Illinois.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed automotive products to the public, including the "SplitFire Spark Plug," an internal combustion engine spark plug with one split or forked electrode.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for SplitFire Spark Plugs, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. "Good [Depiction of a conventional spark plug]
Conventional Plugs

...
Better [Depiction of a platinum-tipped spark plug]
Platinum Plugs

...
BEST [Depiction of a SplitFire Spark Plug]
SplitFire Plugs

...
Experts say improved combustion of the fuel/air mixture results in:
MORE POWER · MORE MILEAGE · LOWER EMISSIONS

The SplitFire Advantage

'It Only Costs More Until You Use It!'TM

Equipped with conventional spark plugs, up to 15% of the combustion cycles in a modern engine end up in 'partial misfires.' SplitFire's larger flame kernel helps reduce partial misfires, and experts say it helps improve:

PERFORMANCE

ECONOMY

EMISSIONS

* More horsepower

* More M.P.G.

* Lower emissions

...
Improved combustion efficiency means that a higher percentage of fuel is converted to power, not partially-burned exhaust. Higher efficiency means you get more out of every ounce of fuel, so you use less of it."

(Exhibit A, consumer brochure)

B. "CONSUMER RESEARCH RESULTS

SplitFire conducts continuous consumer surveys to constantly monitor 'real life' performance in all vehicle types, coast-to-coast.

...
Of all users (regardless of vehicle type, age, condition, and use) responding:

...
70% reported a gas mileage increase of from 1 to 6 more miles per gallon."

(Exhibit B, product catalog)

C. Consumer Endorser: "Yeah, I went from probably 300 miles on a full tank to almost 400."

...
Consumer Endorser: "I probably was getting, I would say about 20 miles more per tankful, and that's a lot for me!"

...
Consumer Endorser: "And when you're driving a four-wheel drive vehicle, you need all the extra gas mileage you can get."

(Exhibit C, television ad)

D. "SplitFire. At \$5.99, America knows it only costs more 'til you use it!

...
Consumer Endorser: 'I can say I've saved at least \$3 - \$4 a week.'

...
Consumer Endorser: 'They'll pay for themselves, basically, in the first 6 months you own 'em.'"

(Exhibit D, television ad)

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Use of SplitFire Spark Plugs will result in significantly better fuel economy than will use of either conventional spark plugs or platinum-tipped spark plugs.

B. Use of SplitFire Spark Plugs will result in significantly lower emissions than will use of either conventional spark plugs or platinum-tipped spark plugs.

C. Use of SplitFire Spark Plugs will result in significantly greater horsepower than will use of either conventional spark plugs or platinum-tipped spark plugs.

D. Use of SplitFire Spark Plugs will result in significant cost savings over use of either conventional spark plugs or platinum-tipped spark plugs.

E. The testimonials or endorsements from consumers appearing in advertisements and promotional materials for SplitFire Spark Plugs reflect the typical or ordinary experience of members of the public who use SplitFire Spark Plugs.

F. 70% of SplitFire Spark Plug users achieve a gas mileage increase of from 1 to 6 more miles per gallon.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that competent and reliable studies or surveys show that 70% of SplitFire users achieve a gas mileage increase of from 1 to 6 more miles per gallon.

9. In truth and in fact, competent and reliable studies or surveys do not show that 70% of SplitFire users achieve a gas mileage increase of from 1 to 6 more miles per gallon. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

123 F.T.C.

EXHIBIT A

SplitFire... "IT ONLY COSTS MORE UNTIL YOU USE IT!"



Conventional Plug
Produces a "lean" mixture of fuel and air.

SplitFire Plug
Produces a "rich" mixture of fuel and air.

Improved combustion efficiency means that a higher percentage of fuel is converted to power, not partially burned exhaust. Higher efficiency means you get more out of every ounce of fuel, so you use less of it.

The SplitFire Spark Plug design has earned a United States patent. SplitFire doesn't look like any other spark plug (plug, it doesn't look like any other spark plug).

MORE POWER AT ANY RPM!



SplitFire produces more power at any RPM. In a dynamometer test, a 1964 Ford Mustang equipped with SplitFire Spark Plugs has been breaking records in all classes, from 1000 to 10000 RPM.

PHOTOGRAPHIC PROOF!



Under the GM spark plug 335 hour torture test, "standard" plugs usually require replacement every 100 to 300 hours. The SplitFire Plug, however, has been tested for 1000 hours and still looks like new. The SplitFire Plug also kept the combustion chamber cleaner (right) compared to standard plugs (left).

—HOT ROD

COMBUSTION VARIABLES AND PARTIAL MISFIRES

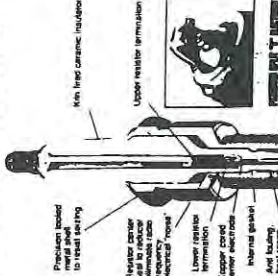
What causes partial misfires? It can be any one — or a combination — of factors. Among the most common:

- Fuel/air ratio too rich/too lean
- Incomplete mixture of fuel and air
- Contaminated fuel
- Worn mechanical parts
- Carbon build-up
- Oil fouling

Modern engines with high energy ignition systems and electronic fuel injection typically have a misfire rate below 5 percent. Insignificant? Hardly. Even a 2.5 percent misfire rate means one partial misfire every single second. And all engines worsen with time.

Older cars, with point and condenser ignition systems, carburetors and less sophisticated combustion chambers, can show a partial misfire rate approaching 15 percent (that's six per second at 2500 RPM).

The First Major Breakthrough Over Conventional Spark Plugs in 75 Years.



Labels: Precision molded insulator, Upper resistor (interruption), Non-fired ceramic insulator, Reflector (which sends to reflector electrode, which eliminates "electrical noise"), Lower resistor, Copper core, Internal gasket, And housing, Heat ring, Control insulator.

THIS IS THE ENEMY: A POWER-ROBbing, FUEL-WASTING, EMISSION-CAUSING PARTIAL MISFIRE.

Equipped with conventional spark plugs, up to 15 percent of the combustion cycles in a modern engine end up in "partial misfires." The spark plug actually fires, but the resulting flame does not cause total ignition. Here is a typical example:



Not all of the exhaust from an engine cycle is used for the combustion process.

Too much fuel is left over at the end of the cycle (at the bottom of the cylinder).

The conventional spark plug cannot handle enough heat and pressure to cause complete combustion.

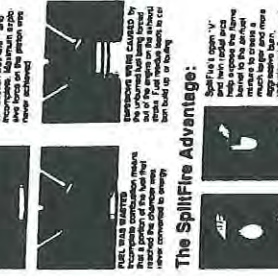
THIS IS A POWER-ROBbing, FUEL-WASTING, EMISSION-CAUSING PARTIAL MISFIRE.

Power is lost because the spark plug cannot handle enough heat and pressure to cause complete combustion.

FUEL WASTAGE: The conventional spark plug cannot handle enough heat and pressure to cause complete combustion.

EMISSIONS: The conventional spark plug cannot handle enough heat and pressure to cause complete combustion.

The SplitFire Advantage:



SplitFire's "split" design helps expose the flame to the entire combustion chamber, ensuring a more complete burn. This means a more powerful engine, less fuel consumption, and fewer emissions.

LOWER OCTANE NEEDS — THE SplitFire ADVANTAGE



It's a fact that only a very small percentage of cars are produced with a manufacturer's requirement for any thing more than regular unleaded 87 octane fuel.

Many motorists, however, in response to an ever increasing loss of power — or pre-ignition — or detonation — decide to go to the dealer's manual. They decide their car "needs" premium fuel — making it a continuous additional expense of approximately 20 cents per gallon.

There's an easy, economical alternative.

At the HOT ROD photographs clearly show SplitFire's more complete burn — which leaves the combustion chamber cleaner and virtually free of unburned fuel and carbon build-up that can cause pre-ignition. That same combustion efficiency reduces the unburned fuel — and with it, the source of detonation.

Results, obviously, vary depending upon initial car condition, age, and operation, but read these reviews and check that last period again. Consider this:

90 percent of SplitFire users surveyed reported equal or better performance with lower octane fuel!

EXHIBIT A p. 1

EXHIBIT A

Good



Conventional Plugs

• Spark better longer than the 1984's
• Spark better longer than the 1983's
• Flame front is weaker than the 1984's
• Flame front is weaker than the 1983's
• Flame front is weaker than the 1983's

Better



Platinum Plug

• Spark better longer than the 1984's
• Spark better longer than the 1983's
• Flame front is weaker than the 1984's
• Flame front is weaker than the 1983's
• Flame front is weaker than the 1983's

BEST



SplitFire Plug

• Spark better longer than the 1984's
• Spark better longer than the 1983's
• Flame front is weaker than the 1984's
• Flame front is weaker than the 1983's
• Flame front is weaker than the 1983's

30 DAY MONEY-BACK TRIAL PERIOD

• MORE POWER

• MORE MILEAGE

• LOWER EMISSIONS

SplitFire

30 DAY MONEY-BACK TRIAL PERIOD

SplitFire

30 DAY MONEY-BACK TRIAL PERIOD

• MORE POWER

• MORE MILEAGE

• LOWER EMISSIONS

SplitFire

30 DAY MONEY-BACK TRIAL PERIOD

The SplitFire Advantage

"If Only Costs More Until You Use It!"

- Equipped with conventional dome plugs, up to 15% of the engine's horsepower is lost to the atmosphere.
- SplitFire's unique design allows the flame front to travel faster, creating more power, more torque, and more economy.
- More M.P.G.
- Less prone to burning longer life
- Quieter engine
- Reduced emissions
- More torque
- Cleaner throttle response
- Works with any type of ignition system
- Works with any type of timing belt
- Churns so many shrapnels
- Breaks in period 200-500 miles

30 DAY* MONEY-BACK TRIAL PERIOD

2 YEAR LIMITED WARRANTY AGAINST DEFECTS**

Every SplitFire comes with a 140,000 mile limited warranty, money back 30 day trial period

For SplitFire Technical Assistance, please call: 1-800-477-5647
or (919) 97-35 SplitFire
**warranty valid only on returning plug only

USA ONLY

SplitFire SEAR PLUG
U.S. Patent #5,837,870

For Spiffire Technical Assistance, please call: 1-800-477-5047
 SU 1153 "USA Day" will be held on Saturday, Oct. 10, 1991. "USA Day" will be held on Saturday, Oct. 10, 1991.

2

11:00 AM

WHETHER YOU'RE PASSING
CARS...OR GAS PUMPS...OR
EMISSIONS CONTROL CHECKS
—WITH SpillFire, YOU'LL WIN.
OR YOU'LL GET YOUR
MONEY BACK!*

SplitFire Is The Most-Tested, Most-Talked-About, Most-Praised New Automotive Product In The Past 75 Years!



HOT ROD "Overall gas mileage over a 4,000-mile test... a 4.78 percent gain."

MIATA. "We recommend this plug for all Miata owners, even in new cars."

TRUCKIN' -It seems too simple, but elapsed times at the track have been lowered by a

times at the dragstrip have been lowered by a tenth of a second and live extra horsepower in the drag room have been accomplished by

the dyno room have been accomplished by merely installing these plugs.*

SUPER FORD "A mostly stock '89 5.0-liter Mustang ran 10 quicker in the quarter mile..."

MOPAA MUSCLE™ In steel applications the plugs are less prone to fouling and deposit

build-up, resulting in better performance and longer life."

MUSTANG ILLUSTRATED "We found that the hydrocarbon (emissions) rate was reduced

over 50 percent.*
SUPER FORD™ Ran 10 quicker in the quarter

mile. Mileage, Power and Emissions gainst" **CHRYSLER POWER** "It's so unique and

advanced that all OEM vehicles will use the SplitFire patent...

1



100

EXHIBIT A p. 2

Complaint

123 F.T.C.

EXHIBIT B

**CONVENTIONAL PLUGS COST CONSUMERS MORE—
MUCH MORE—THAN SPLITFIRES!**

Patented SplitFire Spark Plugs only cost more than conventional spark plugs . . . until you start to use them.

Let's talk money:

FUEL SAVINGS

If you drive 12,000 miles a year in a 6-cylinder car—and you get half the miles per gallon increase ("4 extra miles per gallon") reported by *TRUCKIN' Magazine* . . .

Over two years, if your mileage increased from 18 MPG to 18 MPG . . . your savings on fuel (at \$1.25 per gallon) would not only completely pay for the SplitFires—it would also give you an additional cash savings of \$129.25!

This example assumes that you pay \$36 dollars for your set of SplitFires—and, to repeat, assumes that you get half the mileage increase reported by *TRUCKIN' Magazine*.

Because no two cars are the same, you might save less—or much, much more!

There's no risk to see how much you'll save: Every SplitFire comes with a no-questions-asked, 30-day money-back guarantee!

EMISSIONS TEST SAVINGS

None of us want our vehicles to pollute the environment—and an ever-growing number of cities and states are passing strict emissions control tests to make sure no one does.

Until SplitFire, the corrective options for a vehicle that fails an emissions control test were financially costly and time consuming: Major tune-ups and timing readjustments; new sensors and/or onboard computer controls; new catalytic converters . . . and on and on.

What's the quick, easy, money-saving alternative? The pros know:

MUSTANG ILLUSTRATED: "We found (that by installing SplitFire Spark Plugs) the hydrocarbon (emissions) rate was reduced over 50 percent . . ."

HOT ROD: "The emissions reduction alone warrants using SplitFire Spark Plugs in those cars having trouble passing local emissions checks."

Those aren't claims, those are quotes. Simply replacing conventional spark plugs with SplitFires can not only help save the environment—they could save you substantial corrective repair money too!

There's no risk to see how much you'll save: Every SplitFire comes with a no-questions-asked, 30-day money-back guarantee!

OCTANE SAVINGS

Only a very small percentage of cars are produced with a manufacturer's requirement for "premium" or even "mid-range" gasoline.

Many motorists, in response to an ever-increasing loss of power and/or decreased "drivability" (rough idle, hard starts and "run on's") decide they "need" premium fuel.

Using conventional plugs costs them a penalty of approximately 20 cents on every gallon of gas they buy! 90 percent of SplitFire owners surveyed reported equal or better performance on fuel-economy test.

At 12,000 miles per year and 18 MPG (the same example from "Fuel Savings" above), saving 20 cents per gallon would save \$133.22 per year. That's in addition to the miles per gallon savings!

With SplitFires, the more you drive the more you save!

There's no risk to see how much you'll save: Every SplitFire comes with a no-questions-asked, 30-day money-back guarantee!

CONSUMER RESEARCH RESULTS

In addition to on-going technical testing in engineering labs, SplitFire conducts continuous consumer surveys to constantly monitor "real life" performance in all vehicle types, coast-to-coast.

These surveys are not restricted to any one area or type of vehicle or type of use. While primary reasons for initial purchase ("want more power" . . . "want better mileage" . . . "have to cut emissions") vary significantly, the degree of overall user satisfaction rate did not. Of all users (regardless of vehicle type, age, condition, and use) responding:

- 82% reported an increase in power with SplitFire
- 70% reported a gas mileage increase of from 1 to 6 more miles per gallon
- 100% experienced "no spark plug fouling"
- 91% said they would buy SplitFires for other vehicles and/or equipment they own
- 94% intend to replace their current set of SplitFires with a new set of SplitFires.

1231

Complaint

EXHIBIT C

Tape labeled:

Splitfire Spark Plugs
"Economy #1"
SFE-101193 (:30)

Yeah I went from probably 300 miles on a full tank to almost 400.

(on screen: Splitfire - the Patented Performance Spark Plug)

America is talking about Splitfire.

I probably was getting, I would say about 20 miles more per tankful, and that's a lot for me!

And when you're driving a four wheel drive vehicle, you need all the extra gas mileage you can get.

I have them on my motorcycle, my boat, and my car. I love 'em.

(Splitfire: The Patented Performance Spark Plug -

In [sic] only costs more until you use it)

Splitfire, at \$5.99 it only costs more 'till you use it.

EXHIBIT D

Splitfire Spark Plugs/Wire Set
"Testimonial"

SFT-94-803WS (:50/:10)

My truck has 99,000 miles on it, and it's like a brand new engine.

(onscreen: America is taling [sic] about Splitfire. The patented performance spark plug)

America is talking about Splitfire. I feel like I have a new engine.

No hesitation. You hit your passing gear, you're gone! Right now!

("U.S. patent #4268774")

Splitfire won a United States patent. It doesn't look like any other sparkplug, it doesn't work like any other sparkplug.

(conventional spark plug - U.S. patented Splitfire)

I love 'em. I have them on my motorcycle, my boat, and my car. I love them. I love them.

(Splitfire - the patented performance spark plug)

Splitfire, at \$5.00, America knows it only costs more, 'till you use it!

(It only costs more until you use it.)

I can say I've saved at least \$3 - \$4/week.

Probably getting, I would say about 20 miles more per tankful. And that's a lot for me! They'll pay for themselves, basically, in the first 6 months you own 'em!

(Splitfire - the patented performance spark plug - It only costs more until you use it.)

Splitfire -- it only costs more, 'till you use it!

Here's another Splitfire breakthrough! Twin coil wire sets -- with a dual firing path to every plug.

(Box shown. More power! More mileage! 30-day money back guarantee!

Details in store.)

More power, and more mileage, or your money back!

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of the complaint that the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SplitFire, Inc. is an Illinois corporation with its principal office or place of business at 4065 Commercial Avenue, Northbrook, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. "*Competent 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.

2. Unless otherwise specified, "*respondent*" shall mean SplitFire, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees. For purposes of this order, "successors" shall include, but not be limited to:

(a) Any person who

(1) Markets the SplitFire spark plug, any split-electrode spark plug, or any spark plug with more than two electrodes; and

(2) Holds or has held an ownership interest in and/or serves or has served as an officer of respondent SplitFire, Inc.; and

(b) Any entity that

(1) Markets the SplitFire spark plug, any split-electrode spark plug, or any spark plug with more than two electrodes; and

(2) Is owned or controlled, wholly or in part, by any person who holds or has held an ownership interest in respondent SplitFire, Inc. and/or serves or has served as an officer of respondent SplitFire, Inc.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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 the "SplitFire Spark Plug," or any other motor vehicle product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. The effect of such product on a vehicle's fuel economy;
- B. The effect of such product on a vehicle's level of emissions;
- C. The effect of such product on a vehicle's horsepower; or

D. The comparative or absolute cost savings that such product will contribute to or achieve,

unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, 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 motor vehicle product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

III.

It is further ordered, That respondent, 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 motor vehicle product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondent, 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 motor vehicle product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

It is further ordered, That respondent SplitFire, Inc. and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

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

VI.

It is further ordered, That respondent SplitFire, Inc. and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of

service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent SplitFire, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent SplitFire, Inc., and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IX.

This order will terminate on April 28, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

ZALE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3738. Complaint, April 28, 1997--Decision, April 28, 1997*

This consent order prohibits, among other things, the Texas-based chain of retail jewelry stores from misrepresenting the composition or origin of any imitation, cultured or natural pearl product. The consent order requires the respondent to include a word such as "artificial," "imitation," or "simulated" in close proximity to any representation that an imitation pearl product contains pearls; and to include a word such as "cultured" or "cultivated" in close proximity to any representation that a cultured pearl product contains pearls. In addition, the consent order requires the respondent, for three years, to make available to consumers in their stores an information sheet that describes the origin of imitation, cultured or natural pearls.

Appearances

For the Commission: *Matthew Gold.*

For the respondent: *Alan P. Shor*, in-house counsel, Irving, TX.

COMPLAINT

The Federal Trade Commission, having reason to believe that Zale Corporation, a corporation ("respondent"), has 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:

1. Respondent Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas.

2. Respondent operates the country's largest chain of retail jewelry stores with more than 1,200 locations throughout the United States, Guam, and Puerto Rico.

3. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed the "Ocean Treasures" line of imitation pearl jewelry, and numerous other lines of cultured pearl jewelry, to the public. These lines of jewelry have included bracelets, earrings, pendants, rings and strands. None of respondent's jewelry products has included natural pearls.

4. Federal Trade Commission industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. The Federal Trade Commission's Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR Part 23, 61 F.R. 27212 (May 30, 1996), state as follows:

A. Section 23.2 Misleading Illustrations. It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

B. Section 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations. It is unfair or deceptive to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

C. Section 23.19 Misuse of the word "pearl." (c) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

5. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. Respondent has disseminated or has caused to be disseminated advertisements for its Ocean Treasures imitation pearl jewelry products, including but not necessarily limited to the attached Exhibits A through B. These advertisements contain the following statements and depictions:

1. "ZALES THE DIAMOND, SEMI-PRECIOUS AND PEARL STORE™
Ocean Treasures™ Fine Jewelry
Created by nature, enhanced by man."
[Depictions of necklace, earrings, rings, and pendants, all of which appear to contain pearls or cultured pearls](Exhibit A)

2. "Ocean Treasures™ Fine Jewelry
Created by nature, enhanced by man."
[Depictions of necklace, earrings, and pendant, all of which appear to contain pearls or cultured pearls] (Exhibit B)

7. Through the means described in paragraph six, respondent has represented, expressly or by implication, that the Ocean Treasures line of jewelry is composed of cultured pearls.

8. In truth and in fact, the Ocean Treasures line of jewelry is not composed of cultured pearls, but rather is composed exclusively of imitation pearls. A cultured pearl is a pearl formed by a mollusk as a result of an irritant placed in the mollusk's shell by humans. An imitation pearl is a manufactured product that is designed to simulate in appearance a pearl or cultured pearl. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

1244

Complaint

EXHIBIT A

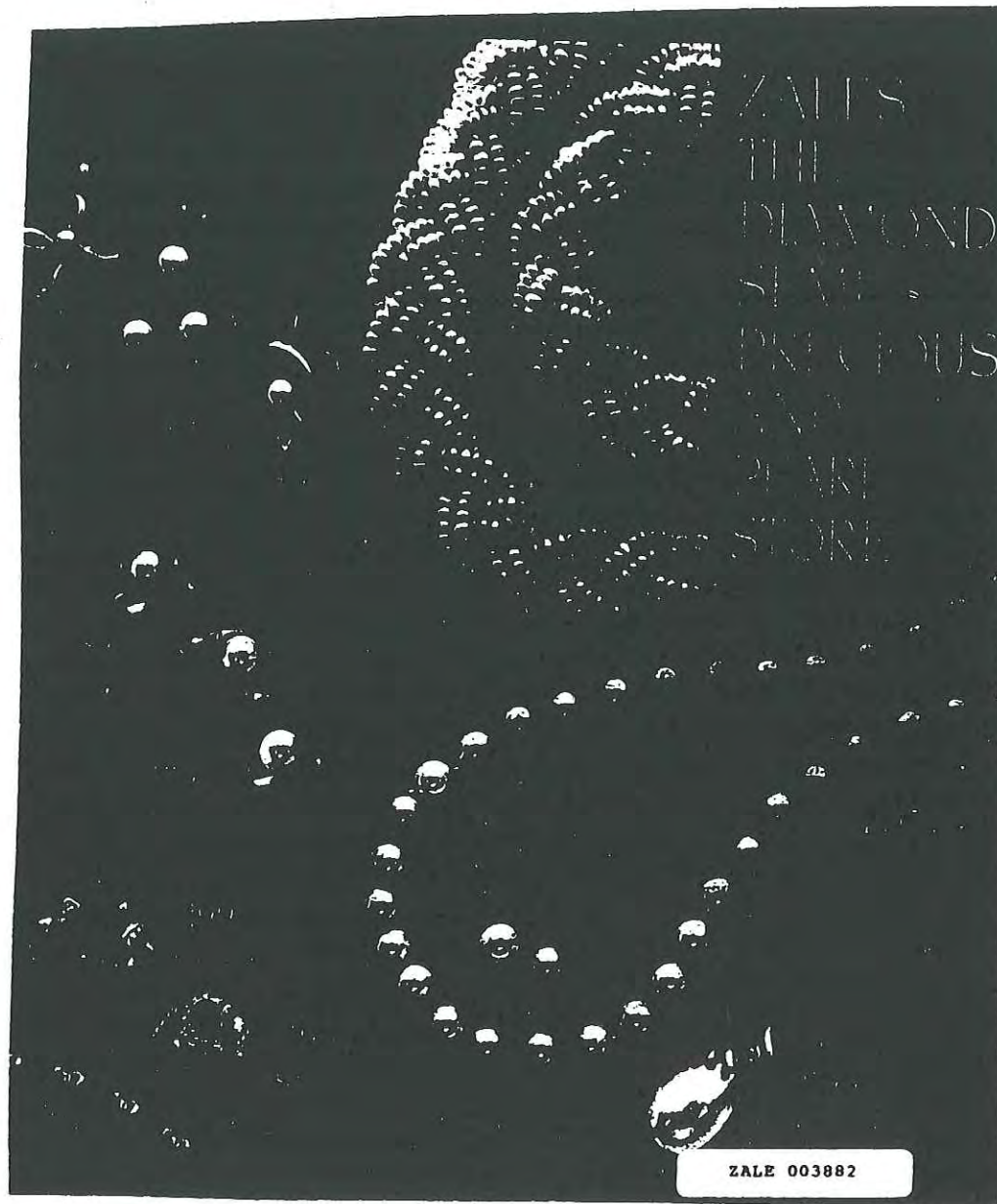


EXHIBIT A

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of the complaint that the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Zale Corporation is a Delaware corporation with its principal office or place of business at 901 W. Walnut Hill Lane, Irving, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. 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 radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, or on any in-store sign or display, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

2. "*Natural Pearl*" shall mean a calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

3. "*Cultured Pearl*" shall mean the composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

4. "*Imitation Pearl*" shall mean a manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

5. Unless otherwise specified, "*respondent*" shall mean Zale Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

6. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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 imitation pearl jewelry, in or affecting commerce, shall not represent that imitation pearls are cultured pearls.

II.

It is further ordered, That respondent, 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 imitation pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more imitation pearls, by describing such product as "artificial," "imitation," or "simulated," or with another word or phrase of like meaning.

III.

It is further ordered, That respondent, 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 cultured pearl jewelry, in or affecting commerce, shall not represent that such product is or contains one or more pearls unless respondent discloses, clearly and prominently, and in close proximity to such representation, that the product is comprised of one or more cultured pearls, by describing such product as "cultured" or "cultivated," or with another word or phrase of like meaning.

IV.

It is further ordered, That respondent, 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 jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls, shall not misrepresent the composition or origin of such product.

V.

It is further ordered, That, for a period of three (3) years from the date of service of this order, respondent, directly or through any corporation, subsidiary, division, or other device, shall make available, in a place and manner calculated to attract the attention of consumers, an information sheet in the form set forth in Appendix A to this order at each store that offers for sale any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.

VI.

It is further ordered, That respondent, and its successors and assigns, shall, for five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, business records demonstrating its compliance with the terms and provisions of this order, including but not limited to:

A. All advertisements and promotional materials for jewelry containing one or more natural pearls, cultured pearls, or imitation pearls;

B. All brochures, hang tags or other in-store displays relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls; and

C. All invoices and order forms relating to jewelry containing one or more natural pearls, cultured pearls, or imitation pearls.

VII.

It is further ordered, That respondent, and its successors and assigns, shall deliver a copy of this order, or a summary in the form

set forth as Appendix B to this order, to all current and future principals and directors; to all current and future officers and managers with responsibilities or duties affecting compliance with the terms of this order; and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order, or a summary in the form set forth as Appendix B to this order, to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

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

X.

This order will terminate on April 28, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade

Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

Your Guide to

Pearls

Natural Pearls

A pearl formed in the wild by the random intrusion of a natural irritant into a mollusk's shell, without the intervention of man. There are few natural pearls on the general consumer jewelry market today.

Cultured Pearls

A cultured pearl is also grown by nature but with the assistance of man. This patented process involves the insertion of a "nucleus" into the oyster. The oyster is then carefully nurtured for the desired type of pearl. The quality of cultured pearls varies and is judged by the pearl's lustre, surface, shape, color and size.

Imitation Pearls

A manufactured product composed of any material or materials that simulate in appearance a natural pearl or cultured pearl.

Decision and Order

123 F.T.C.

APPENDIX B

[To be printed on Zale Corporation letterhead]

[date]

Dear Zale employee:

This letter is to inform you that Zale Corporation recently settled a civil dispute with the Federal Trade Commission ("FTC") regarding certain alleged claims for our "Ocean Treasures" line of imitation pearl jewelry. We deny the FTC's allegations, but in order to avoid protracted litigation we have entered into a settlement agreement. As part of that settlement, we are required to summarize the requirements of the settlement for our directors and officers, and for employees and others who sell our products to consumers.

The FTC alleged that Zale advertisements falsely claimed, expressly or by implication, that Ocean Treasures jewelry was composed of cultured pearls. Our settlement with the FTC contains the following requirements:

1. Zale may not represent that imitation pearls are cultured pearls.
2. Zale may not represent that imitation pearl jewelry contains pearls unless we specifically describe the jewelry as "artificial," "imitation," "simulated," or with another word or phrase of like meaning.
3. Zale may not represent that cultured pearl jewelry contains pearls unless we specifically describe the jewelry as "cultured" "cultivated," or with another word or phrase of like meaning.
4. Zale may not misrepresent the composition or origin of any jewelry product composed partially or entirely of natural pearls, cultured pearls, or imitation pearls.
5. Zale must make available to consumers for a period of three years, in each store that offers for sale natural pearl, cultured pearl, or imitation pearl jewelry, an information sheet that describes the difference among natural pearls, cultured pearls, and imitation pearls. This information sheet, which we are providing to each store, must be made available in a place and manner that is calculated to attract the attention of consumers.

Requirements 1-4, above, apply to all representations made in advertising, labeling, promotion, offering for sale, sale and distribution, including individual sales transactions.

Thank you for your assistance. If you have any questions about the requirements contained in this letter, please call _____.

Sincerely,

[Zale Official]
[Title]

IN THE MATTER OF

AMERICAN CYANAMID COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3739. Complaint, May 12, 1997--Decision, May 12, 1997

This consent order prohibits, among other things, a New Jersey-based distributor of agricultural herbicides and insecticides from conditioning the payment of rebates or other incentives on the resale prices its dealers charge for their products, and from agreeing with its dealers to control or maintain resale prices. The consent order requires the respondent, for three years, to post clearly and conspicuously a statement, on any price list, advertising or catalogue that contains a suggested resale price, that dealers remain free to determine on their own the prices at which they sell the company's products. In addition, the respondent must mail a letter containing this statement to all current dealers, distributors, officers, management employees and sales representatives.

Appearances

For the Commission: *Michael Antalics and Sarah O. Allen.*

For the respondent: *Daniel K. Mayers, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Cyanamid Company, a corporation (hereinafter "Am Cy" or "respondent"), has violated the provisions of Section 5 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, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent American Cyanamid Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at One Campus Drive, Parsippany, New Jersey. Respondent is a wholly-owned subsidiary of American Home Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Five Giralda Farms, Madison, New Jersey.

PAR. 2. Respondent is now, and for some time has been, engaged in the offering for sale, sale, and distribution of crop protection chemicals, such as herbicides and insecticides used in commercial agriculture, to over 2500 retail dealers located throughout the United States. In 1995, Am Cy sold at retail more than \$1 billion of its crop protection chemicals.

PAR. 3. In 1995, Am Cy was the market share leader in three domestic crop protection chemical markets: soybean broadleaf herbicides, soybean grass herbicides, and corn soil insecticides. In addition, Am Cy had the second-largest share of the domestic cotton grass herbicide market.

PAR. 4. Respondent's acts and practices, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. For approximately five years beginning in 1989, Am Cy operated two rebate programs for its retail dealers. From 1989-1992, the plan was called the "Cash Reward on Performance" ("C.R.O.P.") program, and was renamed the "Award for Performance Excellence" ("A.P.E.X.") program in late 1992 through August 1995. Pursuant to the written agreements respondent entered into with its dealers under these programs, Am Cy offered to pay the dealers substantial rebates on each sale if the dealers sold Am Cy's crop protection chemicals at or above specified minimum resale prices. The specified minimum resale prices were equal to the wholesale prices paid by the dealers for the crop protection chemical products. Under the terms of the agreements, a dealer was not entitled to, and did not receive, any rebate on sales made below the specified minimum price; therefore, sales below Am Cy's specified minimum resale prices were made at a loss to the dealer. The dealers overwhelmingly accepted Am Cy's offer by selling at or above the specified minimum prices.

PAR. 6. Am Cy also included certain nonprice performance criteria in its C.R.O.P. and A.P.E.X. programs that could increase the amount of the rebate, but compliance with those performance criteria was neither necessary nor, by itself, sufficient to obtain rebates. For example, if the dealer did not meet any of Am Cy's performance criteria, but sold the product at or above the specified minimum resale price, the dealer nonetheless received a rebate on that sale. On the other hand, if the dealer met all of the performance criteria, but sold the product below Am Cy's specified minimum resale price, the dealer received no rebate on that sale.

PAR. 7. The purpose, effects, tendency, or capacity of the acts and practices described in paragraphs five and six are and have been to restrain trade unreasonably and hinder competition in the provision of crop protection chemicals in the United States.

PAR. 8. The aforesaid acts and practices of the respondent were and are to the prejudice and injury of the public. These acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. These acts and practices may recur in the absence of the relief requested.

Commissioner Starek dissenting.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Cyanamid Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at One Campus Drive, Parsippany, New Jersey. Respondent is a wholly-owned subsidiary of American Home Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Five Giralda Farms, Madison, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For purposes of this order, the following definitions shall apply:

(A) "*Respondent*" or "*Am Cy*" means American Cyanamid Company, its directors, officers, employees, agents and representatives, predecessors, successors (including American Home Products Corporation) and assigns, and its subsidiaries, divisions, groups, and affiliates controlled, directly or indirectly, by American Cyanamid Company, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

(B) "*Commission*" means the Federal Trade Commission.

(C) "*Product*" or "*Products*" means any crop protection chemicals, such as herbicides and insecticides used in commercial agriculture, that are manufactured, offered for sale, sold, or distributed by Am Cy to retail dealers or consumers located in the United States of America.

(D) "*Dealer*" means any person, corporation or entity not owned by Am Cy that in the course of its business purchases from Am Cy or a distributor and sells any Product in or into the United States of America.

(E) "*Resale price*" means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any Product. "Resale price" includes, but is not limited to, any established or customary resale price.

II.

It is ordered, That Am Cy, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, offering for sale, sale, or distribution of any Product in or into the United States of America in or affecting "commerce," as defined by the Federal Trade Commission Act, forthwith cease and desist from:

(A) Conditioning the payment of any rebate or other incentive to any dealer, in whole or in part, directly or indirectly, on the resale price at which the dealer offers for sale or sells any Product; and

(B) Otherwise agreeing with any dealer to control or maintain the resale price at which the dealer may offer for sale or sell any Product.

III.

It is further ordered, That, for a period of three (3) years from the date on which this order becomes final, Am Cy shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price for any Product to any dealer:

ALTHOUGH AMERICAN CYANAMID MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALERS ARE FREE TO DETERMINE ON THEIR OWN THE PRICES AT WHICH THEY WILL SELL AMERICAN CYANAMID PRODUCTS.

IV.

It is further ordered, That respondent shall:

(A) Within thirty (30) days after the date on which this order becomes final, mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to all of its officers, management employees, dealers, distributors, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America;

(B) For a period of three (3) years after the date on which this order becomes final, mail by first class mail the letter attached as Exhibit A, together with a copy of this order, to each person who becomes an officer, management employee, or agent or representative having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America, within thirty

(30) days of the commencement of such person's employment or affiliation with Am Cy; and

(C) For a period of three (3) years after the date on which this order becomes final, require each of its officers, management employees, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America, to sign and submit to Am Cy within thirty (30) days of the receipt thereof a statement that: (1) acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject American Cyanamid Company to penalties for violation of the order.

V.

It is further ordered, That respondent shall:

(A) Within sixty (60) days after the date on which this order becomes final, and annually thereafter for three (3) years on the anniversary of the date this order becomes final, and at such other times as the Commission shall request, file with the Commission a verified written report setting forth in detail the manner and form in which Am Cy has complied and is complying with this order;

(B) For a period of three (3) years after the order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, all records of communications with dealers, distributors, and agents or representatives having sales or policy responsibilities with respect to Am Cy's Products sold in or into the United States of America relating to any aspect of retail pricing in the United States of America, and records pertaining to any action taken in connection with any activity covered by paragraphs II, III, IV, and V of this order; and

(C) Notify the Commission at least thirty (30) days prior to any proposed changes in Am Cy 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 that may affect compliance obligations arising out of this order.

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Decision and Order

VI.

It is further ordered, That this order shall terminate on May 12, 2017.

Commissioner Starek dissenting.

EXHIBIT A

[AMERICAN CYANAMID LETTERHEAD]

Dear Dealer:

The Federal Trade Commission has conducted an investigation into American Cyanamid's sales policies, and in particular, American Cyanamid's C.R.O.P. and A.P.E.X. rebate programs, which were in effect from mid-1989 through August 1995. To expeditiously resolve the investigation and to avoid disruption to the conduct of its business, American Cyanamid has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the order is enclosed. This letter and the accompanying order are being sent to all of our dealers, distributors, sales personnel and representatives.

The order spells out our obligations in greater detail, but we want you to know and understand that you can sell our products at any price you choose. While we may send materials to you which contain suggested retail prices, you remain free to sell those products at any price you choose.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President

STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS JANET D. STEIGER AND CHRISTINE A. VARNEY

The Commission today enters a consent order with American Cyanamid prohibiting it from engaging in conduct designed to prevent its dealers from making discounted sales below the minimum price that American Cyanamid specified. American Cyanamid entered into written agreements with its dealers that provided dealers with "rebates" each time they sold their product at or above a certain resale price (the floor transfer price). For dealers who sold at the specified price, this rebate constituted their entire profit margin. The Commission believes that this conduct amounted to an illegal resale price maintenance agreement.

Commissioner Starek, in his dissent, criticizes this enforcement action for a number of reasons. As explained below, we disagree with Commissioner Starek's reasoning.

First, the dissenting statement appears to conclude that a situation where a manufacturer and a dealer enter into an express agreement that the manufacturer will pay the dealer to adhere to the manufacturer's specified resale price, is not an "agreement on resale prices" but rather some form of voluntary behavior. Judge Posner responded to similar arguments in *Khan v. State Oil*.¹

In *Khan*, the court declared a maximum resale price arrangement *per se* illegal where the manufacturer permitted dealers to charge above a maximum price, but required them in such case to provide any resulting profit above the maximum price to the manufacturer. The "voluntary" nature of the arrangement did not detract from the finding that there was an agreement. Judge Posner noted that the arrangement was indistinguishable from an agreement not to exceed the maximum price, because the dealer was sanctioned for violating the agreement by having to remit any resulting profit to the manufacturer. In responding to *State Oil*'s argument that there was no price fixing agreement, Judge Posner observed: "The purely formal character of the distinction that it urges can be seen by imagining that the contract had forbidden *Khan* to exceed the suggested resale price and had provided that if he violated the prohibition the sanction would be for him to remit any resulting profit to *State Oil*."²

¹ 93 F.3d 1358 (7th Cir.), *cert. granted*, ___ S. Ct. ___ (1996).

² *Id.*, at 1361. See also *Isaksen v. Vermont Castings, Inc.*, 825 F.2d 1158, 1164 (7th Cir. 1987) (in finding a violation based on economic coercion, Judge Posner noted, "It is as if Vermont Castings had told Isaksen that it would reduce its wholesale price to him if he raised his retail price, and Isaksen had accepted the offer by raising his price.").

We agree with Judge Posner. In this case, the sanction was loss of the rebate for sales made below the floor transfer price. If an agreement to forego one's entire profit margin if one departs from the specified price does not constitute a price maintenance agreement, then nothing remains of the *per se* rule.

Second, the dissent seems to suggest that this case is one where agreement is being inferred from unilateral conduct. We cannot concur. American Cyanamid entered into written agreements which offered financial incentives for adherence to a minimum price schedule. Courts, both before and after Sharp,³ have held such arrangements unlawful where adherence to a suggested price was the *quid pro quo* for the financial inducements. Judge Posner's decision in Khan is consistent with this approach.⁴

Third, the dissenting statement, relying in large part on recent economic literature, argues that American Cyanamid's program should not be condemned without proof of a supplier cartel, dealer cartel, or market power.⁵ That view is inconsistent with the Supreme Court's view that resale price maintenance continues to be illegal *per se* and we reject the idea that the Supreme Court can be overruled by scholarly contributions to economic journals.

Finally, we cannot agree with the suggestion that this enforcement action somehow creates uncertainty about the Commission's treatment of pass through rebates or cooperative advertising programs. As the analysis to aid public comment explains, pass through programs have always been permitted, as long as the dealer is free to discount to an even greater extent than the pass through amount. Similarly, both the courts and the Commission have judged cooperative advertising cases under the rule of reason, as long as the arrangements do not limit the dealer's right: (1) to discount below the advertised price, and (2) to advertise at any price when the dealer itself pays for the advertisement. Unlike those programs, American Cyanamid's rebate program controlled the actual prices charged and was structured to prevent dealers from pricing below the floor transfer price.

³ *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1988).

⁴ 93 F.3d at 1362.

⁵ Although we do not fully detail our disagreement with the description of the facts in the dissent, we believe that a full trial would have shown that an overwhelming portion of sales were made at or above the minimum resale price. Moreover, a dealer's advisory council voted to advise American Cyanamid to retain the program in order to protect its margins.

Attachment to Statement of Chairman Pitofsky,
Commissioner Steiger, and Commissioner Varney

ANALYSIS TO AID PUBLIC COMMENT ON
THE PROPOSED CONSENT ORDER

The Federal Trade Commission ("the Commission") has accepted an agreement to a proposed consent order from American Home Products Corporation ("AHP"), through its wholly-owned subsidiary, American Cyanamid Company ("American Cyanamid"), located in Parsippany, New Jersey. The agreement would settle charges by the Commission that American Cyanamid violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition in the domestic markets for crop protection chemicals, which are herbicides and insecticides widely used in commercial agriculture.

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

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of American Cyanamid's alleged anticompetitive conduct relating to its C.R.O.P. and A.P.E.X. rebate programs. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that American Cyanamid has engaged in acts and practices that have unreasonably restrained competition in the sale and distribution of crop protection chemicals in the United States. In 1995, the Commission's proposed complaint alleges, American Cyanamid sold at retail more than \$1 billion of its crop protection chemicals and was the market share leader in three domestic crop protection chemical markets: soybean broadleaf herbicides, soybean grass herbicides, and corn soil insecticides, as well as being the second-largest domestic producer of cotton grass herbicides.

According to the complaint, American Cyanamid operated two cash rebate programs for its retail dealers for approximately five years. From 1989-1992, the plan was called the "Cash Reward on Performance" ("C.R.O.P.") program, and was renamed the "Award for Performance Excellence" ("A.P.E.X.") program in late 1992 through August 1995. The complaint states that American Cyanamid entered into written agreements with its dealers under these programs, pursuant to which American Cyanamid offered to pay its dealers substantial rebates on each sale of its crop protection chemicals that was made at or above specified minimum resale prices. According to the complaint, the dealers overwhelmingly accepted American Cyanamid's rebate offer by selling at or above the specified minimum resale prices.

The complaint further alleges that the wholesale prices in the agreements were set at a level equal to the specified minimum resale prices, and because a dealer received no rebate on sales below the specified prices, those sales were made at a loss to the dealer.

The complaint further states that although American Cyanamid included certain non-price performance criteria in its rebate programs that could increase the amount of the rebate, a dealer's compliance with these performance criteria was neither necessary nor, by itself, sufficient to obtain rebates. As examples, the complaint alleges that if a dealer met all of American Cyanamid's performance criteria, but sold the product for less than American Cyanamid's specified minimum resale price, that dealer received no rebate on the sale. On the other hand, if the dealer met none of the performance criteria, but sold the product at or above American Cyanamid's specified minimum resale price, the dealer nonetheless received a rebate on that sale.

American Cyanamid's conditioning of financial payments on dealers' charging a specified minimum price amounted to the *quid pro quo* of an agreement on resale prices. In cases where this issue has arisen, both before and after the Supreme Court examined the *per se* rule against resale price maintenance in *Monsanto* and *Sharp*,¹ courts have treated such agreements as *per se* illegal. See *Lehrman v. Gulf Oil Corp.*, 464 F.2d 26, 39, 40 (5th Cir.), *cert denied*, 409 U.S. 1077 (1972) (stating that ". . . adherence to a suggested price schedule was the *quid pro quo* for Lehrman's receiving Gulf's TCAs [temporary competitive allowances]" and "there is no comparable justification for

¹ *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1988); *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984).

conditioning wholesale price support upon adherence to a schedule of minimum retail prices." (emphasis in original)); *Butera v. Sun Oil Co., Inc.*, 496 F.2d 434, 437 (1st Cir. 1974). By offering financial inducements in return for selling at specified minimum prices, a manufacturer seeks the "acquiescence or agreement" of its dealers in a resale price-fixing scheme. *Monsanto*, 465 U.S. at 764 n. 9. The dealer, in turn, accepts the manufacturer's offer by selling at or above the specified minimum prices. *See Isaksen v. Vermont Castings, Inc.*, 825 F.2d 1158, 1164 (7th Cir. 1987) (Posner, J.) (an "obvious" resale price-fixing agreement is found" . . . if [the manufacturer] had told [the dealer] that it would reduce its wholesale price to him if he raised his retail price, and [the dealer] had accepted the offer by raising his price."). *See also Khan v. State Oil Co.*, 93 F.3d 1358, 1360-61 (7th Cir. 1996) (Posner, J.), *petition for cert. pending* (No. 96-871) (agreement on price found where dealership agreement on its face allowed dealer to charge any resale price it wished, but distributor tied financial consequences to dealers' not charging the resale prices it suggested). As a result, incentives to reduce price below the specified level were substantially affected by American Cyanamid's rebate scheme.

The rebate programs challenged in this case are unlike situations where manufacturers are permitted to condition a discount or other incentive on that discount being "passed through" to consumers, which prevents a dealer from simply "pocketing" the discount. In these types of cases, the dealer is free to sell at even lower prices than the amount of the direct "pass through" of the discount or other incentive. Discounts cannot be conditioned, therefore, on the dealers' adherence to specified minimum prices. *See AAA Liquors, Inc. v. Joseph E. Seagram and Sons, Inc.*, 705 F.2d 1203, 1206 (10th Cir. 1982), *cert. denied*, 461 U.S. 919 (1983) (Seagram's requirement of passing through its discount "[did] not prohibit the wholesaler from making greater reductions in price than the discount provides."). *See also Acquaire v. Canada Dry Bottling Co.*, 24 F.3d 401, 409-10 (2d Cir. 1994); *Lewis Service Center, Inc. v. Mack Trucks, Inc.*, 714 F.2d 842, 845-47 (8th Cir. 1983) (because dealers could discount more than Mack's sales assistance, the court found that "the purpose of Mack's discount program [was] not to force adherence to any particular price scheme of Mack's.").

The Proposed Consent Order

Part I of the proposed order covers definitions. These definitions make clear that the consent order applies to the directors, officers, employees, agents and representatives of American Cyanamid. The order also defines the terms product, dealer and resale price.

Part II of the order contains two major operative provisions: Part II(A) deals with the specific conduct at issue in this case. It prohibits American Cyanamid from conditioning the payment of rebates or other incentives on the resale prices its dealers charge for its products. Part II(B) prevents American Cyanamid from otherwise agreeing with its dealers generally to control or maintain resale prices.

Neither of these provisions should be construed to prohibit lawful cooperative advertising programs or "pass through" discount programs that are not otherwise part of an unlawful resale price maintenance scheme. The Commission has previously determined that order provisions prohibiting agreements on resale prices do not restrict a company's ability to implement otherwise lawful cooperative advertising and "pass through" rebate plans because such programs do not, in themselves, constitute agreements on resale prices. *See, e.g., In Re Magnavox Co.*, 113 FTC 255, 263, 269-70 (1990).

Part III of the order requires that for a period of three (3) years from the date on which the order becomes final, American Cyanamid shall include a statement, posted clearly and conspicuously, on any price list, advertising, catalogue or other promotional material where it has suggested a resale price for any product to any dealer. The required statement explains that while American Cyanamid may suggest resale prices for its products, dealers remain free to determine on their own the prices at which they will sell American Cyanamid's products.

Part IV of the order requires that for a period of three (3) years from the date on which the order becomes final, American Cyanamid shall mail the letter attached to the order as Exhibit A and a copy of this order to all of its current dealers, distributors, officers, management employees, and agents or representatives with sales or policy responsibilities for American Cyanamid's products. American Cyanamid also must mail the letter and order to any new dealer, distributor or employee in the above positions within thirty (30) days after the commencement of that person's affiliation or employment with American Cyanamid. All of the above dealers, distributors and employees must sign and return a statement to American Cyanamid

within thirty (30) days of receipt that acknowledges they have read the order and that they understand that non-compliance with the order may subject American Cyanamid to penalties for violation of the order.

Part V of the order requires that American Cyanamid file with the Commission an annual verified written report giving the details of the manner and form in which American Cyanamid is complying and has complied with the order. In addition, Part V of the order also requires American Cyanamid to maintain and make available to the Commission upon reasonable notice all records of communications with dealers, distributors, and agents or representatives relating to resale prices in the United States, as well as records of any action taken in connection with activities covered by the rest of the order. Finally, American Cyanamid must inform the Commission at least thirty (30) days before any proposed changes in the corporation, such as dissolution or sale.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to issue the consent order, but decline to join the separate statement of Chairman Pitofsky and Commissioners Steiger and Varney. The consent agreement, which includes the consent order and the complaint on which it is based, constitutes the decisional document of the Commission. My substantive views on this matter are contained entirely within the four corners of the decisional document. If the majority wants to revise or expand its decision, the proper course is to revise the decisional document. *See* Dissenting Statement of Commissioner Mary L. Azcuenaga in Dell Computer Corp. at 21-23 (Docket No. 3658, May 20, 1996).

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I respectfully dissent from the Commission's decision to issue a consent order against American Cyanamid Company ("AmCy"), a producer of agricultural chemicals. The complaint claims that certain aspects of AmCy's compensation arrangement with its dealers constitute *per se* illegal resale price maintenance ("RPM"), in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. I do not agree that AmCy's dealer rebate policies constitute the functional and legal equivalent of RPM agreements. Consequently, I conclude that the decision to challenge AmCy's distribution policies would expand substantially the range of activities

condemned by the Commission as illegal *per se*. This policy is ill-advised and runs contrary to twenty years of case law in which the scope of vertical arrangements subject to *per se* condemnation has been steadily narrowed. This case is an especially poor vehicle for expanding the scope of the *per se* rule, for it would be difficult to find conduct that better exemplifies the economic deficiencies of that standard.

Condemning certain conduct as illegal *per se* normally is rationalized by the belief that the conduct in question is so frequently pernicious that one cannot justify the cost of attempting to identify the few instances in which it is not. Whether RPM warrants characterization as *per se* illegal conduct has increasingly been called into question by antitrust scholars,¹ indeed, it would be difficult to find an antitrust economist who would defend this enforcement standard.² RPM remains illegal *per se*, however, and, consistent with this standard, I have voted to support enforcement actions against RPM agreements when I have been convinced that (1) the conduct in question plainly constituted an illegal agreement on price (as construed by contemporary case law), and (2) the relief was appropriately tailored to deter future illegal conduct.

Notwithstanding the continued *per se* treatment of RPM -- and my willingness to support RPM cases in the limited circumstances identified above -- I cannot ignore the persistent accumulation of economic evidence demonstrating the potentially procompetitive (or, at worst, economically neutral) nature of RPM agreements. At minimum, this evidence counsels against expanding the boundaries

¹ There is a substantial body of economic literature demonstrating that RPM frequently can be socially beneficial. See, e.g. Michael L. Katz, "Vertical Contractual Relations," in Richard Schmalensee and Robert D. Willig, 1 *Handbook of Industrial Organization* 655 (1989). The existing empirical literature fails to find evidence supporting an anticompetitive characterization of RPM. See, e.g., Pauline M. Ippolito & Thomas R. Overstreet, Jr., "Resale Price Maintenance: An Economic Assessment of the Federal Trade Commission's Case Against the Corning Glass Works," 39 *J.L. & Econ.* 285 (1996) (evidence convincingly rejects anticompetitive theories and suggests instead that RPM increased sales of Corning's products); Pauline M. Ippolito, "Resale Price Maintenance: Empirical Evidence from Litigation," 34 *J.L. & Econ.* 263 (1991) (empirical evidence cannot support a collusive explanation for the use of RPM).

² I also emphasize that in none of the RPM actions brought by the Commission during my tenure could one have plausibly characterized the condemned conduct as having an anticompetitive effect (indeed, in several instances, procompetitive rationales for the restrictions were plainly evident). In only one instance, *Nintendo of America Inc.*, 114 *FTC* 702 (1991), could one have plausibly ascribed market power to the manufacturer that was party to the agreement. Without manufacturer market power, RPM agreements between a single manufacturer and its dealers cannot harm consumers. Of course, it cannot be overemphasized that market power is only a necessary, but not a sufficient, condition for vertical restraints to reduce consumer welfare; by itself, market power does not establish that the conduct is anticompetitive. Even when a manufacturer possesses substantial market power, all of the procompetitive rationales for vertical restraints remain potentially valid.

of *per se* illegal conduct to envelop activities that (at best) only weakly satisfy the legal criteria for finding the existence of an "agreement" and, more important, appear to be procompetitive in both purpose and effect. Under these evaluative criteria, the present matter is a poor candidate for an enforcement action.

The Supreme Court set forth the legal standard for finding an illegal RPM "agreement" in *Monsanto Co. v. Spray-Rite Service Corporation*.³

The correct standard is that there must be evidence that tends to exclude the possibility of independent action by the manufacturer and distributor. That is, there must be direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others had a conscious commitment to a common scheme designed to achieve an unlawful objective.

Monsanto, 465 U.S. at 768. The court stated further that the "concept of 'a meeting of the minds' or 'a common scheme' . . . includes more than a showing that the distributor conformed to the suggested price. It means as well that evidence must be presented both that the distributor communicated its acquiescence or agreement, and that this was sought by the manufacturer." *Id.* at 764 n. 9 (emphasis added).

While it is true that AmCy entered into contracts with its distributors providing for compensation for sales at or above the wholesale purchase price, it is clear that there was no "meeting of the minds" or "common scheme," and thus no illegal agreement, to maintain resale prices. At no time did AmCy tell its distributors that they must sell agricultural chemicals at specific prices or risk losing supplies; AmCy did not attempt to coerce or intimidate its distributors into selling at specific price levels; distributors did not communicate an agreement to sell at specific prices; no distributors were ever terminated for selling at prices below the wholesale price; and distributors remained free (as explicitly provided by contract) to resell products at any price of their choosing. That distributors sometimes sold at prices below the wholesale level without loss of supply or termination is testament to the unilateral nature of the distributors' pricing decisions and to the absence of any agreement to

³ 465 U.S. 752 (1984).

maintain resale prices.⁴ In this instance, all of the hallmarks of a *per se* illegal RPM agreement are lacking.

Evidence that dealers did in fact resell AmCy products at or above the wholesale purchase price does not relieve the Commission of its obligation to demonstrate the existence of an illegal agreement. As made clear by *Colgate*,⁵ a unilateral, self-motivated decision by a distributor to accept a manufacturer's pricing policies, and thus sell products at a suggested retail price, does not constitute an illegal RPM agreement. In *Monsanto*, the Supreme Court stated: "Under *Colgate*, the manufacturer can announce its resale prices in advance and refuse to deal with those who fail to comply. And a distributor is free to acquiesce in the manufacturer's demand in order to avoid termination." 465 U.S. at 761. As *Monsanto* and *Colgate* make clear, something more than mere acquiescence by a distributor in a manufacturer's pricing policies is necessary to convert a unilateral decision by a distributor into an agreement to maintain resale prices.

I am therefore puzzled why the majority is so quick to infer the existence of a *per se* illegal RPM agreement from evidence that many distributors found it in their self-interest unilaterally to sell at or above the wholesale price and thereby receive rebates from AmCy. To infer the existence of a *per se* illegal RPM agreement in this context, when AmCy never announced minimum resale prices nor sought a commitment from distributors to sell at or above certain price levels, violates the fundamental principle of RPM law announced in *Colgate*. How can the majority find a *per se* illegal agreement here -- under arguably weaker factual circumstances than existed in *Colgate* -- and believe that it still seeks to enforce the rule announced in *Colgate*, and reiterated in *Monsanto*, that mere acquiescence by a distributor in the pricing policies of a manufacturer

⁴ Evidence suggests that distributors in fact sold specific products covered by the AmCy program at retail prices both above and below the wholesale transfer price. Wide variation in distributor resale prices runs contrary to usual evidence of a minimum resale price fixing agreement. As Chairman Pitofsky has stated: "The one point that emerges clearly in any debate concerning the *per se* rule is that minimum vertical price agreements lead to higher, and usually uniform, resale prices." Robert Pitofsky, "In Defense of Discounters: The No-Frills Case for a *Per Se* Rule Against Vertical Price Fixing," 71 Geo. L.J. 1487, 1488 (1983). The Commission's complaint does not allege, nor does it provide supporting evidence, that the rebate program resulted in higher retail prices for AmCy's products. Moreover, the wide dispersion in resale prices demonstrates the absence of the type of uniformity believed to be an indicator of a minimum resale price agreement. This dispersion in retail prices suggests that distributors were engaging in loss-leader programs out of a desire to increase future sales of AmCy products. In addition to encouraging distributors to provide valuable pre-sale services, AmCy's rebate program may have encouraged distributors to engage in loss-leader programs as a means of persuading customers to switch to AmCy products.

⁵ *United States v. Colgate & Co.*, 250 U.S. 300 (1919).

is insufficient as a matter of law to warrant inference of the existence of a *per se* illegal RPM agreement?⁶

The majority's finding that AmCy entered into illegal RPM agreements with its distributors is nothing less than a retreat from the principles of vertical restraints analysis laid down by the Supreme Court in *Colgate*, *Monsanto*, *Sylvania*,⁷ and *Sharp*.⁸ In cases involving allegations of concerted price fixing, "the antitrust plaintiff must present evidence sufficient to carry its burden of proving that there was such an agreement. If an interference of such an agreement may be drawn from highly ambiguous evidence, there is a considerable danger that the doctrines enunciated in *Sylvania* and *Colgate* will be seriously eroded." *Monsanto*, 465 U.S. at 763. I concluded that the standard set forth by Supreme Court for the finding of a price-fixing agreement has not been met. That the majority is willing to infer the existence of an agreement in this instance on the basis of such ambiguous evidence, and to rely primarily on pre-*Sharp* case law and post-*Sharp* dicta and one case not on point⁹ to justify its conclusion, represents an effort to

⁶ Although the majority's reply emphasizes "written agreements" pursuant to which dealers were offered compensation for sales at prices above the wholesale transfer price (Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A. Varney in the Matter of American Cyanamid, at 2), the complaint in this case indicates that the Commission is willing -- despite the clear warnings of *Colgate* and *Monsanto* to the contrary -- to infer the existence of *per se* illegal RPM "agreements" solely from the dealers' unilateral response to AmCy's "offer." Complaint, at ¶ 6 ("The dealers overwhelmingly accepted AmCy's offer by selling at or above the specified minimum prices.").

⁷ *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977).

⁸ *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717 (1988).

⁹ The majority relies heavily on Judge Posner's opinion in *Khan v. State Oil Co.*, 93 F.3d 1358 (7th Cir. 1996), *cert. granted*, 117 S. Ct. 941 (1997). Besides the obvious difference that *Khan* deals with maximum rather than minimum RPM, the facts of *Khan* are fundamentally different. The contract between State Oil (the supplier) and *Khan* (the dealer) provided that State Oil would announce a suggested retail price for gasoline and sell it to *Khan* for 3.25 cents per gallon less. The contract further required *Khan* to rebate to State Oil any profit received for sales above the suggested retail price. As Judge Posner noted, the contract eliminated any incentive for *Khan* to charge above the suggested retail price. Since absolute compliance was thus guaranteed under the facts of *Khan*, it is not surprising that a dealer challenged the program. AmCy, on the other hand, never announced suggested retail prices to its dealers, never established an explicit mark-up, and never required dealers to seek permission before lowering their price. The fact that AmCy's dealers frequently lowered retail prices below the wholesale purchase price indicates that AmCy did not implement its rebate program in order to eliminate dealers' incentives to reduce prices (e.g., to develop new customers, to increase business with existing customers, or to encourage switching by customers from other manufacturers' agricultural products to AmCy's products). The majority's reliance on *Khan* is therefore of doubtful relevance to this case, particularly in light of the Supreme Court's recent decision to review *Khan* and the Commission's decision to join with the Antitrust Division of the Justice Department in the filing of an amicus brief in that Court that seeks to overrule the precedent on which *Khan* relies, *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), and bring an end to the *per se* rule against maximum RPM. See Brief for the United States and the Federal Trade Commission as Amici Curiae Supporting Reversal, *State Oil v. Khan*, No. 96-871 (April 1997).

circumvent the law of RPM (and of vertical restraints in general) laid down by the Supreme Court over the last twenty years.¹⁰

The majority's decision to issue a consent order here also cannot be supported on economic grounds. The *per se* treatment of RPM usually is justified by the assertion that such agreements almost invariably are used to support collusion, either among manufacturers or among distributors.¹¹ RPM could support manufacturer collusion for two reasons.¹² First, RPM may make it easier to detect cheating on a cartel agreement, because resale prices (presumably) are easier to observe than wholesale prices, and successful monitoring of prices is necessary for any successful collusive price agreement to work.¹³ Second, RPM may reduce the incentive to cheat on a cartel because a manufacturer cutting its wholesale price will not increase sales by very much if the corresponding resale price cannot fall.¹⁴ If RPM is being used to facilitate manufacturer collusion, we would expect to see other manufacturers adopting similar price restrictions; collectively, these manufacturers would have to account for sufficient total output to give them power over price.¹⁵

As far as I can tell, the "manufacturer cartel" theory is not relevant to the present case. The Commission's complaint does not allege, let alone provide supporting evidence, that AmCy attempted to collude with other agricultural chemical makers, such as DuPont, Monsanto, Ciba-Geigy, or BASF. There is also no evidence that these other firms used RPM, as is required for the theory to work. But even

¹⁰ Today's action by the Commission has by no means established a clearer and more certain legal rule for RPM cases than exists under the rule of *Colgate* and other Supreme Court decisions. Whereas a supplier before today's order might know with certainty that mere voluntary adherence by a distributor to a unilaterally announced resale price policy does not constitute illegal RPM, this same supplier must now worry that the Commission may henceforth use such voluntary adherence as evidence of a *per se* illegal agreement to maintain resale prices. Moreover, as a result of today's decision, the business community may be left wondering how the Commission can -- and whether it will -- maintain the functional distinction it currently draws between, on the one hand, rebate-pass-through provisions and cooperative advertising programs -- programs that the Commission generally does not consider to be *per se* illegal -- and, on the other hand, other types of rebate programs that similarly impose restrictive conditions on the buyer.

¹¹ Of course, much of the empirical literature on the actual uses of RPM (*see* note 1, *supra*) casts serious doubt upon the validity of this proposition.

¹² *See* Lester G. Telser, "Why Should Manufacturers Want Fair Trade?," 3 J.L. & Econ. 86 (1960).

¹³ *See* George J. Stigler, "A Theory of Oligopoly," in *The Organization of Industry* 39, 43 (1968) ("In general the policing of a price agreement involves an audit of the transactions prices.").

¹⁴ This argument is subject to the obvious limitation that a manufacturer wishing to cheat on the collusive arrangement would have little incentive to enforce the RPM agreement.

¹⁵ Of course, all of the standard factors used to analyze market power and the ability to implement and maintain collusive pricing (*e.g.*, ease of entry, heterogeneity of the products, and so forth) would also be relevant to judging the likelihood of successful supplier collusion.

putting aside the absence of such evidence, it is difficult to imagine an arrangement less suited to cartel stability than that which existed between AmCy and its distributors. Specifically, under the terms of AmCy's C.R.O.P.[™] and A.P.E.X.[™] programs, a dealer's compensation was tied explicitly to the share of chemical sales accounted for by AmCy's products. Given that a crucial element of cartel enforcement is the discovery of some means by which each member can commit credibly to maintaining -- but not increasing -- its market share,¹⁶ how could a program that explicitly rewards market share expansion plausibly be characterized as a cartel enforcement tool?

Furthermore, the available evidence suggests that the C.R.O.P.[™] and A.P.E.X.[™] programs were extraordinarily successful in expanding AmCy's sales and market share, which grew substantially while the program was in use. Certainly, other factors (*e.g.*, the successful introduction of several new product lines) may have accounted for a portion of this increase,¹⁷ nevertheless, it is difficult (if not impossible) to reconcile the behavior of AmCy's output -- or of total market output -- during this period with any coherent theory of competitive harm involving collusion with other chemical makers.

In the alternative, *per se* treatment sometimes is predicated on the characterization of RPM as an aid to dealer collusion. Under such a scenario, a group of dealers pressures the supplier to adopt RPM to achieve and maintain a collusive resale price arrangement among the dealers. When RPM is used for this purpose, we would expect to see coordinated pressure on the manufacturer to adopt RPM from a group of dealers with sufficient market power to credibly threaten the manufacturer. Moreover, to be effective, the dealer cartel must enter into similar arrangements with enough manufacturers to be able to affect market price; otherwise, the collusive retail price of price-maintained products would be undermined by competition from products not subject to RPM agreements. Under such conditions, we would expect the manufacturer to be a reluctant participant in the scheme, though it would enforce the RPM agreement if the dealer threats were credible. Finally, it is unlikely that the colluding dealers would carry competing products not subject to RPM agreements, as

¹⁶ As Stigler (*supra* note 13, at 42) noted, "[f]ixing market shares is probably the most efficient of all methods of combating secret price reductions."

¹⁷ The likelihood of successfully maintaining collusion in the face of product innovation (as was occurring in this instance) is, of course, quite small. Collusion is more likely to be successful, the greater the degree of similarity (*e.g.*, in terms of cost, demand, and product characteristics) among the parties to the agreement.

that would be equivalent to cheating on the collusively-determined resale margin.

This second anticompetitive theory fits the facts of this case no better than the first. The Commission's complaint does not allege that AmCy is the victim of a dealer cartel. As I already have noted, it does not appear that other manufacturers had similar arrangements with the members of any putative "dealer cartel," or that this "cartel" eschewed the products of rival manufacturers.¹⁸ Had AmCy been the victim of a cartel, its attitude toward the Commission and numerous state investigations should have been one of grateful acquiescence, because the enforcement agencies would be rescuing it from the clutches of its rapacious dealers. In fact, of course, AmCy unilaterally terminated the challenged provisions of the C.R.O.P.[™] and A.P.E.X.[™] programs several years ago. So much for "dealer coercion."¹⁹

Given that neither of the two traditional anticompetitive theories can be reconciled with the terms of the AmCy program, could the Commission's action be justified on some other basis? The Commission might attempt to seek refuge in some unilateral theory of market power, under which a manufacturer with substantial pre-existing market power is hypothesized to use vertical restraints because, for some reason, it cannot extract the full value of its market power simply by raising its wholesale price. The economics literature certainly acknowledges such possibilities, but these theories provide a fragile basis for antitrust enforcement.²⁰ As such models show, vertical restraints often can improve consumer welfare even when adapted by firms with substantial market power,²¹ the models fail, however, to provide empirical criteria by which enforcers can

¹⁸ This is unsurprising, because over 2500 dealers participated in the C.R.O.P.[™] and A.P.E.X.[™] programs. It is fanciful to believe that a cartel could have been formed from among such a large number of dealers. If such a cartel exists, one might reasonably ask why the dealers that belong to it are not also named in the Commission's complaint.

¹⁹ In its reply, the majority appears to suggest that the existence of a dealer cartel can be inferred from the allegation that "a dealer's advisory council voted to advise American Cyanamid to retain the program in order to protect its margins." Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A. Varney in the Matter of American Cyanamid, at note 5. Even if an advisory council furnished this advice to AmCy, communications of this nature between dealers and manufacturers do not establish that the dealers acted collusively. Moreover, the fact that dealers may have communicated this advice says nothing about the competitive effects of AmCy's rebate program. One would expect dealers to provide this same "advice" if AmCy's program were designed to prevent discounters from free-riding on the pre-sale services provided by other dealers.

²⁰ See, e.g., Remarks of Commissioner Roscoe B. Starek, III, "Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond," before a conference on "A New Age of Antitrust Enforcement: Antitrust in 1995" (Marina del Rey, California, Feb. 24, 1995).

²¹ As I noted earlier (*supra* note 2), market power is a necessary, but not a sufficient, condition for vertical restraints to reduce consumer welfare.

distinguish anticompetitive from procompetitive effects.²² Thus, the practical utility of these theories is questionable even for conduct judged under the rule of reason; their inability to justify a policy of *per se* illegality appears self-evident.

On several grounds, therefore, issuance of the complaint and consent order in this matter represents a poor policy choice by the Commission. From a legal perspective, AmCy's conduct does not constitute an illegal agreement to maintain resale prices; from an economic perspective, the evidence points to the conclusion that AmCy's conduct was procompetitive; and from a policy perspective, the Commission's decision hardly delineates a clearer distinction (and in fact seriously blurs the line) between conduct likely to be subject to *per se* condemnation and conduct that is not. Instead of reaching for ways to expand the application of the *per se* rule to conduct that is plainly procompetitive, enforcers should reserve their heavy hand for conduct that falls within standards for *per se* illegality clearly enunciated by the Supreme Court.

²² As Katz (*supra* note 1, at 713-14) notes, "[much of the literature on vertical restraints has been conducted with the express aim of deriving policy conclusions. But in many, if not most, instances there is no widespread agreement on whether a particular vertical practice is socially beneficial or harmful. This unhappy state of affairs is due, in part, to the fact that all of the practices can be beneficial in some instances and harmful in others, and it may be extremely difficult to distinguish between the two cases."

1279

Complaint

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3740. Complaint, May 16, 1997--Decision, May 16, 1997

This consent order requires, among other things, American Home Products Corporation ("AHP"), a New Jersey-based manufacturer of animal vaccines, to divest Solvay's U.S. and Canada rights to three types of vaccines to the Schering-Plough Corporation; to assist Schering-Plough in obtaining U.S. Department of Agriculture ("USDA") certifications; and to manufacture and supply the three vaccines to Schering-Plough for 24 to 36 months or until Schering-Plough obtains USDA approvals. The consent order also prohibits AHP from suing Schering-Plough for patent infringements relating to the vaccines.

Appearances

For the Commission: *Casey Triggs, Ann Malester and William Baer.*

For the respondent: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, American Home Products Corporation ("AHP"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the animal health business of Solvay S.A. ("Solvay"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. *"Canine Lyme Vaccines"* means all vaccines used to create and maintain antitoxin levels in dogs to prevent lyme disease.

2. *"Canine Corona Virus Vaccines"* means all combination vaccines used to create and maintain antitoxin levels in dogs to

prevent corona virus, including the single antigens contained therein, individually, or in any combination.

3. "*Feline Leukemia Vaccines*" means all combination vaccines used to create and maintain antitoxin levels in cats to prevent feline leukemia, including the single antigens contained therein, individually, or in any combination.

4. "*Respondent*" means AHP.

II. RESPONDENT

5. Respondent AHP is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at Five Giralda Farms, Madison, New Jersey.

6. Respondent is engaged in, among other things, the research, development, manufacture and sale of Canine Lyme Vaccines, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines.

7. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

8. Solvay is a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its principal place of business located at Rue du Prince Albert, 33, 1050 Brussels, Belgium.

9. Solvay is engaged in, among other things, the research, development, manufacture and sale of Canine Lyme Vaccines, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines.

10. Solvay is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

11. On October 31, 1996, AHP entered into a Purchase Agreement with Solvay to purchase Solvay's entire animal health business for approximately \$463 million ("Acquisition").

V. THE RELEVANT MARKETS

12. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

A. The research, development, manufacture and sale of Canine Lyme Vaccines;

B. The research, development, manufacture and sale of Canine Corona Virus Vaccines; and

C. The research, development, manufacture and sale of Feline Leukemia Vaccines.

13. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

14. The market for the research, development, manufacture and sale of Canine Lyme Vaccines is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The post merger HHI is 8,042 points, which is an increase of 1,976 points over the premerger HHI level. AHP and Solvay are two of only three suppliers of Canine Lyme Vaccines in the United States.

15. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Canine Lyme Vaccines in the United States.

16. The market for the research, development, manufacture and sale of Canine Corona Virus Vaccines is highly concentrated as measured by the HHI. The post merger HHI is 5,496 points, which is an increase of 809 points over the premerger HHI level. AHP and Solvay are two of only a small number of suppliers of Canine Corona Virus Vaccines in the United States. With the exception of Solvay, other suppliers of Canine Corona Virus Vaccines license from AHP the right to manufacture and sell their vaccines.

17. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Canine Corona Virus Vaccines in the United States.

18. The market for the research, development, manufacture and sale of Feline Leukemia Vaccines is highly concentrated as measured by the HHI. The post merger HHI is 6,980 points, which is an increase of 3,353 over the premerger HHI level. AHP and Solvay are two of only three suppliers of Feline Leukemia Vaccines in the United States.

19. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Feline Leukemia Vaccines in the United States.

VII. BARRIERS TO ENTRY

20. Entry into the research, development, manufacture and sale of Canine Lyme Vaccines and Canine Corona Virus Vaccines is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing the manufacture of such products compounds the difficulty of new entry.

21. Entry into the research, development, manufacture and sale of Feline Leukemia Vaccines is difficult and time consuming, requiring the expenditure of significant resources over many years with no assurance that a viable commercial product will result.

22. The need to obtain approvals by the United States Department of Agriculture to manufacture and sell animal vaccines in the United States further lengthens the time required to enter the relevant markets.

VIII. EFFECTS OF THE ACQUISITION

23. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

A. By eliminating actual, direct, and substantial competition between AHP and Solvay in the relevant markets;

B. By increasing the likelihood that AHP will unilaterally exercise market power in the relevant markets; and

C. By increasing the likelihood of collusion or coordinated action among the remaining firms in the relevant markets.

IX. VIOLATIONS CHARGED

24. The Acquisition agreement described in paragraph eleven constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

25. The Acquisition described in paragraph eleven, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of Solvay S.A., ("Solvay") and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent American Home Products Corporation ("AHP") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at Five Giralda Farms, Madison, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*AHP*" or "*respondent*" means American Home Products Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by AHP, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*Solvay*" means Solvay S.A., a corporation organized, existing and doing business under the laws of Belgium with its principal place of business located at Rue du Prince Albert, 33, 1050 Brussels, Belgium.

C. "*Acquisition*" means the acquisition by AHP of the animal health business of Solvay pursuant to a letter of intent dated September 12, 1996.

D. "*Interim Trustee*" means the trustee set forth in paragraph III of this order.

E. "*Divestiture Trustee*" means the trustee set forth in paragraph IV of this order.

F. "*Acquirer*" means Schering-Plough, Ltd., ("Schering-Plough") or the entity to whom AHP shall divest the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and Feline Leukemia Vaccine Assets pursuant to paragraph II of this order.

G. "*New Acquirer*" means the entity to whom the Divestiture Trustee shall divest the Solvay Companion Animal Vaccine Assets pursuant to paragraph IV of this order.

H. "*Commission*" means the Federal Trade Commission.

I. "*Canine Lyme Vaccine*" means all Solvay vaccines used to create and maintain antitoxin levels in dogs to prevent lyme disease.

J. "*Canine Lyme Vaccine Assets*" means Solvay's assets and rights, as of the date AHP signs this agreement containing consent order, relating to the research, development, manufacture and sale of Canine Lyme Vaccine that are not part of Solvay's physical facilities; provided, however, that for the single antigen lyme, "Canine Lyme Vaccine Assets" does not include, and AHP may retain, a non-exclusive right for AHP to research, develop, manufacture and sell products for use in species other than canines. "Canine Lyme Vaccine Assets" does not include, and AHP may retain, co-exclusive rights to all regulatory approvals relating to sales outside the United States and Canada and a non-exclusive right for AHP to research, develop, and manufacture Canine Lyme Vaccine for sale outside the United States and Canada.

K. "*Canine Corona Virus Vaccines*" means all Solvay combination vaccines used to create and maintain antitoxin levels in dogs to prevent corona virus, including the single antigens contained therein, individually, or in any combination.

L. "*Canine Corona Virus Vaccine Assets*" means Solvay's assets and rights, as of the date AHP signs this agreement containing consent order, relating to the research, development, manufacture and sale of Canine Corona Virus Vaccines that are not part of Solvay's physical facilities. "Canine Corona Virus Vaccine Assets" includes, but is not limited to, any single antigen included in any Solvay canine corona virus combination vaccine and those Solvay projects relating to improving any of the antigens currently in any canine corona virus combination vaccine or the research and development of any antigens for possible inclusion in any canine corona virus combination vaccine in the future; provided, however, that for the single antigen corona, "Canine Corona Virus Vaccine Assets" does not include, and AHP may retain, a non-exclusive right for AHP to research, develop, manufacture and sell products for use in species other than canines. "Canine Corona Virus Vaccine Assets" does not include, and AHP may retain, co-exclusive rights to all regulatory approvals relating to sales outside the United States and Canada and a non-exclusive right for AHP to research, develop, and manufacture Canine Corona Virus Vaccines for sale outside the United States and Canada.

M. "*Feline Leukemia Vaccines*" means all Solvay combination vaccines used to create and maintain antitoxin levels in cats to

prevent feline leukemia, including the single antigens contained therein, individually, or in any combination.

N. "*Feline Leukemia Vaccine Assets*" means Solvay's assets and rights, as of the date AHP signs this agreement containing consent order, relating to the research, development, manufacture and sale of Feline Leukemia Vaccines that are not part of Solvay's physical facilities. "Feline Leukemia Vaccine Assets" includes, but is not limited to, any single antigen in any Solvay feline leukemia combination vaccine and Solvay projects relating to improving any of the antigens currently in any feline leukemia combination vaccine or the research and development of any antigens for possible inclusion in any feline leukemia combination vaccine in the future. "Feline Leukemia Vaccine Assets" does not include, and AHP may retain, co-exclusive rights to all regulatory approvals relating to sales outside the United States and Canada and a non-exclusive right for AHP to research, develop, manufacture, and sell Solvay's feline leukemia combination vaccines with rabies for a period of four years from the date this order becomes final. "Feline Leukemia Vaccine Assets" does not include, and AHP may retain, co-exclusive rights to all regulatory approvals relating to sales outside the United States and Canada and a non-exclusive right to research, develop, manufacture and sell the rabies single antigen. AHP shall have the exclusive rights to any combination of the rabies antigen with other AHP antigens. "Feline Leukemia Vaccine Assets" does not include, and AHP may retain, co-exclusive rights to all regulatory approvals relating to sales outside the United States and Canada and a non-exclusive right for AHP to research, develop, manufacture and sell Feline Leukemia Vaccines outside the United States and Canada. "Feline Leukemia Vaccine Assets" does not include, and AHP may retain, an exclusive right for AHP to research, develop, manufacture and sell products incorporating the feline immunodeficiency virus and feline infectious peritonitis antigens.

O. "*Equine Vaccines*" means all Solvay equine vaccines in combination or single antigen.

P. "*Equine Vaccine Assets*" means Solvay's assets and rights as of the date AHP signs this agreement containing consent order, relating to the research, development, manufacture and sale of Equine Vaccines manufactured at the Charles City Facility that are not part of Solvay's physical facilities. "Equine Vaccine Assets" includes, but is not limited to, any single antigens included in any Solvay equine combination vaccine and those Solvay projects relating to improving

any of the antigens currently in any equine combination vaccine or the research and development of any antigens for possible inclusion in any equine combination vaccine.

Q. "*Solvay Companion Animal Vaccine Assets*" means Solvay's assets and rights, including, but not limited to, all inventory designated for sale in the United States and Canada and 50% of the inventory designated for sale outside the United States and Canada, as of the date the Divestiture Trustee divests to the New Acquirer, relating to the research, development, manufacture and sale of Canine Lyme Vaccine Assets, Canine Corona Virus Vaccines Assets, Feline Leukemia Vaccines Assets and Equine Vaccines Assets, including the single antigens contained therein, individually, or in any combination. "Solvay Companion Animal Vaccine Assets" includes, but is not limited to, the Charles City Facility and at AHP's discretion a supply contract, for a term not to exceed (3) three years, from the date of the divestiture between AHP and the New Acquirer, to supply AHP (i) any swine or poultry vaccines for sale worldwide, (ii) any Canine Lyme Vaccine, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines for sale by AHP outside the United States and Canada and (iii) single antigen rabies vaccine and feline leukemia combination vaccine containing rabies for sale worldwide being produced at the Charles City Facility at the time of divestiture to the New Acquirer and priced at each vaccine's Average Total Cost.

R. "*Divestiture Agreement*" means the agreement for the sale of Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and Feline Leukemia Vaccine Assets between AHP and an Acquirer or New Acquirer.

S. "*Charles City Facility*" means the facility located in Charles City, Iowa, in which Solvay manufactures companion animal biologicals.

T. "*Contract Manufacture Agreement*" means an agreement to manufacture Canine Lyme Vaccine, Canine Corona Virus Vaccines, Feline Leukemia Vaccines or rabies vaccine by AHP for sale to the Acquirer or New Acquirer.

U. "*Contract Manufacture*" means the manufacture of Canine Lyme Vaccine, Canine Corona Virus Vaccines, Feline Leukemia Vaccines or rabies vaccine by AHP for sale to the Acquirer or New Acquirer.

V. "*Cost*" means Solvay's average direct per unit cost for each of the single antigens and the combination vaccines referred to in Definitions "J," "L" and "N".

W. "USDA" means the United States Department of Agriculture.

X. "Average Total Cost" means average direct per unit cost including all allocated overhead for each of the swine and poultry vaccines, Canine Lyme Vaccine, Canine Corona Virus Vaccines, Feline Leukemia Vaccines, single antigen rabies vaccine and feline leukemia combination vaccine with rabies referred to in Definition "Q".

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, the Solvay Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and the Feline Leukemia Vaccine Assets to (1) Schering-Plough, in accordance with the agreement dated January 30, 1997, no later than ten (10) days after the date on which this order becomes final; or, (2) at no minimum price, within ninety (90) days of the date on which this order becomes final, to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and Feline Leukemia Vaccine Assets is to ensure the continued use of the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and Feline Leukemia Vaccine Assets in the same business in which the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets and Feline Leukemia Vaccine Assets are engaged at the time of the proposed Acquisition and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint.

B. Respondent shall enter into a Divestiture Agreement with Schering-Plough or an Acquirer that shall include the following and AHP shall commit to satisfy the following:

1. AHP shall Contract Manufacture and deliver to the Acquirer (or the New Acquirer, as applicable) in a timely manner and under reasonable terms and conditions, a supply of Solvay's Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines specified in the Divestiture Agreement at Cost for a period not to exceed twenty-four (24) months from the date the Divestiture Agreement (or the New Acquirer's Divestiture Agreement) is approved, or three (3) months after the date the Acquirer or the New

Acquirer obtains all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines in the United States, whichever is earlier; provided, however, that the twenty-four (24) month period may be extended by the Commission for one additional period of up to twelve (12) months if the Interim Trustee submits to the Commission the certification provided for in subparagraph II.B.8 of this order.

2. After AHP commences delivery of the Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines to the Acquirer or the New Acquirer pursuant to subparagraph II.B of this order, all United States and Canadian inventory of the Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines acquired by AHP through the Acquisition may be sold by AHP only to the Acquirer (or the New Acquirer, as applicable).

3. AHP shall make representations and warranties to the Acquirer or the New Acquirer that the Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines supplied pursuant to the Contract Manufacturing Agreement by AHP to the Acquirer or the New Acquirer meet the USDA approved specifications. AHP shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines supplied to the Acquirer or New Acquirer pursuant to the Contract Manufacturing Agreement by AHP to meet USDA specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving AHP prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting AHP to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require AHP to be liable for any negligent act or omission of the Acquirer or the New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by AHP to the Acquirer or the New Acquirer.

4. During the term of the Contract Manufacturing Agreement between AHP and the Acquirer or the New Acquirer, upon reasonable request by the Acquirer, New Acquirer or the Interim Trustee, AHP shall make available to the Interim Trustee all records kept in the normal course of business that relate to the Cost of manufacturing

Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines.

5. Upon reasonable notice and request from the Acquirer or the New Acquirer to AHP, AHP shall provide: (a) such assistance and advice as is reasonably necessary to enable the Acquirer or the New Acquirer to obtain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States; (b) such assistance to the Acquirer or New Acquirer as is reasonably necessary to enable the Acquirer or New Acquirer to manufacture Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in substantially the same manner and quality employed or achieved by Solvay at the time the agreement containing consent order is signed; and (c) consultation with knowledgeable employees of AHP and training at either the Charles City Facility or the Acquirer's or New Acquirer's facility, at the Acquirer's or New Acquirer's option for a period of time until the Acquirer or New Acquirer receives certification from the USDA or abandons its efforts for certification from the USDA, sufficient to satisfy reasonably the management of the Acquirer or New Acquirer that its personnel are adequately trained in the manufacture and sale of Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States. Such assistance shall include an on-site inspection of the Charles City Facility, at the Acquirer's or New Acquirer's request, that is the specified source of supply of the Contract Manufacturing. AHP may require reimbursement from the Acquirer or New Acquirer for all its direct out-of-pocket expenses incurred in providing the services required by this subparagraph II.B.5.

6. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission, at the same time that the respondent submits its application for approval of divestiture, a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including an actual plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Interim Trustee, periodic verified written reports setting forth in detail the efforts of the Acquirer or the New Acquirer to sell in the United States, Canine Lyme Vaccine,

Canine Corona Virus Vaccines, and Feline Leukemia Vaccines obtained pursuant to the Contract Manufacturing Agreement and to obtain all USDA approvals necessary to manufacture and sell its own Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States. The Divestiture Agreement shall require the first such report to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary USDA approvals are obtained by the Acquirer or the New Acquirer to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the Interim Trustee within ten (10) days of its ceasing the sale in the United States of Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines obtained pursuant to the Contract Manufacture Agreement for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary USDA approvals to manufacture and sell its own Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines in the United States.

8. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines (except for feline leukemia combinations including the rabies antigen) in the United States prior to obtaining all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines in the United States; (b) abandons its efforts to obtain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines (except for feline leukemia combinations including the rabies antigen) in the United States; or (c) fails to obtain all necessary USDA approvals of its own to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines or Feline Leukemia Vaccines (except for feline leukemia combinations including the rabies antigen) in the United States within twenty-four (24) months from the date the Commission approves the Divestiture Agreement between AHP and the Acquirer or the New Acquirer; provided, however, that the twenty-four (24) month period may be extended by the Commission for one additional period of up to twelve (12)

months if the Interim Trustee certifies to the Commission that the Acquirer or the New Acquirer made good faith efforts to obtain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States and that such USDA approvals appear likely to be obtained within such extended time period.

9. The Divestiture Agreement shall provide that if it is terminated, the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets, and the Feline Leukemia Vaccine Assets shall revert back to AHP and the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets, and the Feline Leukemia Vaccine Assets shall be divested by the Divestiture Trustee to a New Acquirer pursuant to the provisions of paragraph IV of this order.

C. While the obligations imposed by paragraphs II, III or IV of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines, Feline Leukemia Vaccines, including the single antigen rabies, and Equine Vaccines in the United States; (2) to maintain the viability and marketability of the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets, Feline Leukemia Vaccine Assets, including single antigen rabies, and Equine Vaccine Assets, as well as all tangible assets, including the Charles City Facility, used to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets, Feline Leukemia Vaccine Assets and Equine Vaccine Assets, including the Charles City Facility, used to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines, Feline Leukemia Vaccines or Equine Vaccines except for ordinary wear and tear. Nothing herein shall prohibit AHP from transferring products, including the single antigen rabies, other than the Canine Lyme Vaccine Assets, Canine Corona Virus Vaccine Assets, Feline Leukemia Vaccine Assets, or Equine Vaccine Assets from the Charles City Facility to any other AHP facility.

D. Respondent agrees not to sue the Acquirer or the New Acquirer for patent infringement with regard to the Acquirer's or the New Acquirer's manufacture or sale of Canine Corona Virus Vaccines or Feline Leukemia Vaccines. Respondent agrees not to

acquire the right to sue the Acquirer or the New Acquirer for patent infringement with regard to the Acquirer's or the New Acquirer's manufacture or sale of the Canine Lyme Vaccine.

III.

It is further ordered, That:

A. At any time after the order becomes final, the Commission may appoint an Interim Trustee to monitor that AHP and the Acquirer or New Acquirer, expeditiously perform their respective responsibilities as required by this order and the Divestiture Agreement approved by the Commission. AHP shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this paragraph:

1. The Commission shall select the Interim Trustee, subject to the consent of AHP, which consent shall not be unreasonably withheld. If AHP has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to AHP of the identity of any proposed trustee, AHP shall be deemed to have consented to the selection of the proposed trustee.

2. The Interim Trustee shall have the power and authority to monitor AHP's compliance with the terms of this order and with the terms of the Divestiture Agreement with the Acquirer or New Acquirer.

3. Within ten (10) days after appointment of the Interim Trustee, AHP shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor AHP's compliance with the terms of this order and with the Divestiture Agreement with the Acquirer or New Acquirer, and to monitor the compliance of the Acquirer or New Acquirer under the Divestiture Agreement.

4. The Interim Trustee shall serve until such time as the Acquirer or New Acquirer has received all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines (except for feline leukemia combinations including rabies) in the United States.

5. The Interim Trustee shall have full and complete access to AHP's personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of Canine Lyme Vaccine, Canine Corona Virus Vaccines, or Feline Leukemia Vaccines, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacturing of Canine Lyme Vaccine, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines. AHP shall cooperate with any reasonable request of the Interim Trustee. AHP shall take no action to interfere with or impede the Interim Trustee's ability to monitor AHP's compliance with paragraphs II, III and IV of this order and the Divestiture Agreement between AHP and the Acquirer or New Acquirer.

6. The Interim Trustee shall serve, without bond or other security, at the cost and expense of AHP, on such reasonable and customary terms and conditions as the Commission may set. The Interim Trustee shall have authority to employ, at the cost and expense of AHP, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

7. AHP shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.

8. If the Interim Trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraph III.A.1 of this order.

9. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and the Divestiture Agreement with the Acquirer or New Acquirer.

10. The Interim Trustee shall evaluate reports submitted to it by the Acquirer or the New Acquirer with respect to the efforts of the Acquirer or the New Acquirer to obtain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines. The Interim Trustee shall report in writing to the Commission every two months concerning compliance by AHP and the Acquirer or New Acquirer, with the provisions of paragraphs II, III and IV of this order and the efforts of the Acquirer or New Acquirer to obtain all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines in the United States.

B. If the Commission terminates the Divestiture Agreement pursuant to subparagraph II.B.8 of this order, the Commission may direct the Interim Trustee to seek a New Acquirer, as provided for in subparagraph II.B.9 of this order.

IV.

It is further ordered, That:

A. If AHP fails to divest absolutely and in good faith, and with the Commission's prior approval: the Canine Lyme Vaccine Assets, the Canine Corona Virus Vaccine Assets, and the Feline Leukemia Vaccine Assets and comply with the requirements of paragraph II of this order, or if Schering-Plough or the Acquirer abandons its efforts or fails to obtain all necessary regulatory approvals in the manner set out in paragraph II.B.8(b) and (c), then any executed Divestiture Agreement between AHP and Schering-Plough or an Acquirer, as applicable, shall be terminated and the Commission may appoint a Divestiture Trustee to divest the Solvay Companion Animal Vaccine Assets and execute a new Divestiture Agreement that satisfies the requirements of paragraph II of this order. The Divestiture Trustee may be the same person as the Interim Trustee and will have the authority and responsibility to divest the Solvay Companion Animal Vaccine Assets absolutely and in good faith, and with the Commission's prior approval. The proceeds of any divestiture by the Divestiture Trustee shall be for the account of AHP.

B. If the Commission terminates a Divestiture Agreement and if a Divestiture Trustee is appointed or directed by the Commission or a court pursuant to subparagraph A of this paragraph to divest the

Solvay Companion Animal Vaccine Assets to a New Acquirer, AHP shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Divestiture Trustee shall have the same authority and responsibilities with respect to the New Acquirer as those described in paragraph III of this order, as well as the authority and responsibility necessary to effect the required divestiture pursuant to this paragraph.

2. Neither the decision of the Commission to direct the Divestiture Trustee, nor the decision of the Commission not to direct the Divestiture Trustee, to divest any of the assets under subparagraph A of this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

3. The Commission shall select the Divestiture Trustee, subject to the consent of AHP, which consent shall not be unreasonably withheld. If AHP has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to AHP of the identity of any proposed Divestiture Trustee, AHP shall be deemed to have consented to the selection of the proposed Divestiture Trustee. The Divestiture Trustee may be the same person as the Interim Trustee.

4. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Solvay Companion Animal Vaccine Assets to a New Acquirer pursuant to the terms of this order and to enter into a Divestiture Agreement with the New Acquirer pursuant to the terms of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.

5. Within ten (10) days after appointment of the Divestiture Trustee, AHP shall execute a (or amend the existing) trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Solvay Companion Animal Vaccine Assets to a

New Acquirer and to enter into a Divestiture Agreement with the New Acquirer.

6. The Divestiture Trustee shall have six (6) months from the date the Commission approves the trust agreement described in subparagraph IV.B.3 of this order to divest the Solvay Companion Animal Vaccine Assets and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of paragraph II of this order. If, however, at the end of the applicable six (6) month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

7. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of AHP related to the manufacture, distribution, or sale of the Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines or to any other relevant information, as the Divestiture Trustee may request. AHP shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. AHP shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.

8. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to AHP's absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that AHP enters into a Divestiture Agreement that complies with the provisions of paragraph IV.A; to assure that AHP complies with the remaining provisions of paragraphs IV of this order; and to assure that the New Acquirer obtains all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines in the United States. The divestiture shall be made to, and the Divestiture Agreement executed with, the New Acquirer in the manner set forth in paragraph II of this order; provided, however, if the Divestiture Trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to

the acquiring entity selected by AHP from among those approved by the Commission.

9. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of AHP, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of AHP, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of AHP. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating a New Acquirer and assuring compliance with this order.

10. AHP shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

11. If the Divestiture Trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV of this order.

12. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this order.

13. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Solvay Companion Animal Vaccine Assets.

14. The Divestiture Trustee shall report in writing to AHP and the Commission every two months concerning his or her efforts to divest the relevant assets, AHP's compliance with the terms of this order,

and the New Acquirer's efforts to obtain all necessary USDA approvals to manufacture and sell the Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines.

V.

It is further ordered, That:

A. Within sixty (60) days of the date this order becomes final and every ninety (90) days thereafter until AHP has fully complied with the provisions of paragraphs II, III and IV of this order, AHP shall submit to the Commission a verified written report setting forth in detail the manner and form of which it intends to comply, is complying, and has complied with these paragraphs of this order. AHP shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these paragraphs of this order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and entering into the Divestiture Agreement required by this order, including the identity of all parties contacted. AHP shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreement required by paragraph II.

B. One (1) year from the date this order becomes final and annually until AHP has complied with all terms of this order or until the Acquirer or New Acquirer has obtained all necessary USDA approvals to manufacture and sell Canine Lyme Vaccine, Canine Corona Virus Vaccines and Feline Leukemia Vaccines in the United States, and at such other times as the Commission may require, AHP shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

IN THE MATTER OF

SCHERING-PLOUGH HEALTHCARE PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3741. Complaint, May 16, 1997--Decision, May 16, 1997*

This consent order prohibits, among other things, the Tennessee-based manufacturer of health care products from making certain claims about the effectiveness or length of protection provided by any children's sun protection product unless they possess scientific evidence to substantiate the claims, and from misrepresenting the existence, contents, validity, results or conclusions of any test or study concerning sun protection products. The consent order requires the respondent to produce and distribute 150,000 consumer education brochures regarding sunscreen protection for children.

Appearances

For the Commission: *Mamie Kresses and Toby Levin.*

For the respondent: *Nancy Buc, Buc & Beardsley, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Schering-Plough Healthcare Products, Inc., a corporation, ("respondent"), has 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 Schering-Plough Healthcare Products, Inc. is a Delaware corporation, with its principal office or place of business at 3030 Jackson Avenue, Memphis, Tennessee.

PAR. 2. Respondent has manufactured, advertised, labeled, promoted, offered for sale, sold, and distributed over-the-counter health care products, including "Coppertone Kids" sunblock lotion, to consumers. Coppertone Kids is a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Coppertone Kids, including but not necessarily limited to the attached

Exhibits A through H. These advertisements and promotional materials contain the following statements and depictions:

A. (Depiction: child performing cannonball dive off of diving board) Coppertone Kids sunblock lasts through 32 back flips, 64 cannonballs and 52 belly flops. Introducing new Coppertone Kids 6-Hour Waterproof Sunblock. It goes on. And goes on protecting. In and out of the water, all day long. Because it's the sunblock that keeps kids protected from the sun, and waterproof for a full six hours. As proven by kids themselves in test after test. Coppertone Kids 6-Hour Waterproof Sunblock. It goes on. And stays on. Read and follow label directions (Exhibit A)(magazine ad)

B. (Depiction: child performing cannonball dive off of diving board) Coppertone KIDS sunblock lasts through 32 back flips, 64 cannonballs and 52 belly flops. Coppertone KIDS 6-Hour Waterproof Sunblock goes on and stays on. In and out of the water. All day long. Because it's the waterproof sunblock that keeps kids protected from the sun for a full six hours. As proven by kids themselves in test after test. Coppertone KIDS 6-Hour Waterproof Sunblock. It goes on and stays on. Read and follow label directions (Exhibit B)(magazine ad)

C. (Sound effects: kids playing in pool) ... Kids can last in the water for hours...But all sunblocks can't. That's why there's Coppertone Kids Waterproof Sunblock. It lasts 6 full hours, in and out of the water, so you don't have to reapply it as often. Which means your kids get great protection, and you get peace of mind...Coppertone Kids 6-Hour Waterproof Sunblock. It goes on and stays on. Use as directed. (Exhibit C) (radio ad)

D. (Sound effects: kids playing in pool; mother repeating herself) Billy, time for more sunblock. ...time for more sunblock. ...time for more sunblock... Coppertone Kids waterproof sunblock is made to last a full 6 hours, in and out of the water, so you won't have to reapply it as often. That means your kids get great protection, and you can stop repeating yourself... Coppertone Kids 6 hour waterproof sunblock. It goes on. And stays on. (Exhibit D) (radio ad)

E. (Depiction: Three mothers fishing at the ocean. One mother reels in her son from the water, applies sunscreen on the child, and then cuts the fishing line holding him) ...Mom's gotta keep a line on her kids... 'cause she's gotta keep re-applying that sunblock every time they come out of the water. But now there's new Coppertone Kids 6 Hour Waterproof Sunblock. (super: USE ONLY AS DIRECTED) It keeps a kid protected from the sun, and waterproof for a full six hours. So Mom puts it on...and cuts them loose... New Coppertone Kids 6 Hour Waterproof Sunblock. It goes on and stays on. (Super: It goes on. And stays on.) (Exhibit E) (tv ad)

F. Coppertone Kids sunblock is uniquely formulated to provide long-lasting waterproof protection. This waterproof formula lasts for a full 6 HOURS in and out of the water, and keeps kids protected from the sun's burning UVA and UVB rays. 6-HOUR WATERPROOF - Ideal for water active kids. LONG LASTING - Kid tested to go on and stay on... (Exhibits F & G) (label and promotion sample)

G. Dear Doctor: ...Coppertone, the most trusted name in suncare, now provides a complete line of sunblocks specially formulated for children...Coppertone KIDS offers 6-hour waterproof protection. ...

Coppertone KIDS

* Waterproof for a full 6 hours

* Long-lasting protection...

* Available in SPF 15 and 30

... All Coppertone Children's Sunblocks are clinically tested on children, so you can be confident your patients are getting safe, effective sun protection. (Exhibit H) (promotional letter to doctors)

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through H, respondent has represented, directly or by implication, that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.

PAR. 6. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through H, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A, B, F, G and H, respondent has represented, directly or by implication, that it has conducted tests demonstrating that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.

PAR. 9. In truth and in fact, respondent has not conducted tests demonstrating that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water. Among other reasons, none of the tests relied upon by respondent evaluated a single application of the product under the advertised conditions of use, *i.e.*, sustained

Complaint

123 F.T.C.

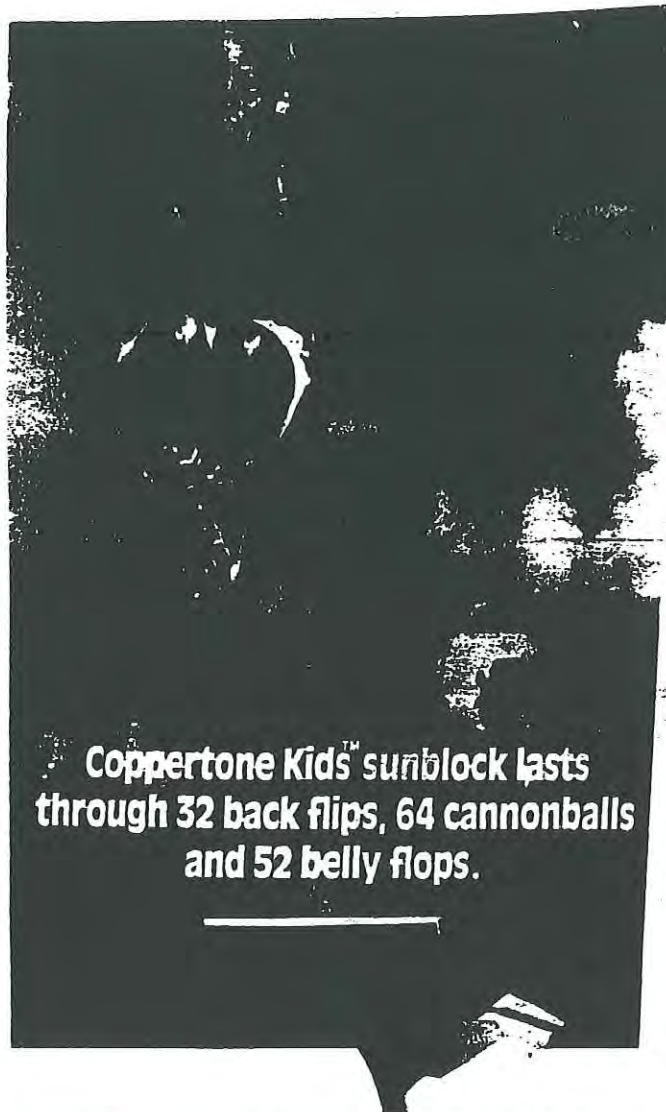
vigorous activity in and out of the water. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts and practices of respondent 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.

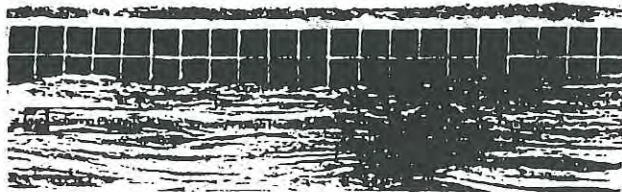
1301

Complaint

EXHIBIT A



**Coppertone Kids™ sunblock lasts
through 32 back flips, 64 cannonballs
and 52 belly flops.**



Introducing new Coppertone Kids
6-Hour Waterproof Sunblock. It
goes on. And goes on protecting.
In and out of the water, all day long.
Because it's the sunblock that
keeps kids protected from the sun,
and waterproof for a full six hours.
As proven by kids themselves in
test after test. Coppertone Kids
6-Hour Waterproof Sunblock.
It goes on. And stays on.



Read and follow label directions.

**NEW!
Coppertone
KIDS™**

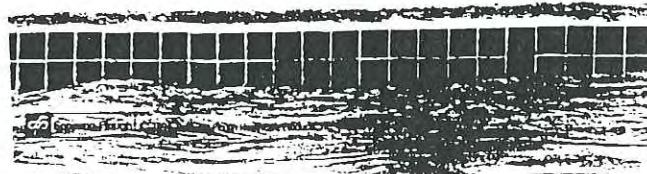
**The 6-Hour
Waterproof Sunblock.**

EXHIBIT A

Complaint

123 F.T.C.

EXHIBIT B



010075

Coppertone KIDS 6-Hour Waterproof Sunblock goes on and stays on. In and out of the water. All day long. Because it's the waterproof sunblock that keeps kids protected from the sun for a full six hours. As proven by kids themselves in test after test. Coppertone KIDS 6-Hour Waterproof Sunblock. It goes on and stays on.



Read and follow label directions

**Coppertone
KIDS[®]**

**It goes on.
And stays on.**

301

Complaint

EXHIBIT C



C10010

MESSNER VETERE BERGER McNAMEE SCHMETTERER/EURO RSCG

Tom Messner
Barry Vetere
Ron Berger
Louise McNamee
Bob Schmetterer
Ed Tedeschi
Larry Deschler
Jim Durfee
Richard Roth
Phil Silvestri
Paul Wolfe

AS RECORDED RADIO SCRIPT

COPPERTONE KIDS 6-HOUR WATERPROOF SUNBLOCK

Job # SPC-34014

Recorded: 3/22/94

CK1002-3

"CANNONBALL" :30

SFX: (KIDS PLAYING IN POOL-LAUGHING/SPLASHING)

KID: (SCREAMING) C-a-n-n-o-n-b-a-l-l !

SFX: (LOUD SPLASH)

ANNCR: Kids can last in the water for hours.

KID: (SCREAMING) J-a-c-k k-n-i-f-e !

SFX: (LOUD SPLASH)

ANNCR: But all sunblocks can't. That's why there's Coppertone Kids Waterproof Sunblock. It lasts 6 full hours, in and out of the water, so you don't have to reapply it as often. Which means your kids get great protection, and you get peace of mind.

KID: (SCREAMING) B-e-l-l-y-f-l-o-p !

SFX: (LOUD SLAP)

ANNCR: Coppertone Kids 6-Hour Waterproof Sunblock. It goes on and stays on. Use as directed.

30000009

Complaint

123 F.T.C.

EXHIBIT D

010013

SCHERING-PLOUGH HEALTHCARE PRODUCTS ADVERTISING CORP.

DATE: MARCH 18, 1994 AIR DATE: FEBRUARY 28, 1994
PRODUCT: COPPERTONE KIDS LENGTH: RADIO :30
TITLE: "BROKEN RECORD" COMML CODE: CK1001-3

(SOUND EFFECTS OF KIDS PLAYING IN POOL KEEP REPEATING WOMAN'S VOICE)

WOMAN: BILLY, TIME FOR MORE SUNBLOCK.

(RECORD SCRATCHES)

...TIME FOR MORE SUNBLOCK.

(RECORD SCRATCHES)

...TIME FOR MORE SUNBLOCK.

(RECORD SCRATCHES)

(MUSIC)

ANNCR: COPPERTONE KIDS WATERPROOF SUNBLOCK IS MADE TO LAST A FULL 6 HOURS, IN AND OUT OF THE WATER, SO YOU WON'T HAVE TO REAPPLY IT AS OFTEN. THAT MEANS YOUR KIDS GET GREAT PROTECTION, AND YOU CAN STOP REPEATING YOURSELF. AT LEAST ABOUT ONE THING.

WOMAN: BILLY, TIME FOR BED.

(RECORD SCRATCHES)

...TIME FOR BED.

(RECORD SCRATCHES)

...TIME FOR BED.

ANNCR: COPPERTONE KIDS 6 HOUR WATERPROOF SUNBLOCK. IT GOES ON. AND STAYS ON.

©1994 Schering-Plough HealthCare Products, Inc.

00000012

1301

Complaint

EXHIBIT E

COPPERTONE KIDS

"MOMS FISHING"

Coppertone
KIDS

CLIENT: Schering-Plough HealthCare Products

PXCK-3913 TV :30



1ST MOM:
Looks like Betty's got one.



2nd MOM:
Way to go Betty.
1st MOM:
Get ready, he's gonna run.



3rd MOM:
Not if I can help it. Gotcha!



ANNCR: (VO)
Mom's gotta keep a line on her kids...



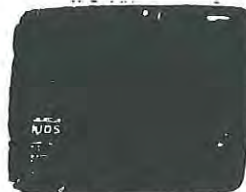
'cause she's gotta keep re-applying that sunblock every time they come out of the water.



But now there's new
Coppertone Kids



6 Hour Waterproof Sunblock.



It keeps a kid protected from the sun, and waterproof for a full six hours.



So Mom puts it on... and cuts them loose.



MOM:
Have fun Billy!



ANNCR: (VO)
New Coppertone Kids
6 Hour Waterproof Sunblock.



It goes on. And stays on.

It goes on and stays on.

00000020

Complaint

123 F.T.C.

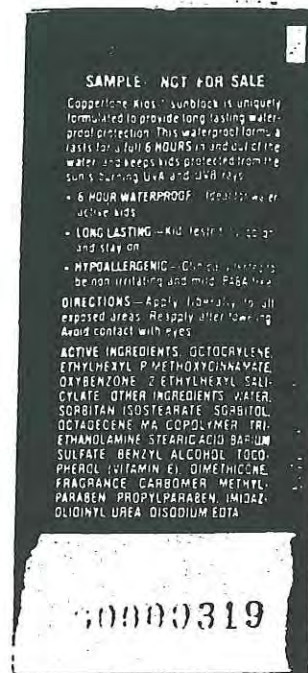
EXHIBIT F



1301

Complaint

EXHIBIT G



Complaint

123 F.T.C.

EXHIBIT H

Coppertone®
Children's Sunblocks

Dear Doctor:

As a healthcare professional, you know that it has been estimated that 50% of the sun damage a person experiences over a lifetime occurs before age 18. However, research indicates that regular use of a sunblock with a Sun Protection Factor of 15 during the first 18 years of a child's life can reduce the risk of developing some types of skin cancer later in life by as much as 78%.

Coppertone®, the most trusted name in suncare, now provides a complete line of sunblocks specially formulated for children — Water BABIES® and Coppertone KIDS™. Coppertone KIDS offers 6-hour waterproof protection.

Water BABIES®

- Specially formulated for baby's delicate skin
- Hypoallergenic, non-irritating
- Waterproof
- Available in SPF 15, 30, and 45

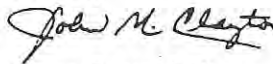
Coppertone KIDS™

- Waterproof for a full 6 hours
- Long-lasting protection
- Hypoallergenic, non-irritating
- Available in SPF 15 and 30

Enclosed please find samples of both Water BABIES and Coppertone KIDS plus an educational brochure called "Sun Safety for Children." This brochure offers parents some practical tips on how to block the sun's damaging rays without blocking the fun.

All Coppertone Children's Sunblocks are clinically tested on children, so you can be confident your patients are getting safe, effective sun protection.

Sincerely,



John M. Clayton, Ph.D.

00000116

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Schering-Plough Healthcare Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office or place of business at 3030 Jackson Avenue, Memphis, Tennessee.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For the purpose of this order, the following definitions shall apply:

A. "*Sun protection product*" shall mean any product intended for, or promoted as, providing users with protection against the harmful effects of sun exposure or ultraviolet radiation, including but not limited to products containing a sunscreen ingredient.

B. "*Children's sun protection product*" shall mean any sun protection product that uses the word "babies," "children," "kids," or words of similar import in the name or promotion of the product, or that is advertised or promoted for use primarily by children under the age of twelve (12).

C. "*Competent 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.

I.

It is ordered, That respondent, Schering-Plough Healthcare Products, Inc., a corporation, its successors and assigns, and its officers, 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 Coppertone Kids or any other children's sun protection 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:

A. The length of time that a single application of the product will provide protection from the sun for individuals engaged in sustained vigorous activity in and out of the water; or

B. The efficacy of such product in providing protection against any harmful effect of sun exposure or ultraviolet radiation,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, Schering-Plough Healthcare Products, Inc., a corporation, its successors and assigns, and its officers, 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 sun protection 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, the existence, contents, validity, results, conclusions or interpretations of any test or study.

III.

Nothing in this order shall prohibit respondent from making any representation for any sun protection product that is specifically permitted in labeling for any such product 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.

IV.

It is further ordered, That respondent shall design, produce and print a color brochure concerning the importance of sunscreen usage by children, which contains all of the following messages or themes:

A. The importance of sunscreens in preventing skin damage, including skin cancer, sunburn and premature skin aging;

B. Regular use of a high SPF sunscreen during childhood can significantly reduce the risk of certain types of skin cancers later in life;

C. A single bad sunburn during childhood can significantly increase a child's risk of developing skin cancer later in life;

D. The importance of proper application of sunscreens;

E. The need to reapply sunscreens after toweling or sustained vigorous activity; and

F. The need to use sunscreens during outdoor activities -- not only in connection with water activities.

Respondent shall submit a draft of the brochure, and a draft plan for its dissemination, no later than sixty (60) days after the date of service of this order, to the Associate Director of the Commission's Division of Advertising Practices for review and approval. No later than sixty (60) days after the Associate Director's approval of the brochure and the dissemination plan, respondent shall disseminate 150,000 copies of the brochure to parents or organizations with access to parents or others who work with or care for children under the age of 12.

V.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

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

VI.

It is further ordered, That the provisions of this order shall not apply to any label or labeling printed prior to the date of service of this order and shipped by respondent to purchasers for resale prior to one hundred (100) days after service of this order.

VII.

It is further ordered, That respondent, 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, and directors, and to all personnel, managers, agents, and

representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of five (5) years from the date of service of this order, provide a copy of this order to each of respondent's principals, officers, and directors, and to all personnel, managers, 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.

VIII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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.

IX.

This order will terminate on May 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

X.

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

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

Today, the Commission issues a final decision and order resolving allegations about certain claims in the advertising of Coppertone Kids 6-Hour Waterproof Sunblock. I concur except with respect to Part IV of the order, which requires the respondent to develop and disseminate a consumer education brochure addressing the dangers of unprotected exposure to the sun. Consumer education brochures are an integral part of the Commission's consumer protection program, but they are not necessarily defensible adjuncts to Commission orders.

A fencing-in provision will be sustained by the courts as long as it is "reasonably related" to the violation found.¹ Fencing-in relief properly may include requirements beyond simply prohibiting the challenged conduct that are designed to "close all roads to the prohibited goal, so that [the Commission's] order may not be bypassed with impunity."² The allegedly deceptive claim is that the respondent's sunblock for children would remain effective for six hours even if the children engaged in "sustained vigorous activities in and out of the water," such as playing in sand, taking off and putting on clothes and toweling off after swimming. Complaint ¶ 5. The order expressly enjoins the respondents from making the challenged claim, either directly or indirectly, for the product at issue as well as for "any other children's sun protection product." Order ¶ I.

In addition, the order requires the respondent to develop and distribute 150,000 copies of a color brochure concerning the importance of sunscreen usage by children. The order requires that the brochure contain six messages or themes only one of which addresses the issue in this case, the need to reapply so-called water-

¹ *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965); *FTC v. National Lead Co.*, 352 U.S. 419, 428 (1957).

² *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

proof or water-resistant sunblock after vigorous activity or after toweling off. Order ¶ IV-E.

The brochure requirement, even the message that relates most closely to the challenged claim, is not focused on preventing the respondent from making the challenged claim or otherwise from avoiding compliance with the order. The brochure would help educate consumers regarding an important health issue, and, presumably, make them less likely to be misled by the kind of implied claims challenged in this action.³ There is no reason to think that it would enhance the deterrent effect of the order on Schering.

Presumably, the brochure requirement will not be unduly burdensome or costly for Schering because it will promote the use of its product, and the brochure is undoubtedly commendable as a public health initiative. Nevertheless, under the circumstances, it is an overly broad requirement as measured against the current standard for ordering relief.⁴ There is a value to the Commission in maintaining the integrity of the standard for imposing a fencing-in remedy.

I respectfully dissent from Part IV of the order.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III
CONCURRING IN PART AND DISSENTING IN PART

I have voted to approve final issuance of the complaint and consent order against Schering-Plough Healthcare Products, Inc. ("Schering"), because I have reason to believe that the challenged advertisements are deceptive and I find that the order, for the most part, provides appropriate relief. I continue, however, to oppose the requirement that Schering produce and distribute a consumer education brochure that includes numerous specified "messages or themes." This remedy is overbroad and is unlikely to assist in the prevention of the violations alleged in the complaint. Although I am an advocate of a strong Commission consumer education program, and we can be proud of the valuable work done by the Bureau of Consumer Protection's Office of Consumer and Business Education, the consumer education remedy contained in this order is a well-meaning but not legally justifiable effort to fund a general consumer education campaign.

³ The product label already contains the statement, "Reapply after toweling."

⁴ It would be even more difficult to justify Part IV of the order as corrective advertising, because it is unlikely that the implied claim challenged in the complaint would linger in the minds of consumers long after it ceased being made. *See Warner-Lambert Co. v. FTC*, 562 F.2d 749, 762 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

The Commission enjoys extensive authority to fashion fencing-in relief for deceptive practices so long as the remedy has a reasonable relation to the violations alleged in the complaint. *See, e.g., FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965); *FTC v. National Lead Co.*, 352 U.S. 419, 428-29 (1957). With such authority, however, comes the responsibility to exercise it judiciously. In my view, the consumer education remedy mandated by this order bears no reasonable relationship to the violations alleged in the complaint.

The complaint alleges that Schering lacked a reasonable basis for the claim that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.¹ The order addresses this allegation by requiring scientific substantiation for claims about the efficacy of any children's sun protection product in providing protection against any harmful effect of sun exposure or ultraviolet radiation, or about the length of time that any such product will provide sun protection for individuals engaged in sustained vigorous activity in and out of the water.

In addition, however, the order requires Schering to design, produce and print a brochure -- subject to the approval of the Associate Director of the Division of Advertising Practices ("DAP") in the Commission's Bureau of Consumer Protection -- about the importance of sunscreen usage by children. The order mandates that the brochure include all of the following "messages or themes":

(A) The importance of sunscreens in preventing skin damage, including skin cancer, sunburn, and premature skin aging;

(B) Regular use of a high SPF sunscreen during childhood can significantly reduce the risk of certain types of skin cancers later in life;

(C) A single bad sunburn during childhood can significantly increase a child's risk of developing skin cancer later in life;

(D) The importance of proper application of sunscreens;

(E) The need to reapply sunscreens after toweling or sustained vigorous activity; and

(F) The need to use sunscreens during outdoor activities -- not only in connection with water activities.

¹ The complaint challenges as false the claim that Schering has conducted tests demonstrating that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water. The order broadly prohibits false establishment claims for any sun protection product.

Order ¶ IV. Schering must disseminate 150,000 copies of this brochure to parents or to organizations with access to parents or others who work with or care for children under age twelve.²

Of the six required messages, only statement (E) seems likely to assist in the prevention of future deception like or related to that alleged in the complaint. Yet by including this key reapplication information in an extensive list of other facts about sunscreen, the order makes it less likely that consumers will see the reapplication information. In my view, it is highly unlikely that a parent who receives and reviews whatever brochure is approved will recall the one piece of information related to the complaint allegation when the parent makes a sunscreen purchase. Because the scope of the information to be included in the brochure is so broad, the consumer education remedy is not reasonably related to the violations alleged in the complaint.³

It is also troubling that the Commission essentially is ordering the respondent to advertise that persons should buy and use more of the respondent's products. Schering already has every incentive to communicate the required messages to consumers. In fact, the consumer education remedy is advertising ("use more sunscreen") that the company might wish to do in any event since the conduct provisions of the order may prevent it from continuing to distinguish its children's sun protection product from others by claiming that it requires fewer applications. The deterrence value of this remedy is minimal at best.

Finally, if this relief were sought in litigation, rather than obtained through a consent agreement, it would not withstand scrutiny under the First Amendment. For purposes of First Amendment analysis, there is no difference between compelled speech and restrictions on speech. *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 796-97

² Like the brochure, the dissemination plan is subject to the approval of the Associate Director in charge of DAP.

³ The consumer education remedy here stands in contrast to a fencing-in provision contained in a consent order issued by the Commission last year. *See* Blenheim Expositions, Inc., Docket No. C-3633 (Jan. 18, 1996) (requiring a franchise show promoter to undertake a limited distribution of an FTC consumer education brochure to customers attending its franchise shows). The respondent in Blenheim allegedly made unsubstantiated claims regarding the earnings and success of franchise owners and false claims regarding a poll of franchise owners. The brochure specifically identified FTC requirements with which franchisors must comply, including consumers' right to receive an earnings claims document, and it provided instructions on how to evaluate earnings claims. It thus contained information likely to assist the respondent's customers to detect and protect themselves from possible future misrepresentations of earnings like those alleged in the complaint. Although the brochure also addressed other issues related to the purchase of a franchise, all of the advice in the brochure at least arguably would help prospective franchisees avoid becoming victims of future violations by the respondent.

(1988). A valid restriction on commercial speech must be no more extensive than necessary to serve the substantial governmental interest directly advanced by the restriction. *Rubin v. Coors Brewing Co.*, 115 S. Ct. 1585, 1591 (1995) (discussing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980)). Thus, disclosures compelled by the FTC can be no broader than necessary to prevent future deception or to correct the effects of past deception. See, e.g., *National Comm'n on Egg Nutrition v. FTC*, 570 F.2d 157, 164 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978). Additionally, the government bears the burden of showing that a speech restriction will advance its interest "to a material degree." 44 *Liquormart, Inc. v. Rhode Island*, 116 S. Ct. 1495, 1509 (1996) (plurality opinion of Justice Stevens) (citing *Edenfield v. Fane*, 507 U.S. 761, 771 (1993)). A commercial speech restriction that "provides only ineffective or remote support for the government's purpose" does not pass this test. 44 *Liquormart*, 116 S. Ct. at 1509 (citing *Central Hudson*, 447 U.S. at 564).

The dubious efficacy of this consumer education remedy makes it unlikely that it will directly advance the asserted governmental interest in preventing future deception by the respondent. In addition, I doubt that a credible argument can be made that the information that the order specifically requires be included in the brochure is no more extensive than necessary to prevent future violations by Schering. Certainly Schering has waived any First Amendment objections to this relief by entering into the consent agreement. Nonetheless, when a remedy implicates First Amendment rights, the Commission should be particularly reluctant to obtain through negotiation relief that it lacks at least a colorable chance to obtain in litigation.

In my view, it would be better to have no consumer education remedy in the consent order if the only alternative is an overbroad remedy of doubtful efficacy that raises First Amendment concerns.

1323

Complaint

IN THE MATTER OF
GENERAL MILLS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3742. Complaint, May 16, 1997--Decision, May 16, 1997

This consent order requires General Mills, among other things, to permit New Ralcorp to transfer to any successor party, without authorization or approval from General Mills, the right to manufacture and sell cereals identical to the Chex brand products. The consent order also prohibits General Mills from delaying production of the private label Chex rivals.

Appearances

For the Commission: *Phillip Broyles and Anthony Joseph.*

For the respondent: *James Rill, Collier, Shannon, Rill & Scott,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent General Mills, Inc., subject to the jurisdiction of the Commission, has agreed to acquire the branded ready-to-eat cereal and snack mix businesses from Ralcorp Holdings, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT GENERAL MILLS, INC.

1. Respondent General Mills, Inc. ("General Mills"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. General Mills' headquarters, office and principal place of business is located at Number One General Mills Boulevard, Minneapolis, Minnesota. In fiscal year 1996, General Mills had sales of approximately \$5.4 billion.

2. Respondent General Mills is, and at all times relevant herein has been, engaged in the sale of branded ready-to-eat ("RTE") cereals to retail grocery stores, grocery wholesalers, and others throughout the United States. General Mills's primary RTE cereals include Cheerios, Total, and Wheaties. General Mills is the nation's second largest producer of RTE cereals, measured based on pound sales or dollar revenues. General Mills's revenue from the sale of RTE cereals worldwide was \$2.75 billion in fiscal year 1996.

II. RALCORP HOLDINGS, INC.

3. Ralcorp Holdings, Inc. ("Ralcorp"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri. Ralcorp's headquarters, office and principal place of business is located at 800 Market Street, Suite 2900, St. Louis, Missouri. In fiscal year 1995, Ralcorp had sales of approximately \$1 billion.

4. In 1994, the Ralston Purina Company created Ralcorp, as a wholly-owned subsidiary, and then distributed Ralcorp's shares to Ralston Purina's shareholders. As part of the creation of an independent Ralcorp, Ralston Purina entered into a technology license authorizing Ralcorp to use certain identified technology in the production of branded and private label RTE cereals.

5. Ralcorp is, and at all times relevant herein has been, engaged in the sale of branded and private label RTE cereals to retail grocery stores, grocery wholesalers, and others throughout the United States. Ralcorp's primary RTE cereals include Corn CHEX, Rice CHEX, and Wheat CHEX. Ralcorp is the nation's fifth largest producer of branded RTE cereals and the largest producer of private label RTE cereals. Ralcorp's revenue from the sale of RTE cereals was \$585.5 million in fiscal year 1995. Its revenue from branded RTE cereals was more than \$311 million for the same year.

III. JURISDICTION

6. General Mills is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

7. On or about August 13, 1996, General Mills and Ralcorp entered into an agreement for General Mills to acquire Ralcorp's branded RTE cereal and snack mix businesses. In exchange for these businesses, General Mills agreed to give Ralcorp's shareholders General Mills' common stock and to assume certain Ralcorp debt. The total value of this consideration is approximately \$570 million.

8. General Mills will not acquire Ralcorp's private label RTE cereal business or other non-cereal or snack mix businesses. Ralcorp will form a new entity, New Ralcorp Holdings, Inc., ("New Ralcorp") to hold the businesses that General Mills will not acquire. As a result of the acquisition agreement, New Ralcorp acquired the right to manufacture and sell private label CHEX products, but was restricted from transferring this right to a third party without permission from General Mills and Ralston Purina Company. The agreement also restricts New Ralcorp from producing private label CHEX products for a period ending eighteen months after consummation of General Mills' acquisition of Ralcorp's branded RTE cereal and snack mix businesses.

V. TRADE AND COMMERCE

9. The relevant line of commerce (*i.e.*, the product market) in which to analyze the effects of the proposed transaction is the sale of branded and private label RTE cereals.

10. The relevant section of the country (*i.e.*, the geographic market) in which to analyze the effects of the acquisition is the United States.

VI. MARKET STRUCTURE

11. The sale of RTE cereals in the United States is highly concentrated, whether measured by the Herfindahl-Hirschmann Index (commonly called the "HHI") or by four-firm concentration ratios.

12. The post acquisition HHI for the sale of RTE cereals in the United States measured based on dollar revenues would increase by approximately 223 points, from 2,317 to 2,540. Measured in pounds, the post acquisition HHI for the sale of RTE cereals in the United States would increase by 158, from 2,103 to 2,261. Post acquisition General Mills' market share in dollars would be almost 31 percent. Its share in pounds would be almost 27 percent.

VII. ENTRY CONDITIONS

13. Entry of new RTE cereal producers into the relevant markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects.

VIII. EFFECTS OF THE ACQUISITION

14. The effects of the acquisition, if consummated, may be substantially to lessen competition in the RTE cereal market in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by increasing the likelihood of the unilateral exercise of market power and simultaneously restricting the entry of new private label cereal products into competition with General Mills.

IX. VIOLATIONS CHARGED

15. The acquisition agreement, entered into between General Mills and Ralcorp for General Mills to acquire Ralcorp's branded RTE cereal and snack mix businesses, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Starek dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition by General Mills, Inc. ("GMI"), of the branded cereals and snack mix businesses of Ralcorp Holdings, Inc. ("Ralcorp"), and it now appearing that GMI, hereinafter sometimes referred to as "respondent," having been furnished with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the

aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent GMI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Number One General Mills Boulevard, Minneapolis, MN.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*GMI*" means General Mills, Inc., its subsidiaries, divisions, and groups and affiliates controlled by General Mills, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "*Ralcorp*" means Ralcorp Holdings, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Ralcorp Holdings, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. "*New Ralcorp*" means New Ralcorp Holdings, Inc., an entity created by the Reorganization Agreement to acquire the Private Label cereal business and other businesses from Ralcorp.

D. "*Commission*" means the Federal Trade Commission.

E. "*Ralston Purina Company*" means Ralston Purina Company, a Missouri corporation, having its principal office in St. Louis, Missouri, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Ralston Purina Company, their successors and assigns, and their directors, officers, employees, agents, and representatives.

F. "*Private Label*" means a cereal product bearing the trade names or trademarks owned by a grocery retailer, a wholesaler, or broker, which entity is not a cereal producer or primarily in the cereal business, which trade names or trademarks are used by such entities to identify grocery products sold by such entities and in which New Ralcorp has no rights, except for the right to produce products utilizing such trade names or trademarks for such entities or their licensees, but which shall not, in any event, include trade names or trademarks described in sections 2(d)(i) and 2(d)(ii)(A) of the Trademark Agreement.

G. "*Successor Party*" means any entity which acquires (by way of asset transfer, stock transfer, merger, or otherwise), following the date of the acquisition of Ralcorp by GMI, all or substantially all of New Ralcorp's assets, title, properties, interests, rights, and privileges, tangible and intangible, to manufacture and sell cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark, including any entity that is a subsidiary or affiliate of New Ralcorp, and any entity that is a subsequent transferee of such assets, title, properties, interests, rights, and privileges.

H. The "*relevant geographic market*" means the United States.

I. "*CHEX trademark*" has the same meaning as any "CHEX trademark" identified in the Trademark Agreement.

J. "*Agreement and Plan of Merger*" means the Agreement and Plan of Merger by and among Ralcorp, GMI, and General Mills Missouri, Inc., dated August 13, 1996.

K. "*Reorganization Agreement*" means the Reorganization Agreement attached as Exhibit A to the Agreement and Plan of Merger.

L. "*Technology Agreement*" means the Technology Agreement attached as Exhibit 6.2(c) to the Reorganization Agreement.

M. "*Trademark Agreement*" means the Trademark Agreement attached as Exhibit 6.2(b) to the Reorganization Agreement.

N. "*Supply Agreement*" means the Transition Services -- Supply Agreement attached as Exhibit 6.2(d) to the Reorganization Agreement.

II.

It is further ordered, That:

A. Respondent shall, before consummating the Agreement and Plan of Merger, include in its agreements with Ralcorp and New Ralcorp provisions that will permit the transfer to any Successor Party of the right to manufacture and sell in the relevant geographic market Private Label cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark. These provisions shall permit the Successor Party to manufacture and sell these Private Label cereals without further authorization or approval from GMI or Ralston Purina Company.

B. Respondent shall not enter into, enforce or attempt to enforce any agreement that prohibits or delays New Ralcorp, as long as it retains the rights referred to in II.A, *supra*, or a Successor Party thereafter, from manufacturing and selling in the relevant geographic market any Private Label cereals that are identical to or substantially similar in form or overall appearance to cereal products bearing the CHEX trademark upon consummation of the Agreement and Plan of Merger.

C. Respondent shall not enforce any provision in the Technology Agreement, the Reorganization Agreement, the Trademark Agreement, the Agreement and Plan of Merger, or any other agreement with Ralcorp that would prevent the transfer to any Successor Party, of the right to manufacture and sell in the relevant geographic market Private Label cereals substantially similar in form or overall appearance to cereal products bearing the CHEX trademark, provided, however, that nothing in this paragraph shall be construed to interfere with General Mills' rights to enforce the provisions of the Supply Agreement.

III.

It is further ordered, That:

A. Within sixty (60) days after consummating the Agreement and Plan of Merger, respondent shall submit to the Commission a verified

written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraph II. A of this order.

B. One year (1) from the date this order becomes final, annually for the next three (3) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II. B, and C, and III of this order.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

VI.

It is further ordered, That this order shall terminate on May 16, 2017.

Commissioner Starek dissenting.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between General Mills, Inc., a corporation organized and existing under the laws of the State of Delaware ("General Mills") and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (the "Commission").

Whereas, General Mills has proposed to acquire Ralcorp Holdings, Inc.'s ("Ralcorp") branded ready-to-eat ("RTE") cereal and snack businesses pursuant to an Agreement and Plan of Merger dated August 13, 1996 ("the proposed Acquisition"); and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and,

Whereas, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and relief resulting from a proceeding challenging the legality of the proposed Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the entering into this Interim Agreement by General Mills shall in no way be construed as an admission by General Mills that the proposed Acquisition constitutes a violation of any statute; and

Whereas, General Mills understands that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, General Mills agrees, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the

Commission's agreement that, at the time it accepts the Consent Agreement for public record comment, it will grant early termination of the Hart-Scott-Rodino-waiting period, as follows:

1. General Mills agrees to execute the Consent Agreement and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date General Mills signs the Consent Agreement.

2. General Mills agrees to submit, within twenty (20) days of the date the Consent Agreement is signed by General Mills, and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraph II.A of the Consent Agreement, written reports, pursuant to Section 2.33 of the Commission's Rules, signed by General Mills setting forth in detail the manner in which General Mills will comply or has complied with paragraph II.A of the Consent Agreement.

3. General Mills agrees that, from the date it signs the Consent Agreement until the first of the dates listed in subparagraphs 3.a and 3.b, it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The date the order is final.

4. General Mills waives all rights to contest the validity of this Interim Agreement.

5. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, General Mills shall permit any duly authorized representative or representatives of the Commission:

a. Access, during the office hours of General Mills and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of General Mills relating to compliance with this Interim Agreement; and

b. Upon five (5) days' notice to General Mills and without restraint or interference from it, to interview officers, directors, or employees of General Mills, who may have counsel present, regarding any such matters.

6. Should the Federal Trade Commission seek in any proceeding to compel General Mills to divest itself of Ralcorp, or any other assets that it may hold as a result of the proposed Acquisition, or to seek any other injunctive or equitable relief, General Mills shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the proposed Acquisition.

7. This Interim Agreement shall not be binding until accepted by the Commission.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

The Commission today issues a consent order based on a complaint alleging that the acquisition by General Mills, Inc., of the branded ready-to-eat cereal business of Ralcorp Holdings, Inc., violates Section 7 of the Clayton Act. The order is narrow, but I would narrow it even further. In particular, I would delete paragraph II(B) of the proposed order, which requires elimination of a noncompete clause that would have prevented Ralcorp for a period of eighteen months from introducing a new private label cereal identical or similar to the CHEX-brand cereals being sold to General Mills.

Paragraph fourteen of the complaint alleges that the noncompete clause described in paragraph eight would have the anticompetitive effect of "restricting the entry of new private label cereal products into competition with General Mills." That effect, however, is precisely the purpose of this (and every other) noncompete clause.¹ Although the complaint might be read as alleging that noncompete clauses are *per se* anticompetitive, that interpretation would be inconsistent with the Commission's recent decision in another case to issue an order that imposed an affirmative prohibition on competition for six years between the merged firm and the acquirer of certain assets to be divested under the order. *See Ciba Geigy Limited*, (Docket No. C-3725, March 24, 1997). The Ciba Geigy decision recognizes the efficiency potential of noncompete clauses, which, among other benefits, can facilitate an orderly transfer to ownership

¹ The noncompete clause described in paragraph eight of the complaint prohibits Ralcorp from entering the market with a private label, CHEX-type cereal product for eighteen months. As indicated in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (April 2, 1992), a merger is unlikely to create or enhance market power if entry is "timely, likely and sufficient," and entry is deemed "timely" if it can be achieved within two years. Under this standard, the noncompete clause is unlikely to create or enhance market power.

and provide a brief transition period for new owners to establish themselves in the business.

Although the appropriate duration of a noncompete clause may vary depending on the circumstances of the industry and the acquisition, using a noncompete clause for a short period to smooth a transition may be procompetitive. I do not find reason to believe that this short-term noncompete clause is anticompetitive, and I dissent from the order requirement to eliminate it.

DISSENTING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I respectfully dissent from the decision of the majority to issue a consent order against General Mills, Inc. relating to the acquisition of the branded ready-to-eat ("RTE") cereal and snack food businesses of Ralcorp Holdings, Inc. ("Ralcorp"). My dissent rests on two grounds.

As noted in the Commission's complaint, General Mills will not acquire the private label RTE cereal or snack food businesses of Ralcorp. Ralcorp instead will form a new entity, New Ralcorp Holdings, Inc. ("New Ralcorp"), to hold the private label cereal and snack food businesses that General Mills will not acquire. Under the acquisition agreement, New Ralcorp has the right to manufacture and sell a private label version of the Chex RTE cereal products, but is restricted from transferring this right to a third party without permission from General Mills. The acquisition agreement further provides that New Ralcorp may not produce private label Chex products for a period of eighteen months following consummation of the acquisition.

My first reason for voting against issuing the consent order is that the Commission lacks sufficient evidence to support the unilateral effects theory alleged in the complaint. Second, it is completely unnecessary -- and in fact creates inefficiency -- to bar enforcement of the parties' non-compete agreement. Whatever minimal competitive risks this transaction may raise are adequately addressed by eliminating the restrictions on Ralcorp's ability to transfer manufacturing and sales rights for private label Chex to a third party.

General Mills' share of the RTE cereal market will increase by approximately three percent as a result of the acquisition. The number of competitors in the RTE cereal industry will remain the same, and General Mills will remain the second largest RTE cereal producer in

the United States.¹ New Ralcorp will immediately assume Ralcorp's position as the largest private label cereal producer in the United States. Moreover, General Mills' post-merger share of the RTE cereal market will be between 25 and 31 percent (depending on whether share is measured in pounds or sales dollars), well below levels suggested by the Horizontal Merger Guidelines as the minimum threshold at which the Commission might reasonably presume market power.² It is hard to understand under these simple facts how the majority determined that the acquisition will enable General Mills unilaterally to exercise market power.

Unable to presume market power, the Commission instead relies upon a "close substitutes" theory of unilateral harm, notwithstanding a paucity of empirical evidence demonstrating that Ralcorp's branded Chex products are the closest substitutes to the branded cereals of General Mills. Although Chex products clearly compete with the branded General Mills RTE cereal products, consumers have a preference for variety when they choose RTE cereals and frequently choose among the many branded and private label cereals produced by RTE cereal manufacturers in the United States. Not surprisingly, Judge Wood reached this conclusion in her opinion explaining why she refused to block the acquisition of the Nabisco RTE cereal assets by Kraft General Foods in early 1993.³ In *Kraft General Foods*, an empirical analysis of cereal purchasing patterns suggested -- as it does in the present matter -- that consumers have many attractive alternatives from which to choose in the event that one RTE cereal producer tries to raise prices above competitive levels. Overall, the empirical evidence does not support the Commission's claim, under either a "close substitutes" or a dominant firm theory, that General Mills would be able unilaterally to raise the prices of its branded RTE cereals after the acquisition.

Even if I agreed with the majority that this consent order rests upon an empirically sound theory of competitive harm, the order would bar General Mills from enforcing an arguably procompetitive non-compete agreement that is properly limited in scope and

¹ General Mills' share of branded cereals will of course increase as a result of the transaction, but the complaint does not allege a relevant market consisting of "branded RTE cereal." Indeed, the provisions of the order (which affect the disposition of assets used in the production of nonbranded cereals; make sense only in the context of an "all RTE cereal" product market.

² See U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines Section 2.211, 4 Trade Reg. Rep. (CCH) ¶ 13,104, at 20,573-79.

³ *State of New York v. Kraft General Foods, Inc.*, 1995-1 Trade Cas. (CCH) ¶ 70,911, at 74,039, 74,066 (S.D.N.Y. 1995).

duration. Covenants not to compete are often included in contracts for the sale of a business, and generally are enforceable when ancillary to an enforceable agreement and reasonable in geographic coverage, scope of activity, and duration. *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981) ("The recognized benefits of reasonably enforced non-competition covenants are now beyond question."), *cert denied*, 455 U.S. 921 (1982); *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 281-82 (6th Cir. 1898), *aff'd* as modified, 175 U.S. 211 (1899).⁴ Judicial inquiry into non-compete provisions generally focuses on whether the restriction is reasonably necessary to protect the legitimate business interests of the party seeking to enforce the provision. *United States v. Empire Gas Corp.*, 537 F.2d 296, 307 (8th Cir. 1976), *cert. denied*, 429 U.S. 1122 (1977); *Sound Ship Bldg. Corp. v. Bethlehem Steel Corp.*, 387 F. Supp. 252, 255 (D.N.J. 1975), *aff'd*, 533 F.2d 96 (3d Cir.), *cert. denied*, 429 U.S. 680. (1976).

The Commission has often recognized that competitive benefits can flow from a non-compete clause in the context of the sale of a business. The Commission's recent issuance of a consent order in Ciba-Geigy, Ltd., et al., Docket No. C-3725 (April 8, 1997), is illustrative. In Ciba-Geigy, the Commission imposed an affirmative obligation on the newly merged entity, Novartis AG, not to compete in the United States and Canada for six years in the sale of animal flea control products.⁵ As the Ciba-Geigy order indicates, the Commission clearly recognizes that non-compete clauses -- even when long in duration and broad in scope -- can serve legitimate procompetitive purposes in some circumstances by allowing an acquiring entity a brief period to re-deploy the acquired assets in a manner that increases competition in the marketplace. I am therefore puzzled why the Commission so hastily condemns a non-compete provision here that is only eighteen months in duration, limited to the manufacture and sale of private label Chex products, and arguably necessary to protect the legitimate interests of the contracting parties.⁶

Because I find that the facts do not support the Commission's theory of unilateral competitive harm in this instance, and because in any event I disagree with the Commission's decision to bar enforcement of the non-compete provision contained in the parties' acquisition agreement, I have voted against issuance of the consent order.

⁴ See also *Business Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 729 n.3 ("The classic 'ancillary' restraint is an agreement by the seller of a business not to compete within the market.")

⁵ See paragraph VI of the order in Ciba-Geigy.

⁶ Barring enforcement of the non-compete agreement might undermine adherence by the parties to the supply agreement, an element of the acquisition agreement found acceptable by the majority.

IN THE MATTER OF
TENET HEALTHCARE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3743. Complaint, May 20, 1997--Decision, May 20, 1997

This consent order, among other things, requires Tenet Healthcare Corporation ("Tenet"), a California acute care hospital chain, to divest OrNda's French Hospital Medical Center and related assets and facilities by August 1, 1997. The consent order also requires Tenet to maintain the marketability and viability of French Hospital, pending the divestiture of French, and to notify the Commission before combining its acute care hospitals in San Luis Obispo County with any other acute care hospital in the area and before acquiring any Monarch stock.

Appearances

For the Commission: *Robert Leibenluft, Oscar Voss and William Baer.*

For the respondent: *Clifford Aronson, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent, Tenet Healthcare Corporation ("Tenet"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Tenet will acquire the stock of OrNda HealthCorp ("OrNda"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

Complaint

123 F.T.C.

DEFINITIONS

PARAGRAPH 1. For purposes of this complaint the following definitions shall apply:

(a) "*Acute care hospital*" means a health facility, licensed as a hospital, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, and may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

(b) "*Acute care inpatient hospital services*" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

THE PARTIES

PAR. 2. Tenet is a corporation organized, existing, and doing business under and by virtue of the laws of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California. Tenet owns and operates, among other things, over seventy-five acute care hospitals throughout the United States. Included among those hospitals are Sierra Vista Regional Medical Center ("Sierra Vista"), a 195-bed acute care hospital in the city of San Luis Obispo, California, and Twin Cities Community Hospital, an 84-bed acute care hospital in Templeton, California, about twenty-two miles north of the city of San Luis Obispo. In fiscal year 1996, Tenet had total sales of approximately \$5.6 billion, and its two hospitals in San Luis Obispo County, California had total sales of about \$83 million.

PAR. 3. OrNda is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 3401 West End Avenue, Nashville, Tennessee. OrNda owns and operates over fifty acute care hospitals throughout the United States. Included among those hospitals is French Hospital Medical Center ("French Hospital"), a 147-bed acute care hospital in the city of San Luis Obispo, California. In fiscal year 1996, OrNda had total sales of about \$1.8 billion, and French Hospital had total sales of about \$47 million.

JURISDICTION

PAR. 4. Tenet and OrNda, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Tenet and OrNda, at all times relevant herein, have been and are now in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

THE PROPOSED ACQUISITION

PAR. 5. On or about October 16, 1996, Tenet and OrNda entered into an agreement whereby Tenet will acquire 100 percent of the voting stock of OrNda, and OrNda stockholders will receive Tenet voting stock in exchange. Tenet will also assume OrNda debt. The total value of the transaction is about \$3.1 billion.

NATURE OF TRADE AND COMMERCE

PAR. 6. The relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

PAR. 7. The relevant section of the country in which to analyze the proposed acquisition is San Luis Obispo County, California ("San Luis Obispo County"), and/or any narrower area contained therein.

MARKET STRUCTURE

PAR. 8. Tenet currently owns two of the five acute care hospitals in San Luis Obispo County, including Sierra Vista, the largest acute care hospital in the county. Tenet's acquisition of OrNda would add the largest of its competitors, French Hospital, to its holdings in San Luis Obispo County. Sierra Vista and French each provide a broader range of acute care inpatient hospital services than any of the other three acute care hospitals in San Luis Obispo County, and are each other's principal and most direct competitor. The other providers of acute care inpatient hospital services in San Luis Obispo County are Arroyo Grande Community Hospital, a 79-bed hospital in Arroyo Grande, about thirteen miles south of the city of San Luis Obispo, and San Luis Obispo General Hospital, a 64-bed hospital located in the city of San Luis Obispo and operated by the San Luis Obispo County

government. The long-term competitive prospects of San Luis Obispo General Hospital are clouded by its need for expensive capital improvements to, among other things, meet stringent new state earthquake safety requirements.

PAR. 9. The relevant market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by market share. The proposed acquisition would significantly increase concentration in this market. It would increase Tenet's market share by at least 17%, to at least 71%. The HHI would increase at least 2000 points, to a post-acquisition level over 5000.

ENTRY CONDITIONS

PAR. 10. It is unlikely that entry into the relevant market would prevent, or remedy in a timely manner, any anticompetitive effects from the proposed acquisition. Entry is difficult, and likely to take more than two years, due to among other things the time required to obtain necessary government permits, including state architectural review, and to complete construction of an acute care hospital.

COMPETITION

PAR. 11. Tenet and OrNda are actual and potential competitors in the relevant market.

EFFECTS

PAR. 12. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

(a) It would eliminate actual and potential competition between Tenet and OrNda;

(b) It would significantly increase the already high level of concentration;

(c) It would eliminate OrNda as a substantial, independent and competitive provider;

(d) It may permit Tenet to unilaterally raise prices;

(e) It may result in less favorable prices and other terms for health plans that contract with providers of acute care hospital services;

(f) It may increase the possibility of collusion or interdependent coordination by the remaining providers of acute care inpatient hospital services;

(g) It may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service; and

(h) It may deny the San Luis Obispo County government the ability to purchase on competitive terms the acute care inpatient hospital services it must provide to certain indigent County residents, as a potentially less costly alternative to providing such services to those residents at its own hospital.

VIOLATIONS CHARGED

PAR. 13. The acquisition agreement described in paragraph five above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 14. The acquisition described in paragraph five, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of OrNda Healthcorp by Tenet Healthcare Corporation ("Tenet" or "respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition and the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

A. Respondent Tenet is a corporation organized, existing, and doing business under and by virtue of the laws of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California.

B. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Tenet*" or "*respondent*" means Tenet Healthcare Corporation; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Tenet Healthcare Corporation; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*OrNda*" means OrNda Healthcorp; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by OrNda Healthcorp; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Commission*" means the Federal Trade Commission.

D. The "*Acquisition*" means the transaction contemplated by the October 16, 1996 Agreement and Plan of Merger between Tenet and OrNda, pursuant to which OrNda will become a wholly-owned subsidiary of Tenet.

E. "*Acute care hospital*" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly

organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. "*Affiliate*" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

G. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

H. "*Relevant area*" means the county of San Luis Obispo in California.

I. The "*Schedule A assets*" mean the assets identified in the attached Schedule A.

J. The "*Schedule B assets*" mean the assets identified in the attached Schedule B.

K. "*Monarch Health Systems*" or "*Monarch*" means Monarch Medical Alliance, Inc., doing business as Monarch Health Systems (a corporation with its headquarters in Santa Barbara, California), its subsidiaries, and their successors and assigns.

L. "*Assets and Businesses*" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. All real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "real property");

2. All contracts and agreements with physicians, other health care providers, unions, third party payers, health maintenance organizations and other health plans, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "contracts");

3. All machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as

are used in the ordinary course of business during the time that Tenet owns the assets) (collectively, the "personal property");

4. All research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes, and quality control data (collectively, the "intangible personal property");

5. All books, records, and files, excluding, however, the corporate minute books and tax records of Tenet, OrNda, and their affiliates; and

6. All prepaid expenses.

M. To "*operate*" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

N. To "*acquire*" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;

3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or

4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, on or before August 1, 1997, the Schedule A assets.

B. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, such additional ancillary assets and

businesses, and effect such arrangements, as are necessary to assure the marketability, independence, viability, and competitiveness of French Hospital Medical Center.

C. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, all of its stock in Monarch Health Systems. The Monarch Health Systems stock may be, but need not be, divested to the same person to whom the Schedule A assets are divested.

D. The purpose of the foregoing divestitures is to ensure the continuation of French Hospital Medical Center as an ongoing, independent, and viable acute care hospital, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. Respondent shall divest the Schedule A assets, the Monarch Health Systems stock, and any additional assets that must be divested pursuant to paragraph II.B above, only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that respondent may divest the Monarch Health Systems stock, or that stock together with the loan agreement identified in Schedule A, without the prior approval of the Commission, to a person other than respondent in connection with that person's acquisition of all, or substantially all, Monarch Health Systems stock.

F. Respondent shall comply with all terms of the Agreement to Hold Separate concerning the Schedule A assets, the Schedule B assets, and the Monarch Health Systems stock, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this paragraph II or until such other time as said Hold Separate provides.

G. Pending the divestitures required by this paragraph II, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the Schedule A and Schedule B assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Schedule A and Schedule B assets, except for ordinary wear and tear.

H. A condition of approval by the Commission of the divestiture of the Schedule A assets shall be a written agreement by the acquirer(s) of those assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by paragraph IV of this

order, any Schedule A asset to any person who operates, or will operate immediately following the sale, any other acute care hospital in the relevant area.

III.

It is further ordered, That:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Schedule A assets, in accordance with this order, on or before August 1, 1997, the Commission may appoint a trustee to effect the divestiture of the Schedule A assets. The trustee may on his or her initiative, or at the direction of the Commission, also divest some or all of the Schedule B assets, to the extent such additional divestitures are necessary to completely fulfill the purpose, identified in paragraph II.D above, of the divestiture of the Schedule A assets.

B. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, its stock in Monarch Health Systems, in accordance with this order, on or before August 1, 1997, the Commission may appoint a trustee to effect the divestiture of the Monarch Health Systems stock.

C. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under paragraph III.A or paragraph III.B shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to them for any failure by the respondent to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A or paragraph III.B of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any

proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission (except with respect to any divestiture of Monarch Health Systems stock which paragraph II.E permits to be made without Commission approval), the trustee shall serve as an agent of the Commission and shall have the exclusive power and authority to divest (a) the Schedule A assets and, as necessary, some or all of the Schedule B assets, if the trustee is appointed pursuant to paragraph III.A, and (b) respondent's Monarch Health Systems stock, if the trustee is appointed pursuant to paragraph III.B.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.D.3 to accomplish the divestitures, which shall be subject to the prior approval of the Commission (with the exception set forth in paragraph III.D.2). If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend this period only two (2) times, for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets he or she is to divest, as well as to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request, and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph III in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the trustee's fiduciary duty to the Commission and to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set forth in paragraph II; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity for the Schedule A assets (along with, if necessary, some or all of the Schedule B assets), or for the Monarch Health Systems stock, and if the Commission determines to approve more than one such acquiring entity (or, for the Monarch Health Systems stock, more than one entity is either approved to acquire the stock, or does not require Commission approval under paragraph II.E), the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets (if the trustee is appointed pursuant to paragraph III.A) and the Monarch Health Systems stock (if the trustee is appointed pursuant to paragraph III.B).

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from

misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A or paragraph III.B of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of French Hospital Medical Center.

12. The trustee shall have no obligation or authority to operate or maintain the Schedule A assets, or the Schedule B assets, or to take any actions (other than in furtherance of divestiture) relating to the Monarch Health Systems stock.

13. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person, other than respondent, operating an acute care hospital in the relevant area;

B. Acquire any assets of an acute care hospital in the relevant area, or any assets used within the two years preceding such acquisition (and still suitable for use) for operating an acute care hospital in the relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in the relevant area, including but not limited to, a lease of or management contract for any such facility;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in the relevant area;

E. Permit any acute care hospital it operates in the relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the relevant area; or

F. Acquire any stock, share capital, equity, or other interest in Monarch Health Systems.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification pursuant to this paragraph IV, or pursuant to paragraph II.H of this order, shall not be required for:

(1) The establishment by respondent of an acute care hospital in the relevant area: (a) that is a replacement for an existing acute care hospital, if that facility is operated by respondent and is not required to be divested pursuant to paragraph II of this order; or (b) that is not a replacement for any acute care hospital in the relevant area;

(2) Any transaction otherwise subject to this paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000); or

(3) Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in the relevant area to be acquired by any other person (except pursuant to the divestitures required by paragraph II, or to divestitures by a trustee pursuant to paragraph III), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI.

It is further ordered, That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II of the order, including a description of all substantive contacts or negotiations for the divestitures, and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

SCHEDULE A

The "Schedule A assets" to be divested pursuant to paragraph II shall include all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of French Hospital Medical Center, 1911 Johnson Avenue, San Luis Obispo, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in San Luis Obispo County, California:

1. Pacific Medical Plaza, 1941 Johnson Avenue, San Luis Obispo, California;

2. Pulse Health Services, 1911 Johnson Avenue, San Luis Obispo, California;

3. Med Stop Urgent Care Centers, at 283 Madonna Road, San Luis Obispo, California, and 877 Oak Park Boulevard, Pismo Beach, California;

4. Central Coast Surgery Center, 1941 Johnson Avenue, Suite 103, San Luis Obispo, California;

5. San Luis Recovery Partners, 1575 Bishop, San Luis Obispo, California; and

6. La Posada Medical Center, 225 Posada Lane, Templeton, California.

The "Schedule A assets" shall include, in addition, the January 1997 loan agreement between OrNda Investments, Inc. and Monarch

Health Systems, including all of OrNda Investments' rights and obligations thereunder, and all promissory notes issued thereunder.

SCHEDULE B

The "Schedule B assets" shall consist of all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of Valley Community Hospital, 505 East Plaza Drive, Santa Maria, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in Santa Barbara County, California:

1. Valley Medical Plaza, 525 East Plaza Drive, Santa Maria, California;
2. Valley Medical Courtyard, 505 and 506 East Plaza Drive, Santa Maria, California; and
3. Knollwood Business Plaza, 5075 South Bradley Road, Santa Maria, California.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and between Tenet Healthcare Corporation ("Tenet" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, on October 16, 1996, Tenet and OrNda Healthcorp ("OrNda") entered into an Agreement and Plan of Merger pursuant to which OrNda will become a wholly-owned subsidiary of Tenet (the "Acquisition"); and

Whereas, Tenet with its principal place of business at 3820 State Street, Santa Barbara, California, owns and operates, among other things, acute care hospitals in San Luis Obispo County, California, and elsewhere; and

Whereas, Tenet through the Acquisition will acquire French Hospital Medical Center and related OrNda assets and businesses in San Luis Obispo County, California; Valley Community Hospital and related OrNda assets and businesses in northern Santa Barbara County, California; about one-third of the outstanding stock of Monarch Medical Alliance, Inc., doing business as Monarch Health Systems ("Monarch"), an integrated health care delivery system which is a major customer of French Hospital Medical Center; and a short-term loan agreement for OrNda to lend funds to Monarch; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order in this matter, which would require the divestiture of French Hospital Medical Center and certain related assets identified in Schedule A of the Consent Order (the "Schedule A assets") and respondent's Monarch stock, and may require the divestiture of certain other assets identified in Schedule B of the Consent Order (the "Schedule B assets") pursuant to paragraph II of the Consent Order, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A assets and the Schedule B assets, and preserving the independence of Monarch from Tenet, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the "60-day public comment period"), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, if the Commission accepts the Consent Order, and Tenet has not divested with the Commission's prior approval French Hospital Medical Center, related assets, and its Monarch stock, in accordance with the Consent Order, on or before August 1, 1997, the Commission may appoint a trustee to divest those assets; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of French Hospital Medical Center, related assets, and Monarch stock, and the Commission's right to have

French Hospital Medical Center continue as a viable acute care hospital independent of Tenet; and

Whereas, the purposes of this Agreement and the Consent Order are to:

(1) Preserve French Hospital Medical Center as a viable, competitive, and ongoing acute care hospital, independent of Tenet, pending the divestiture required under the terms of the Consent Order;

(2) Prevent interim harm to competition from the operation of French Hospital Medical Center pending the divestiture required under the terms of the Consent Order; and

(3) Remedy any anticompetitive effects of the Acquisition;

Whereas, respondent's entering into this Agreement shall in noway be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the divestitures required by the Consent Order are not accomplished on or before August 1, 1997, to appoint a trustee to seek divestiture of French Hospital Medical Center, related assets, and Monarch stock pursuant to the Consent Order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.

2. Respondent agrees that:

a. From the date this Agreement to Hold Separate is accepted until the earliest of the dates listed in subparagraphs 2.a.(i) or 2.a.(ii), it will comply with the provisions of paragraph 3 of this Agreement:

(i) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

(ii) The day after the divestitures required by paragraphs II.A and II.B of the Consent Order are completed.

b. From the date this Agreement to Hold Separate is accepted until the earliest of the dates listed in subparagraphs 2.b(i) or 2.b(ii), it will comply with the provisions of paragraph 4 of this Agreement:

(i) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

(ii) The day after the divestiture required by paragraph II.C of the Consent Order is completed, or, if later, the day after all loan agreements between respondent and Monarch expire, are terminated, or are divested in accordance with paragraph II.A of the Consent Order.

3. To ensure the complete independence and viability of the Schedule A assets and the Schedule B assets, and to ensure that no competitive information is exchanged between respondent and the managers of the Schedule A assets and the Schedule B assets, respondent shall hold the Schedule A assets and the Schedule B assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Schedule A assets and the Schedule B assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

b. Prior to, or simultaneously with the Acquisition, respondent shall adopt, for the corporations that now own and operate, respectively, French Hospital Medical Center (the "French

Company"), and Valley Community Hospital (the "Valley Company"), constituent documents that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer to the French Company all ownership and control of any Schedule A assets it does not already own and control. Respondent shall transfer to the Valley Company all ownership and control of any Schedule B assets it does not already own and control. The French Company and the Valley Company shall hereafter be described collectively as the "Hold Separate Companies."

c. The boards of directors of each of the Hold Separate Companies ("Hold Separate Companies Boards") shall have the same three members for each of the Hold Separate Companies. Respondent shall elect the members of the Hold Separate Companies Boards. The Hold Separate Companies Boards shall consist of the following three persons: (i) Michael D. Bakst; (ii) Thomas Sawicki, and (iii) Michael H. Focht Sr., provided they agree, or comparable, knowledgeable persons. The Chairman of the Hold Separate Companies Boards shall be Michael D. Bakst, provided he agrees, or a comparable, knowledgeable person, who shall remain independent of respondent and competent to assure the continued viability and competitiveness of the Schedule A assets and the Schedule B assets. The Hold Separate Companies Boards shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be Michael H. Focht Sr., provided he agrees, or a comparable, knowledgeable person ("the respondent's Hold Separate Companies Boards member"). The Hold Separate Companies Boards shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Hold Separate Companies Boards during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

d. The operations of the Hold Separate Companies shall, to the extent deemed desirable by the Hold Separate Companies Boards, coordinate their operations with each other as if they were a single company.

e. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Schedule A assets, the Schedule B assets, the independent Chairman of the Boards of the Hold Separate Companies, or any of their operations or businesses; provided, however, that respondent may exercise only such direction and control over the Hold Separate Companies as is necessary to

assure compliance with this Agreement or the Consent Order, or with all applicable laws.

f. Respondent shall maintain the viability, competitiveness, and marketability of the Schedule A assets and the Schedule B assets; shall not sell, transfer, or encumber the Schedule A assets or the Schedule B assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Schedule A assets or the Schedule B assets.

g. Except for the respondent's Hold Separate Companies Boards member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the Hold Separate Companies.

h. The Hold Separate Companies shall be staffed with sufficient employees to maintain the viability and competitiveness of the Schedule A assets and the Schedule B assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.

i. Respondent shall not employ, or make offers of employment to, any person employed by the Schedule A assets or the Schedule B assets in any capacity relating to the management or marketing activities of those assets. Respondent shall encourage and facilitate continued employment by the Schedule A assets and the Schedule B assets of such employees; shall not offer any incentive to such employees to cease employment with the Schedule A assets or the Schedule B assets, or to accept other employment with respondent; and shall take all actions necessary to remove any impediments that may deter such employees from continuing their employment with the Schedule A assets or the Schedule B assets, including but not limited to, the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of respondent.

j. With the exception of the respondent's Hold Separate Companies Boards Member, respondent shall not change the composition of the Hold Separate Companies Boards unless the independent Chairman consents. The independent Chairman shall have power to remove members of the Hold Separate Companies Boards for cause and to require respondent to appoint replacement members to the Hold Separate Companies Boards as provided in

paragraph 3.c. Respondent shall not change the composition of the management of the Hold Separate Companies, except that the Hold Separate Companies Boards shall have the power to remove management employees for cause.

k. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 3.c of this Agreement.

l. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the Hold Separate Companies, the activities of the hospitals operated by the Hold Separate Companies Boards, the activities of Monarch, the Schedule A assets, or the Schedule B assets. Nor shall the Hold Separate Companies or the Hold Separate Companies Boards receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the Hold Separate Companies necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, Medicare or Medicaid cost reports, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, health plan contracts, marketing methods, patents, technologies, processes, or other trade secrets.)

m. Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not, in his or her capacity as a Hold Separate Companies Boards member, receive Material Confidential Information, and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's Hold Separate Companies Boards member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's

Hold Separate Companies Boards member shall participate in matters that come before the Hold Separate Companies Boards only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not participate in any matter, or attempt to influence the votes of the other members of the Hold Separate Companies Boards with respect to matters, that would involve a conflict of interest if respondent and the Hold Separate Companies were separate and independent entities.

n. Any material transaction of the Hold Separate Companies that is out of the ordinary course of business must be approved by a majority vote of the Hold Separate Companies Boards; provided that the Hold Separate Companies shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

o. If necessary, respondent shall provide the Hold Separate Companies with sufficient working capital to operate the Schedule A assets and the Schedule B assets at their current rate of operation, to fulfill respondent's obligations under the loan agreement identified in Schedule A of the Consent Order, and to carry out any capital improvement plans for the Schedule A assets and the Schedule B assets that have already been approved.

p. Respondent shall continue to provide the same support services to the Schedule A assets and the Schedule B assets as are being provided to them by OrNda as of the date this Agreement is signed. Respondent may charge the Hold Separate Companies the same fees, if any, charged by OrNda as of December 1, 1996 for such support services. Respondent's personnel providing such support services must retain and maintain all Material Confidential Information of the Schedule A assets and the Schedule B assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Schedule A assets and the Schedule B assets.

q. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) August 1, 1997, or (ii)

the date contemplated by subparagraph 2.a(ii) (the "Initial Divestiture Period"), respondent shall make available for use by the Hold Separate Companies funds sufficient to perform all necessary routine maintenance to, and replacements of, the Schedule A assets and the Schedule B assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the Hold Separate Companies with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Schedule A assets and the Schedule B assets.

r. Respondent shall circulate, to its management employees responsible for the operation of acute care hospitals in San Luis Obispo County, California, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.

s. The Hold Separate Companies Boards shall serve at the cost and expense of respondent. Respondent shall indemnify the Hold Separate Companies Boards against any losses or claims of any kind that might arise out of its involvement under this Hold Separate Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Companies Boards directors.

t. The Hold Separate Companies Boards shall have access to and be informed about all companies who inquire about, seek, or propose to acquire the Schedule A assets or the Schedule B assets.

u. Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the Hold Separate Companies Boards shall together report in writing to the Commission concerning those Boards' efforts to accomplish the purposes of this Hold Separate.

4. To ensure the complete independence of Monarch from respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), and to ensure that no competitive Monarch information is disclosed to respondent, respondent shall establish a trust for Tenet's Monarch stock, on the following terms and conditions:

a. Prior to, or simultaneously with the Acquisition, respondent shall establish a voting trust for Tenet's Monarch stock, for which the Trustee shall be the independent Chairman of the Hold Separate Companies Boards. The Trustee shall exercise any and all voting

rights of Tenet's Monarch stock, on all matters (including without limitation the election or removal of directors), voted on by Monarch shareholders, whether at a regular or special meeting, or pursuant to a unanimous written consent. The Trustee shall vote all shares of Tenet's Monarch stock in the same proportion as all other shares of Monarch's stock are voted with respect to such matters. The Trustee shall also be present, in person or by proxy, at all annual or special meetings of Monarch shareholders, so that Tenet's Monarch stock may be counted for purposes of determining the presence of a quorum at such meetings.

b. Tenet shall not use its holdings of Monarch stock, or any loan agreements with Monarch:

(i) To control or influence the conduct of Monarch's business, or Monarch's business relationships with French Hospital Medical Center; or

(ii) To obtain Material Confidential Information of Monarch, except Monarch financial information necessary and essential to allow respondent to prepare United States consolidated financial reports and tax returns, to allow respondent to prepare Medicare or Medicaid cost reports, or for use by the Hold Separate Companies in order to carry out the loan agreement identified in Schedule A of the Consent Order (which Monarch information shall be used only for the purposes set forth in this subparagraph).

c. Tenet shall not permit any director, officer, employee, agent, or representative of Tenet to serve on Monarch's board of directors.

5. Should the Commission seek in any proceeding to compel respondent to divest the Schedule A assets and/or the Schedule B assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the Consent Order, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by

the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the Consent Order.

7. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

8. This Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Tenet Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain assets, in or near San Luis Obispo County, California, that Tenet is to acquire through its acquisition of OrNda Healthcorp.

Until after the divestitures required under the Consent Agreement are completed, OrNda's hospitals and other businesses in San Luis Obispo County, California, as well as those in Santa Barbara County, California (collectively the "Hold Separate Assets"), must be managed and maintained as a separate, ongoing business, independent of all other Tenet businesses. All competitive information relating to the Hold Separate Assets must be retained and maintained by the persons involved in the operation of those Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose

employment involves any other Tenet business. Similarly, all such persons involved in Tenet shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Hold Separate Assets. (These confidentiality requirements are subject to limited exceptions, set forth in the Hold Separate Agreement.)

Monarch Health Systems is also to remain independent of Tenet's businesses, other than the Hold Separate Assets, pending Tenet's divestiture of its Monarch stock.

Any violation of the Consent Agreement or the Agreement to Hold Separate (which is incorporated by reference as part of the Consent Order to which Tenet has agreed), may subject Tenet to civil penalties and other relief as provided by law.

IN THE MATTER OF
GERBER PRODUCTS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3744. Complaint, May 27, 1997--Decision, May 27, 1997

This consent order prohibits Gerber, among other things, from making any claims, without competent and reliable scientific substantiation, about the extent to which doctors or other health, nutrition, child care or medical professionals recommend, approve of, or endorse baby or toddler food; and from misrepresenting the results or existence of any survey, test or research.

Appearances

For the Commission: *Jill E. Samuels* and *Rosemary Rosso*.

For the respondent: *John J. James* and *Jane Gennaro*, in-house counsel, Fremont, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gerber Products Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Gerber Products Company ("Gerber") is a Michigan corporation with its principal office or place of business at 445 State Street, Fremont, Michigan.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including Gerber baby and toddler foods. Gerber baby and toddler foods are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Gerber baby and toddler foods, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. [Depiction: Smiling baby]
VOICEOVER: "There's only one baby like yours."
[Depiction: Jar of Gerber baby food]
VOICEOVER: "And only one baby food like ours. Gerber."
[Depiction: Fresh apples]
VOICEOVER: "No one knows more about purity, . . ." [Depiction: Fresh carrots]
VOICEOVER: ". . . safety and nutrition . . ." [Depiction: Toddler being fed]
VOICEOVER: ". . . (and how to make sure baby likes it!) . . ."
[Depiction: Jars of Gerber baby and toddler food]
VOICEOVER: ". . . than Gerber. To learn more why four out of five pediatricians who recommend baby food recommend Gerber, . . ."
[Depiction: Baby being fed] "1-800-4-GERBER"
VOICEOVER: ". . . call us, anytime, day or night. You know you can trust Gerber . . ." [Depiction: Woman eating an apple]
"For learning to eat smart, right from the start."
VOICEOVER: ". . . for learning to eat smart, right from the start."
[Exhibit A, television advertisement]

B. [Ad translated from Spanish] [SFX: Baby crying]
WOMAN: "Oh! Mom could you hand me the baby food from the kitchen. The baby is hungry!"
MOM: "Hey, but not all of them are Gerber."
WOMAN: "But those are less expensive. Aren't they all the same?"
MOM: "Of course not. Gerber is the most recommended by pediatricians."
VOICEOVER: "She knows that there is nothing more nutritious and reliable for babies. As a matter of fact, four out of every five pediatricians that recommend baby food recommend Gerber."
WOMAN: "Now that I know I will always buy Gerber. My baby's health is priceless." [SFX: Baby laughing]
VOICEOVER: "For a better start in life, give him only Gerber."
[Exhibit B, radio advertisement]

C. [Gerber ran a promotion in which consumers who purchased a jar of Beech-Nut baby food were given a checkout coupon for Gerber baby food that offered five minutes of free long-distance telephone time upon calling an 800-number and listening to the following recording]
"Congratulations on your free five minutes of long distance, compliments of Gerber. Gerber feels there are a few things you should know. For one, *nobody* makes a safer baby food than Gerber. Plus, four out of five pediatricians who recommend baby food recommend Gerber. And nobody else knows more about purity, safety, nutrition, and of course, taste. And Gerber offers more variety than any other brand -- more than 180 kinds! In a few of those foods we add a controlled amount of sugar, or tapioca. Because research has proven it enhances the taste, without compromising the nutritional composition. No other baby food in the world does all that. Give Gerber a try and find out why it's the baby food more pediatricians recommend. To begin your call, use your key pad to enter your personal identification number found on your store receipt."
[Exhibit C, script of recorded message]

D. "4 OUT OF 5 PEDIATRICIANS* RECOMMEND GERBER

*A 1994 CONTEMPORARY PEDIATRICS RECOMMENDATION STUDY FOUND THAT 88% OF PEDIATRICIANS WHO RECOMMEND BABY FOOD RECOMMEND GERBER."

[Exhibit D, display case sticker]

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that competent and reliable studies or surveys show that four out of five pediatricians who recommend baby food recommend Gerber.

6. In truth and in fact, competent and reliable studies or surveys do not show that four out of five pediatricians who recommend baby food recommend Gerber. In the survey relied upon by respondent, 562 of the surveyed doctors responded to the questions concerning baby food. Of these 562 pediatricians, 408 responded that they recommend baby food to their patients at least once per week. Of the 408 pediatricians who recommend baby food to their patients at least once per week, 332, or approximately 82%, responded that they did not recommend any specific brands of baby food. Of the 76 pediatricians who did recommend specific brands, 67 recommended Gerber. Thus, only 67 of the 408 pediatricians who recommend baby food, or approximately 16%, recommend Gerber to their patients. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that approximately four out of five pediatricians recommend Gerber.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraphs five and seven, at the time the representations were made.

9. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraphs five and seven, at the time the representations were made. In the survey relied upon by respondent, 67, or approximately 12%, of the 562 pediatricians surveyed recommended Gerber. Therefore, the representations set forth in paragraphs five and eight were, and are, false or misleading.

10. The acts and practices of respondent 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.

Complaint

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EXHIBIT A

RTV

PRODUCT: GERBER PRODUCTS/BABY FOOD
 TITLE: "FOR LEARNING TO EAT SMART"
 PROGRAM: NEWS
 STATION: WABC

10/12/95
 (NEW YORK)

95-15562 MI

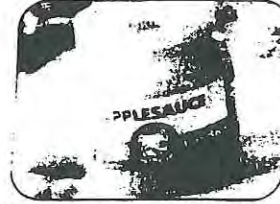
:30
 12:16PM



(MUSIC)



WOMAN ANNCR: There's only one
 baby like yours.



and only one baby food like ours,
 Gerber.



No one knows more



about purity,



safety and nutrition,



and how to make sure baby likes it
 than Gerber.



To learn more, why four out of five
 pediatricians



who recommend baby food
 recommend Gerber.



call us



anytime day or night



You know you can trust Gerber, for
 learning to eat smart, right from
 the start. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

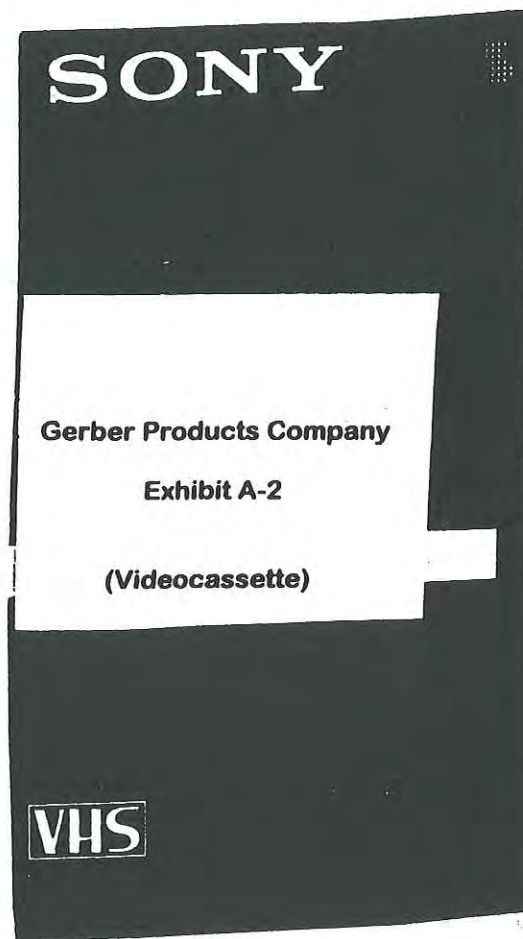
WABC-TV's program is intended to provide the viewer with material subject to the Commission's jurisdiction. The Commission is not responsible for the content of the program.

Exhibit A-1

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Complaint

EXHIBIT A



Complaint

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EXHIBIT B

Transcripción: Gerber
Spot: "Cuatro de cada cinco"
30ss / Radio

SFX

-sfx: Bebe llorando

-sfx: páos

-sfx: música

-sfx: bebe llorando

COPY

-Mujer: "Hay mami alcanzame el baby food
de la cocina que el bebé tiene
hambre"

-Mamá: "Oye, pero no todos son Gerber"

-Mujer: "Pero esos son más baratos, no da
igual?"

-Mamá: "Claro que no. Gerber es el más
recomendado por pediatras."

-Locutor: "Ella sabe que no hay
nada más nutritivo y
confiable para bebés. De
hecho 4 de cada 5
pediatras que recomiendan
alimentos para bebés
recomiendan Gerber."

-Mujer: "Ahora que lo sé compraré Gerber
siempre. La salud de mi bebé no
tiene precio."

-Locutor: "Para un mejor comienzo en la
vida sólo son Gerber."

Exhibit B

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Complaint

EXHIBIT C

Shoppers who have purchased a jar of Beech-Nut baby food in supermarkets (in the St. Louis area, at least) recently, have been given a "Catalina coupon" as they checked out at the register. The coupon offers 5 minutes of free long distance telephone time, if one calls (800) 507-8807. On calling the number, one hears the following:

"Congratulations on your free five minutes of long distance, compliments of Gerber.

Gerber feels there are a few things you should know. For one, nobody makes a safer baby food than Gerber.

Plus, four out of five pediatricians who recommend baby food, recommend Gerber. And nobody else knows more about purity, safety, nutrition, and of course, taste.

And Gerber offers more variety than any other brand, more than one hundred and eighty kinds.

In a few of these foods we add a controlled amount of sugar or tapioca, because research has proven it enhances the taste without compromising the nutritional composition.

No other baby food in the world does all that.

Give Gerber a try and find out why it's the baby food more pediatricians recommend.

To begin your call please use your touch tone phone to enter your pin number found on your red and white phone certificate.

(a beep is heard)"

CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON		
		THIS IS A LIVE PHONE CARD! FREE 5 MINUTES OF LONG DISTANCE PHONE CALLS GOOD IN THE U.S. PUERTO RICO & THE US VIRGIN ISLES DIAL: 800-507-8807 PIN NUMBER: 4708236916		To make your FREE call (5) dial 800-507-8807 After prompt enter your PIN# 4708236916 After tone, dial the area code and number you wish to call You will hear tones indicating when you have 5, 4, 3, 2, 1 seconds remaining in your call Customer Services: 1-800-507-8807 FREE PHONE TIME EXPIRES 12/31/80	
CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON		

Exhibit C

Complaint

123 F.T.C.

EXHIBIT D



Exhibit D

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Gerber Products Company is a Michigan corporation with its principal office or place of business at 445 State Street, Fremont, Michigan.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise

of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondent*" shall mean Gerber Products Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. "*Baby or toddler food*" shall mean any food or juice manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed by respondent for consumption by infants and children up to 4 years of age.

I.

It is ordered, That respondent, 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 baby or toddler food shall not make any representation, in any manner, expressly or by implication, about:

A. The extent to which doctors or other health, nutrition, child care, or medical professionals recommend such product; or

B. The recommendation, approval, or endorsement of such product by any health, nutrition, child care, or medical professional, profession, group, or other such entity,

unless, at the time it is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

It is further ordered, That respondent, 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 baby or toddler food, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any survey, test, study, or research.

III.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any baby or toddler food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

IV.

It is further ordered, That respondent, and its successors and assigns, shall for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including written consumer complaints or any communications with governmental or consumer protection organizations.

V.

It is further ordered, That respondent, and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, deliver a copy of this order to all current principals, officers, directors, and sales, advertising, and marketing managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of this order; and

B. For a period of five (5) years after the date of service of this order, deliver a copy of this order to all future principals, officers, directors, and sales, advertising, and marketing managers, and to all

employees, agents, and representatives having responsibilities with respect to the subject matter of this order, within thirty (30) days after the person assumes such position or responsibilities.

VI.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VII.

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

VIII.

This order will terminate on May 27, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

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Decision and Order

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

ABBOTT LABORATORIES

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3745. Complaint, May 30, 1997--Decision, May 30, 1997*

This consent order prohibits, among other things, the Illinois corporation that manufactures and advertises Ensure, a meal supplement, from making scientifically unsubstantiated claims about the extent to which doctors or other professionals recommend any food dietary or nutritional supplement for healthy adults; and about the recommendation, approval or endorsement of any such product by any person, profession or other entity. The consent order also prohibits the respondent from misrepresenting that one serving of any product sold as a meal replacement or supplement, including Ensure, for healthy adults provides vitamins in an amount comparable to typical vitamin supplements; and from misrepresenting the amount of any vitamin or any other nutrient or ingredient in such products.

Appearances

For the Commission: *Michelle Rusk, Michael Ostheimer and C. Lee Peeler.*

For the respondent: *Nancy Buc, Buc & Bearsdley, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Abbott Laboratories, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Abbott Laboratories ("Abbott") is an Illinois corporation with its principal office or place of business at One Abbott Park Road, Abbott Park, Illinois.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed nutritional products to the public, including Ensure products. Ensure products are marketed through Abbott's Ross Products Division and include Ensure, Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light. These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Ensure, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. VIDEO

Close-up of a graduation photograph of man and woman.

Man and woman who appear to be in their middle thirties.

Can of Ensure being poured into glass.

Man and woman jogging in a park.

Cans of Ensure. Super:

RECOMMENDED #1 BY DOCTORS.

(Exhibit A, television advertisement entitled "Younger Husband/Wife").

B. VIDEO

Close-up of black and white photograph of little girl and young father fishing.

Father and adult daughter fishing on dock.

Three cans of Ensure. Super:
RECOMMENDED #1 BY DOCTORS.

Can of Ensure being poured into glass.

Father and daughter in boat with father casting.

Three cans of Ensure. Super:
RECOMMENDED #1 BY DOCTORS.

AUDIO

Man: For 15 years, we've taken good care of each other.

Woman: We sure have.

Man: And to take better care of our health, we started drinking Ensure.

Woman: More than a vitamin supplement, Ensure is a delicious drink with all the nutrients adults need to help stay healthy, active, be energetic.

Man: Drink Ensure as a meal.

Woman: Or in between meals.

Man: Ensure is even recommended number one by doctors as a source of complete balanced nutrition.

Woman: Ensure, to your health honey.

Man: Uh, uh, to our health.

AUDIO

Woman: When I was young, you and mom made sure I ate right.

Man: Well you were my little girl.

Woman: Well today we're listening to our doctors and taking better care of our health with Ensure.

Man: Ensure is recommended number one by doctors as a source of complete balanced nutrition.

Woman: More than a vitamin supplement, Ensure has all the nutrients adults need to help stay healthy, active, be energetic.

Man: Drink Ensure as a meal.

Woman: Or in between meals. Ensure, to your health dad.

Mother: Uh, uh, to our health.

Announcer: Ensure, doctors recommend it number one.

(Exhibit B, television advertisement entitled "Father/Daughter").

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C. Wife: Oh boy, that water felt great!

Husband: Sure did. I always feel so good after a swim.

Wife: For 15 years, we've shared a pretty active life.

Husband: I've loved every minute.

Wife: And to help make sure we stay active, one thing we've done lately is to drink Ensure.

Husband: Hm Hmm. See, our doctor told us that a key to being energetic and in good health is good nutrition.

Wife: Right. And one way to help guarantee that you're getting the nutrition you need, is by drinking Ensure.

Husband: More than a vitamin supplement, Ensure is a delicious drink that provides complete balanced nutrition.

Wife: It's got the protein, carbohydrates, minerals and vitamins your body needs everyday to help you stay healthy, active, be energetic.

Husband: Drink Ensure anytime.

Wife: I like it as a delicious meal.

Husband: I like it in between meals. Ensure is even recommended number one by doctors and nutritionists for complete balanced nutrition.

Wife: So make sure the ones you love get the nutrition they need. Ensure. To your health, dear.

Husband: Uh, uh, to our health.

(Exhibit C, radio advertisement entitled "Younger Husband/Wife").

D. Depiction: Snapshots of a young man and a young woman. "Back then we promised to make the most out of life...today we're enjoying every moment."

DRINK TO YOUR HEALTH WITH ENSURE.[®] Depiction: Man and woman who appear to be in their thirties holding glasses of Ensure.

The #1 Doctor Recommended Source of Nutrition.

Most doctors will tell you that a key to good health is good nutrition. But even if you've improved your diet by eating more lean meats, fruits and vegetables, you still may not be getting the balanced nutrition you need.

So how can you help guarantee that you and the ones you love get the right nutrition?

With Ensure and *New Ensure High Protein*.

Ensure is more than a vitamin supplement. It's complete balanced nutrition in a delicious ready-to-serve drink that provides an excellent balance of protein, carbohydrate, vitamins, and minerals. In addition, *New Ensure High Protein* is low in cholesterol and low in saturated fat while being high in the nutrients you need everyday to help stay healthy, be energetic and more active. Drink your favorite Ensure anytime. Enjoy it as a healthy meal by itself or as a healthy between-meal snack. Ensure is even recommended #1 by doctors as a complete source of nutrition.

So make sure the ones you love get the right nutrition. Drink Ensure and drink to your health.

(Exhibit D, print advertisement).

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that many doctors recommend Ensure as a meal supplement and as a meal replacement for healthy adults, including those in their thirties and forties.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Among other reasons, a survey of doctors relied upon by respondent was not designed to elicit whether many doctors actually recommend Ensure as a meal supplement or meal replacement for healthy adults, as opposed to for adults who are ill or elderly and may have nutritional deficiencies. The survey merely asked doctors to assume that they would recommend a supplement for adults who were not ill, and then to select the brand they would most recommend. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that one serving of Ensure provides vitamins in an amount comparable to typical multivitamin supplements.

9. In truth and in fact, one serving of Ensure does not provide vitamins in an amount comparable to typical multivitamin supplements. While the typical multivitamin supplement provides at least 100% of the recommended daily intake (RDI) of vitamins for which RDIs have been established, at the time the advertisements were first disseminated, one serving of Ensure provided 62% of the RDI of Vitamin C and between 12% and 26% of the RDIs of the other vitamins for which RDIs have been established. Ensure has been reformulated and currently one serving provides 50% of the RDI of Vitamin C and 25% of the RDIs of the other vitamins for which RDIs have been established. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. The acts and practices of respondent 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.

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EXHIBIT A

RTV

PRODUCT: ENSURE VITAMIN SUPPLEMENT
 TITLE: "LOW IN SATURATED FAT"
 PROGRAM: WORLD NEWS TONIGHT
 STATION: ABC

6/16/95
 (NEW YORK)

95-09482 KH
 :30
 6:47PM



(MUSIC) MAN: For 15 years, we've taken good care of each other.



WOMAN: We sure have.



MAN: And to take better care of our health,



we started drinking Ensure.



WOMAN: More than a vitamin supplement,



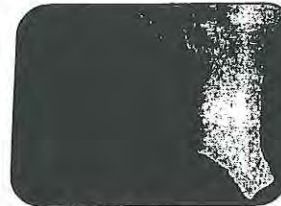
Ensure is a delicious drink with all the nutrients



adults need to help stay healthy, active, be energetic.



MAN: Drink Ensure as a meal.
 WOMAN: Or in between meals.



MAN: Ensure is even recommended



RECOMMENDED #1 BY DOCTORS
 number one by doctors as a source of complete balanced nutrition.



WOMAN: Ensure. To your health, honey. MAN: Uh uh, to our health.



ANNCR: Also try Ensure high protein. It's low in saturated fat. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Exhibit A-1

While Radio TV Reports undertakes to ensure the accuracy of material supplied by it, it cannot be responsible for omissions or misstatements. Material supplied by Radio TV Reports may be used for file and reference purposes only. It may not be reproduced, sold or publicly demonstrated or exhibited.

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EXHIBIT A

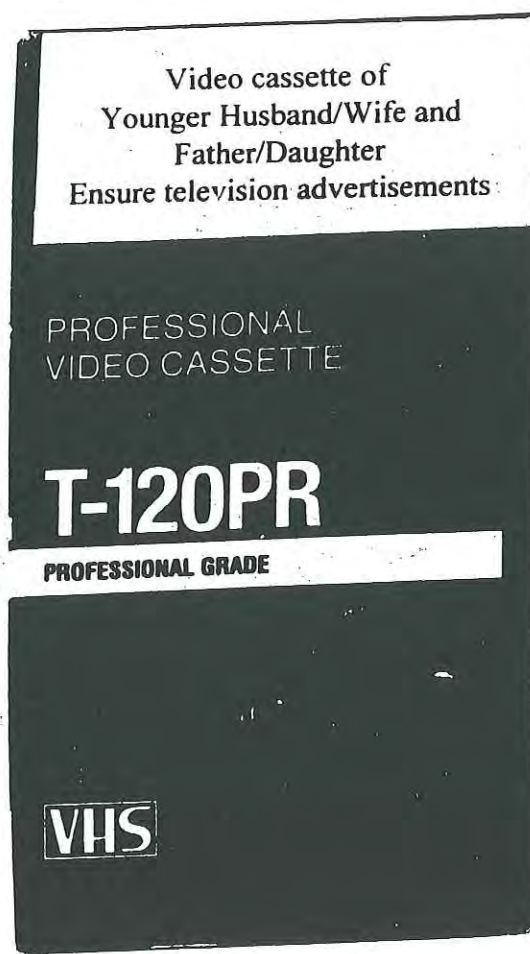


Exhibit A-2

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EXHIBIT B

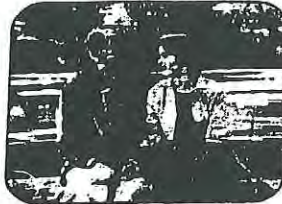
RTV

PRODUCT: ENSURE VITAMIN SUPPLEMENT
 TITLE: "FATHER & DAUGHTER"
 PROGRAM: CBS EVENING NEWS
 STATION: CBS

95-10434 AH
 07/10/95
 (NEW YORK)
 :30
 6:48PM



(MUSIC) DAUGHTER: When I was young,



you and Mom made sure I ate right.



FATHER: Well you were my little girl.



DAUGHTER: Well today we're listening to our doctor, and taking better care of our health with Ensure.



FATHER: Ensure is recommended number one by Doctors as a source of complete balanced nutrition.



DAUGHTER: More than a Vitamin Supplement



Ensure has all the nutrients



adults need



to help stay healthy, active,



be energetic. FATHER: Drink Ensure as a meal--



DAUGHTER: or in between. Ensure, to your health Dad. FATHER: Uh, to our health



ANNCR: Ensure, doctors recommend it number one. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Exhibit B-1

While Radio TV stations endeavor to ensure the accuracy of material supplied by it, it cannot be responsible for the material supplied by Radio TV stations may be used for the and reference purposes only. It may not be reproduced, sold or publicly exhibited or exhibited.

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Complaint

EXHIBIT B

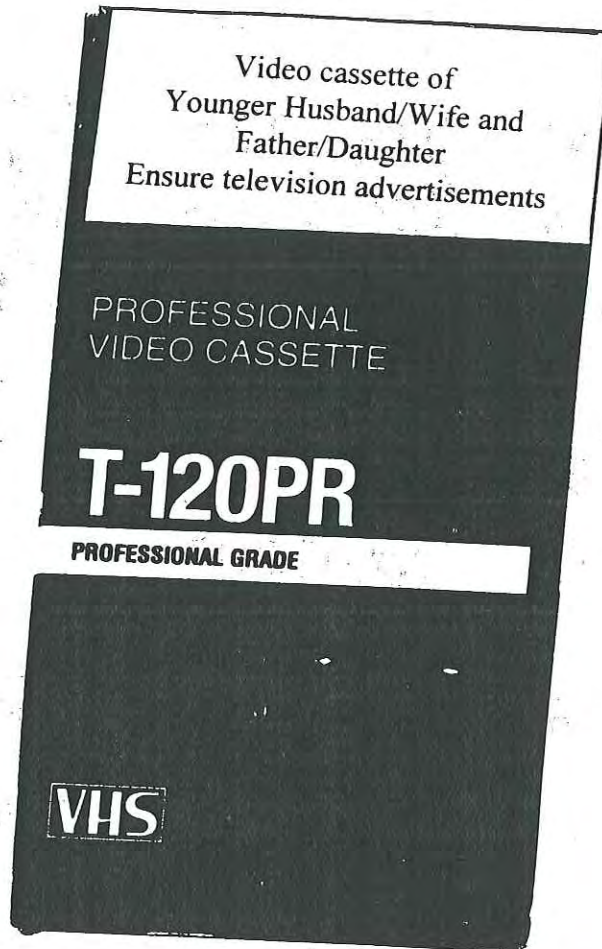


Exhibit B-2

Complaint

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EXHIBIT C

SCRIPT FOR
☒ RADIO ☐ TELEVISION FROM
LCF&L

Date: 6/21/94
Client: Ross Labs\Ensure
Commercial title: "Younger Husband/Wife"
Version no: RLE-428-60
Length: :60

(MUSIC & SFX UNDER)

WIFE: Oh, boy, that water felt great!

HUSBAND: Sure did. I always feel so good after a swim.

WIFE: For 15 years, we've shared a pretty active life.

HUSBAND: I've loved every minute.

WIFE: And to help make sure we stay active, one thing we've been doing lately is to drink ENSURE.

HUSBAND: Hm Hmm. See, our doctor told us that a key to being energetic and in good health is good nutrition.

WIFE: Right. And one way to help guarantee that you're getting the nutrition you need, is by drinking ENSURE.

HUSBAND: More than a vitamin supplement, ENSURE is a delicious drink that provides complete balanced nutrition.

WIFE: It's got the protein, carbohydrates, minerals and vitamins your body needs everyday to help you stay health, active, be energetic.

Exhibit C

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EXHIBIT C

HUSBAND: Drink ENSURE anytime.

WIFE: I like it as a delicious meal.

HUSBAND: I like it in between meals. ENSURE is even recommended #1 by doctors and nutritionists for complete balanced nutrition.

WIFE: So make sure the ones you love get the nutrition they need. ENSURE. To your health, dear.

HUSBAND: Uh, uh, to our health.
(SFX: CLINK)

ANNCR: Use as directed.

Exhibit C

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EXHIBIT D



The #1 Doctor Recommended Source of Nutrition.

Most doctors will tell you that a key to good health is good nutrition. But even if you've improved your diet by eating more lean meats, fruits and vegetables, you still may not be getting the balanced nutrition you need.

So how can you help guarantee that you and the ones you love get the right nutrition?

With Ensure and *New* Ensure High Protein.

Ensure is more than a vitamin supplement. It's complete, balanced nutrition in a delicious ready-to-serve drink that provides an excellent balance

of protein, carbohydrate, vitamins and minerals. In addition, *New* Ensure High Protein is low in cholesterol and low in saturated fat while being high in the nutrients you need everyday to help stay healthy, be energetic and more active. Drink your favorite Ensure anytime. Enjoy it as a healthy meal by itself

or as a healthy between-meal snack.

Ensure is even recommended #1 by doctors as a complete source of nutrition.

So make sure the ones you love get the right nutrition. Drink Ensure and drink to your health.

ENSURE

ENSURE

ENSURE

Available in 11 Delicious Flavors

Exhibit D

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now, in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Abbott Laboratories is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office or place of business at One Abbott Park Road, Abbott Park, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "*respondent*" shall mean Abbott Laboratories, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

2. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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 Ensure products, any other food, or any other dietary or nutritional supplement in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

A. The extent to which doctors or other professionals recommend such product for healthy adults; or

B. The recommendation, approval, or endorsement of such product by any person, profession, group, or other entity,

unless, at the time it is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

II.

It is further ordered, That respondent, 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 Ensure products, or any other product advertised, marketed or sold as a meal replacement or meal supplement for healthy adults, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. That one serving of such product provides vitamins in an amount comparable to typical vitamin supplements; or

B. The absolute or comparative amount of any vitamin or any other nutrient or ingredient contained in or provided by such product.

If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

III.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

It is further ordered, That respondent, and its successors and assigns, shall for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

It is further ordered, That respondent, and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, deliver a copy of this order to all current principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of this order; and

B. For a period of five (5) years after the date of service of this order, deliver a copy of this order to all future principals, officers, directors, and managers, and to all employees, agents, and representatives having responsibilities with respect to the subject matter of this order, within thirty (30) days after the person assumes such position or responsibilities.

VI.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VII.

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

VIII.

This order will terminate on May 30, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

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IN THE MATTER OF

BST ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9276. Complaint, Sept. 27, 1995--Final Order, May 30, 1997*

This final order adopts the initial decision and order issued by the Administrative Law Judge which prohibits, among other things, the maker of ABS BrakeSafe Equipment and its president from using the term ABS in connection with their retrofitted brakes and from representing that their brakes: are an antilock braking system; will qualify a vehicle for an automobile insurance discount; comply with performance standards set by the Society of Automotive Engineers or the National Highway Traffic Safety Administration; or provide antilock benefits equivalent to those provided by genuine ABS systems. In addition, the order prohibits safety claims, unless the respondents possess competent and reliable scientific substantiation.

*Appearances*For the Commission: *Theodore Hoppock.*For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BST Enterprises, Inc., a corporation, and Michael Woodruff, individually and as an officer and director 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 BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3139 National Circle, Garland, Texas.

Respondent Michael Woodruff is or was at relevant times herein an officer and director of BST Enterprises, Inc. 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 office and principal place of business is at 3139 National Circle, Garland, Texas.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

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.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to the advertisements and promotional materials attached hereto as Exhibits A through D. Those advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE

In just 30 minutes or less, your car, truck, motorhome, or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium, it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result, wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

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In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

* With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.

* Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.

* * * *

* In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Exhibit B]

(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

* Mechanical Safety Braking System with Anti-lock Benefits

* Safer, Skid Resistant Stopping

* Controls Premature Lock-up

* Shorter, Smoother Braking

* Efficiency in Emergencies

* * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when traveling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums. [Exhibit D]

PAR. 5. Through the use of the trade name ABS BrakeSafe and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that ABS BrakeSafe is an antilock braking system.

PAR. 6. In truth and if fact, ABS BrakeSafe is not an antilock braking system. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(e) Tests prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 8. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) Tests do not prove that ABS BrakeSafe reduces stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph;

(f) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product.

Therefore, the representations set forth in paragraph seven were, and are, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

PAR. 10. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through D, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs five, seven, and 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 five, seven, and 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. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

1394

Complaint

EXHIBIT A

21



In just 30 minutes or less, your car/truck/motorhome is MOTORIZED with the unit lock benefit of Brakesafe.

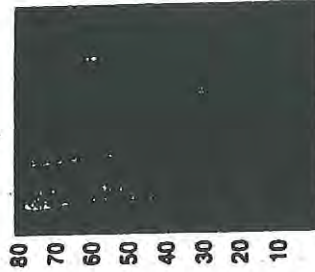
For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the patented, non-skid action of hydraulic anti-lock braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new, high priced car or truck to have the safety of Brakesafe.

And, since some insurance companies support this type of safety product, your Brakesafe installation certificate may entitle you to discounts on your yearly premium. If yes, but reductions as high as 10% are not unusual.

Don't just brake Brakesafe

Unlike electronic ABS systems which react only in emergency or panic situations, Brakesafe is proactive - it's in continuous operation. In addition, this all-mechanical system is unique in its patented remote-mount design, allowing simple installation and a choice of both mounting and placement options.



While results can vary substantially by road conditions, vehicle weight and other factors, Brakesafe has been found to reduce stopping distances up to 40% when aggressively decelerating from 60 to 0 mph.

After installation, most drivers say they find their brakes feel "more comfortable" and that less foot pressure is required to bring the vehicle to a safer stop. Shorter stopping distances are also realized, not just during panic stops or on wet roads. And with the unit's pre-active action, brake wear is also significantly reduced because pressure is applied more evenly and efficiently each time the driver depresses the brakes.

000171



Here's How Brakesafe Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, Brakesafe coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. It's almost like a hydraulic "shock

absorber" for your brakes, but one it absorbs excess brake pressure before it ever reaches the wheels. (Pressure is created when ABS Brakesafe is assembled, permanently charged and sealed, affecting a dynamic seal between the diaphragm and its chamber.)

Installed on your vehicle's existing brake lines, one unit controls the front brakes; another the rear brakes.

It works equally well on both drum or disc brakes and there are no complex sensors, wires or pumps and Brakesafe is automatically regulated to your vehicle's application and various load factors.

0 172

Complaint

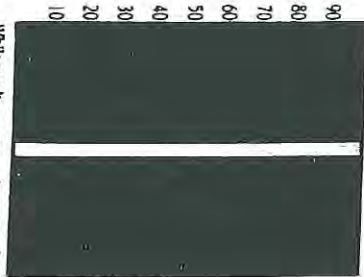
123 F.T.C.

EXHIBIT B

EXHIBIT B

**HOW BRAKESAFE™ WORKS**

BrakeSafe™ is an accumulator that equalizes brake shoe and/or pad pressure against the drums and rotors. Braking is coordinated by modulating brake line pressure to all four wheels simultaneously, assisting in control of the rotational wheel lock-up before it occurs. It's similar to having a hydraulic "shock absorber" for your brakes—it absorbs excess brake pressure before it ever reaches the wheels.



While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% in aggressively decelerating from 60-0 mph.

Adjustability for Weight Differences

A unique and unparalleled BrakeSafe™ feature is its Adjustability for handling significant vehicle weight differences. Each BrakeSafe™ unit is preset for the standard weight factor of most vehicles, but can be adjusted prior to installation for more efficient braking, e.g. if the vehicle is very light, like many of today's small and foreign vehicles; or exceptionally heavy, such as limousines, motor homes or larger trucks. This adjustment can only be performed by a qualified technician.

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp

CROCCO RACING

"...I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a major accident..."

Bob Beaumont

NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

BrakeSafe™ carries its own warranty for as long as the purchaser owns the vehicle. The Limited Warranty will be void if the units are transferred to a second vehicle.

BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration (DOT) 49 Code of the Federal Regulations CMV 101-1.57 Edition 571.105-SA Anti-lock System.

©Copyright 1991 - ABS BrakeSafe™ All Rights Reserved



Mechanical Safety Braking System with
Anti-lock Benefits

PROTECT YOUR FAMILY,
YOURSELF & OTHERS WITH
MORE EFFICIENT STOPPING.



Los Angeles Times Photo

NOW YOU CAN BRAKESAFE™
NO MATTER WHAT YOU DRIVE

1394

Complaint

EXHIBIT B

You Now Have an Opportunity to Add a Marvelous New Safety System to Your Vehicle

What BrakeSafe™ offers:

- BrakeSafe™ enhances most braking systems by providing uniform friction during the rotation of each drum or rotor.
- With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.
- Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.
- The need for less pedal effort creates lower rotor temperatures resulting in the extended life of standard braking units.
- This system does not alter your existing brake system. If the BrakeSafe™ units should fail, your original braking system will continue to operate in its normal manner.
- In summary, Softer Operation, Greater Control, and Reduced Brake Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking brake systems. In the late 1980's electronic variations were offered on expensive European luxury cars, and later on selected domestic models.



Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

In less than an hour your vehicle can be retro-fitted with this safety system

This all-mechanical system is unique in its patent-pending, remote mount design, allowing simple installation and choice of both mounting and placement options. A complete installation and information video is included with each kit.

Remote Mounting Design creates simple installation on almost any vehicle.



How can any system that reduces brake pressure stop a car faster on a dry road?

The key is wheel slip. To engineers, that's a measure of kinetic friction of a tire and the road surface. More simply, a smoothly rolling tire exhibits static friction or zero slip. A locked tire in full skid exhibits kinetic friction or 100% slip. The most efficient, quietest braking occurs just at the verge of lockup - at about 5% or 10% slip. And that's the friction point BrakeSafe™ aims to maintain. With any more pressure, you're locked and skidding. With any less, you're adding stopping distance. So while drivers shouldn't expect to never "leave rubber" in a high-speed braking situation, they should find that the tire's "footprint" will be straight and shorter.

What can I expect on snow and ice?

You should see a marked improvement in braking effectiveness as long as tires have the ability to retain cohesion with the road surface - which is often the case in pure snow. However, ABS or any other system can prevent skidding or shorten stopping when tires have no cohesion, such as on ice.

Will BrakeSafe™ Improve the performance of worn brakes?

Possibly, but not to the extent it will improve a brake system in good condition. No ABS system can cure brakes that are inherently unsafe. That's why it's important for installers to inspect the existing brake system and tires carefully before installing BrakeSafe™. Worn brakes or tires contaminated with brake fluid, even improper tire inflation can all impede the ability of BrakeSafe™ to stop cars shorter and safer. [Note: all types of brake fluid are acceptable for use with BrakeSafe™.]

So it won't interrupt the manufacturer's warranty on the original brakes?

No, because manufacturers recognize that BrakeSafe™ is a replacement brake system per se. It simply an enhancement for existing brakes.

Complaint

123 F.T.C.

EXHIBIT C

EXHIBIT C

PROTECT YOUR FAMILY.

(As used in the airline industry)



- Mechanical Safety Braking System with Anti-lock Benefits
- Safer, Skid Resistant Stopping
- Controls Premature Lock-up
- Shorter, Smoother Braking
- Efficiency in Emergencies
- Extends Life of Brake Parts
- Fits Most Vehicles
- Lifetime Warranty

24

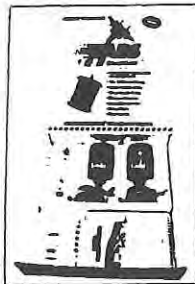
NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

1394

Complaint

EXHIBIT D

EXHIBIT D

New Products Section • New Products Section**THE ABS
OF BRAKES**

BrakeSafe is an enhanced braking system with ABS benefits. One of the unique features of BrakeSafe is the units automatically adjust to the weight and unique personality of your vehicle. BrakeSafe is electronically mounted, it installs anywhere under the hood. Some of the many enhance-

ments to conventional braking is that you normally stop straighter and shorter. The life of most brake parts are greatly increased, thereby saving dollars as well as lives. In independent testing, the BrakeSafe devices have proven to stop at least 20 percent shorter when traveling at 60 mph. If BrakeSafe should discontinue operating, it reverts to the original braking system. In some cases, your customers may also be offered decreased insurance premiums. BST is also offering Motorcycle BrakeSafe units and will be offering retrofit air bags (SRS) for most vehicles in 1993.

BST Enterprises Inc.
4711 E. Falcon Dr., 3rd Fl.
Mesa, Ariz. 85205
800/257-8720
Fax 602/924-8166
Circle 312 on Service Card

DEFAULT JUDGMENT AGAINST RESPONDENTS
BST ENTERPRISES, INC., AND MICHAEL WOODRUFF

I. INTRODUCTION

Complaint counsel have moved, pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, for the entry of a default judgment against respondents in Docket 9276, BST Enterprises, Inc. ("BST") and Michael Woodruff.

The motion is based on the failure of respondents BST and Woodruff to answer the complaint in this matter or to respond to various discovery requests served upon them, and the failure of Woodruff to appear at a deposition in response to a subpoena.

II. BACKGROUND

*A. Respondents Were Properly Served With
The Complaint and Notice Order*

Beginning on approximately October 6, 1995, the U.S. Postal Service made repeated, unsuccessful efforts to get respondents to claim the registered mail package containing the Commission's complaint and notice order in this matter. Thereafter, on November 21, 1995, an investigative assistant in the Commission's Dallas Regional Office hand-delivered to BST's corporate offices, at 3139 National Circle, Garland, Texas, an additional copy of the complaint and notice order, as well as complaint counsel's first set of interrogatories and first *subpoena duces tecum* to respondents, motion to consolidate, and other pleadings and orders issued prior to that date.¹

Respondents were located at this address at the time the complaint was issued, and they received the pleadings. The address, 3139 National Circle, was then currently used on BST's stationery and other BST documents. The FTC investigator who delivered the pleadings to this address noted that the building entrance bore the trade name of the BST braking product, BrakeSafe. Moreover, employees present at BST's offices on November 21 confirmed that

¹ See Spears Declaration and Griggs Declaration, dated November 22, 1995, and filed with the Secretary's Office on November 28, 1995 (Attachments 1 and 2 to complaint counsel's motion); Complaint Counsel's Response to Respondent BST's Motion for Thirty Day Extension to Submit Documents, at footnote 1, filed December 15, 1995 (Attachment 3 to complaint counsel's motion). Accompanying the complaint was the standard Secretary's letter informing respondents of the need to file an answer within the time set by the Commission's Rules. (Attachment 1, ¶2 to complaint counsel's motion).

BST operated out of the location and led FTC personnel to respondent Woodruff's private office. *See* Spears Declaration; Griggs Declaration. Most importantly, respondents' opposition to the motion to consolidate, and their partial responses to complaint counsel's first subpoena and first set of interrogatories, although incomplete, are irrefutable evidence of the fact that respondents received the complaint and notice order.²

B. Respondents Failed to Comply With Duly Issued Subpoenas

In addition to their failure to answer the complaint, respondents BST and Woodruff have disobeyed my order that they respond to complaint counsel's November 17, 1995 *subpoena duces tecum* by January 5, 1996. On December 18, 1995, I issued an order requiring respondents to produce all documents responsive to complaint counsel's November 11, 1995 *subpoena duces tecum* by January 5, 1996. Respondents have yet to turn over such documents.³ Moreover, it is apparent that respondents' failure to comply with my December 18 order is due to their unwillingness to defend this action and not to an inability to do so. Respondents have neither attempted to discuss the subpoena return with complaint counsel nor filed a motion to quash it.

BST and Woodruff also failed to respond to complaint counsel's February 6, 1996 requests for admissions, or to respond to complaint counsel's motion for partial summary judgment as to the advertising claims made by them. On May 22, 1996, I entered a partial summary decision against respondents BST and Woodruff ruling that respondents made each of the claims alleged in the complaint. My findings of fact were based in part upon the failure of respondents to answer the February 6 request for admissions. *See* Rule 3.32(b) (matters deemed admitted unless replied to within ten days of service).

² *See* BST's Answer to Motion to Consolidate (stamped Dec. 15, 1995) (Attachment 4 to complaint counsel's motion); November 17, 1995 *Subpoena duces tecum* to BST and BST's December 22, 1995 Partial Response thereto (Attachment 5 to complaint counsel's motion); November 17, 1995 Interrogatories to BST and BST's December 26, 1995 Partial Responses thereto (Attachment 6 to complaint counsel's motion). *See also*, BST's request for a thirty day extension on the subpoena return (stamped Dec. 15, 1995) (Attachment 7 to complaint counsel's motion). These are all of the pleadings respondents have submitted in this proceeding. None of these pleadings dispute respondents' receipt of the complaint or other documents.

³ *See* Order Granting Extension of Time to BST, D. 9276 (Dec. 18, 1995) (Attachment 8 to complaint counsel's motion); Hoppock Declaration (Attachment 9 to complaint counsel's motion) (complaint counsel never received the documents ordered to be turned over by January 5, 1996).

Finally, Woodruff failed to appear for deposition pursuant to a subpoena issued by me on June 4, 1996. In light of respondents' failure to respond to the outstanding discovery requests, complaint counsel had intended to depose respondent Woodruff, individually and as an officer of BST Enterprises, as to all issues to be adjudicated in this case. Complaint counsel have substantial proof that, despite Woodruff's ongoing efforts to evade service in this proceeding, the subpoena was successfully served upon him.⁴ Woodruff not only failed to appear at his deposition; he also neglected to contact complaint counsel either before or after the date of deposition to attempt to comply with the subpoena.

III. DEFAULT JUDGMENT IS APPROPRIATE UNDER RULES 3.12(c)
AND 3.38(b)(5) OF THE COMMISSION'S RULES OF PRACTICE

Default judgment against respondents BST and Woodruff is appropriate under both Rules 3.12(c) and 3.38(b)(5) of the Commission's Rules of Practice.

Rule 3.12(c) provides that the failure of a respondent to file an answer to a complaint:

authorize[s] the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

Respondents BST and Woodruff failed to answer the complaint in this action, despite the fact they clearly were served with the complaint and notice order almost one year ago. A default order is, therefore, appropriate. *See Griffin Systems, Inc.*, 1993 FTC LEXIS

⁴ Since the complaint was issued, respondents BST and Woodruff have changed addresses several times without notifying complaint counsel, me, or the Secretary's Office. Despite this fact, complaint counsel have attempted to serve all pleadings to respondents' most current known address.

In May 1996, complaint counsel learned from the U.S. Postal Service that respondents had changed their address to a post office box in Dallas, Texas at zip code 75355. Hoping to effect personal service of a *subpoena ad testificandum* upon Woodruff, complaint counsel obtained the street address given by him in registering for the post office box. When it was determined that Woodruff did not reside at this address, an employee of the Commission's Dallas Regional Office hand-delivered a *subpoena ad testificandum* to the station manager for zip code 75355 for placement in respondent Woodruff's post office box. (*See Elliott Declaration*) (Attachment 10 to complaint counsel's motion). The station manager's sworn declaration states that the subpoena was picked up from the post office box the following day. (*See Brown Declaration*) (Attachment 11 to complaint counsel's motion). Accordingly, Woodruff was properly served with the *subpoena ad testificandum*.

Moreover, Woodruff and BST Enterprises continue to accept mail at this address. (*See Teague Declaration*) (Attachment 12 to complaint counsel's motion). On June 7, 1996, the same date that the subpoena was picked up, respondents renewed the post office box. At that time Woodruff changed his street address to 3131 National Circle, Garland, Texas – evidently just doors down from BST's former corporate address of 3139 National Circle. (*See Teague Declaration*).

167 (Order Granting Default Judgment Against Robert W. Boughton), *affirmed*, *Boughton v. FTC*, unreported (11th Cir. 1996);⁵ *American Tractor Trailer Training, Inc.*, 86 FTC 654, 663-64 (1975); *Joseph Richard Horvath t/a Sew Rite*, 85 FTC 1081, 1085 (1975); *Robertson Investment Co.*, 83 FTC 1717, 1721-22 (1974).

Commission Rule 3.38(b)(5) provides that if a party fails to comply with a subpoena, or with an order for the production of documents or the answering of interrogatories, the Administrative Law Judge may rule that a "decision of the proceeding be rendered against the party." Respondents BST and Woodruff failed to comply with my order requiring the production of documents and failed to appear for testimony pursuant to subpoena.

In a recent Commission action against RustEvader Corp., the ALJ struck RustEvader's answer, pursuant to Rule 3.38(b)(5), on the grounds that the corporate respondent had failed to comply with the ALJ's order directing it to answer discovery requests. The ALJ then held that the entry of default judgment was appropriate under both Rule 3.12(c) and 3.38(b) where the corporate respondent generally had failed to respond to discovery as to all aspects of the litigation. *See RustEvader Corp.*, Docket No. 9274 (Initial Decision) (May 24, 1996) (Timony, ALJ). A default judgment is also appropriate here since respondents BST and Woodruff have failed to answer the complaint, failed to appear for testimony pursuant to subpoena, and failed to comply with a subpoena or my order for the production of certain documents relevant to the central issues for adjudication in this case.

Commission Rules 3.12(c) and 3.38(b)(5) are modeled closely after Rules 37 and 55(b) of the Federal Rules of Civil Procedure. Under Rule 55(b) default judgment is available "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend [the lawsuit]. . . ." Under Rule 37, a court may issue "an order rendering a judgment by default" if a party disobeys a discovery order, fails to attend its own deposition, fails to serve answers to interrogatories, or fails to respond to a request for inspection. The federal rules provide for default judgment in order to allow the courts to manage their dockets efficiently and effectively.

⁵ The circuit court's unpublished opinion is included as Attachment 14 to complaint counsel's motion. Both the ALJ and the circuit court found that the entry of a default judgment against the respondent for failure to answer the complaint was appropriate under Rule 3.12(c) where the complaint was properly served upon a post office box, respondent's only known address. In this instance, service was made at respondents' place of business, which unquestionably is appropriate under Rule 3.12(c).

Merrill Lynch Mort. Corp. v. Narayan, 908 F.2d 246, 252 (7th Cir. 1990). As the Supreme Court has stated:

The most severe in the spectrum of sanctions must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League v. Met. Hockey Club, Inc., 427 U.S. 639, 643 (1976).

The federal courts frequently enter default judgments, pursuant to Rule 55(b), as a result of a party's failure to answer the complaint. For instance, in *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D.C. Minn. 1985), the court held that Fed. R. Civ. P. 55(b) does not require a hearing before the entry of default where a defendant has failed to answer the complaint:

If the court determines that a defendant is in default, the factual allegations of the complaint will be taken as true. This rule applies to cases seeking equitable as well as legal relief.

FTC v. Kitco of Nevada, Inc., 612 F. Supp. at 1297 (citations omitted).

The federal courts also frequently enter default judgments pursuant to Rule 37 where, as here, the defendant has failed to comply with duly served subpoenas or other discovery requests. In *FTC v. Packers Brand Meats, Inc.*, 562 F.2d 9, 10 (8th Cir. 1977), the defendant, after nearly six months, had failed to respond to the lower court's order to show cause why it should not be required to testify or produce documents pursuant to a subpoena issued by the FTC ALJ. The appellate court held that the district court was "fully justified" in entering a default where the defendant's failure to comply did not constitute either good faith mistake or excusable neglect.

Similarly, the appellate court in *U.S. v. DiMucci*, 879 F.2d 1488 (7th Cir. 1989), held that the district court did not abuse its discretion in entering default where:

Defendants' repeated failure to comply with discovery, to obey court orders regarding the same, and to appear for their depositions clearly constitute contumacious conduct which seriously hampered [plaintiff's] trial preparation.

U.S. v. DiMucci, 879 F.2d at 1494.

A default judgment is appropriate and necessary to ensure the functioning of the judicial process when a defendant's actions or inactions amount to willful misconduct. "A defendant cannot be permitted to avoid or delay a plaintiff's right to judicial resolution of a dispute by ignoring the proceeding." *Frank Keevan & Son v. Collier Steel Pipe & Tube*, 107 F.R.D. 665, 670 (1985). See also *Home Port Rentals, Inc. v. Ruben*, 957 F.2d 126, 133 (4th Cir.), cert. denied 113 S. Ct. 70 (1992) (The district court was justified in entering default where defendant: failed to cooperate in discovery matters; refused to submit to depositions; and failed to participate in the prosecution and defense of the matter); *Crocker National Bank v. M.F. Securities (Bahamas)*, 104 F.R.D. 123, 127 (1985) ("As a result of defendants' willful failure to comply with the court's order to appear for deposition, this court is authorized in issuing an order rendering judgment by default against defendants."); *Minnesota Min. & Mfg. Co. v. ECO Chem., Inc.*, 757 F.2d 1256, 1261 (Fed. Cir. 1985) (district court did not abuse its discretion in entering default where the defendant repeatedly had engaged in dilatory tactics).

For the reasons given above,

It is ordered, That respondents BST Enterprises, Inc., and Michael Woodruff be, and they hereby are, found in default of this proceeding; and

It is further ordered, That because of respondents' default, and pursuant to Sections 3.12(c) and 3.38(b)(5) of the Rules of Practice, the following initial decision be, and it hereby is, entered.

INITIAL DECISION

BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

OCTOBER 16, 1996

I. FINDINGS OF FACT

1. Respondent BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3131 National Circle, Garland, Texas.

2. Respondent Michael Woodruff is an officer and director of BST Enterprises, Inc. His office and principal place of business is at 3131 National Circle, Garland, Texas, and he also receives mail at Post Office Box 551355, Dallas, Texas.

3. Respondent Michael Woodruff, individually or in concert with others, formulates, directs, and controls the acts and practices of the corporate respondent.

4. Respondents have manufactured, advertised, offered for sale, sold, and distributed certain after-market automotive products including ABS BrakeSafe, a device that is installed on a vehicle to improve its braking performance.

5. The acts and practices of respondents have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

6. Respondents have disseminated or caused to be disseminated advertisements and promotional materials for ABS BrakeSafe, including but not necessarily limited to Exhibits A through D attached to the complaint. These advertisements and promotional materials contain the following statements and depictions:

(a) NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

In just 30 minutes or less, your car, truck, motorhome or motorcycle can be RETROFITTED with the anti-lock benefit braking of BrakeSafe!!

For over forty years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with the unmatched, non-skid action of hydraulic anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars and later on select domestic models.

But now you don't have to own a new high-priced car or truck to have the safety of BrakeSafe™.

And, since some insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to discounts on your yearly premium; it varies, but reductions as high as 10% are not unusual.

Don't just brake - BrakeSafe.

Unlike electronic ABS systems which react only in emergency or panic situations, BrakeSafe™ is pro-active - it's in continuous operation.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 30% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 80 on a graph, and the other short and straight, extending from 0 to 60 on the graph.]

* * * *

Shorter stopping distances are also realized, not just during panic stops or on wet roads.

* * * *

Here's How BrakeSafe™ Works

With conventional brakes, vehicles go into a skid when excess brake pressure is applied - usually the driver's response to an unexpected situation.

As brake pressure increases, one tire can begin to slow at a disproportionate rate to the others. The result: wheel lock-up and an immediate reduction in road adhesion. A skid or spin-out.

In contrast, BrakeSafe™ coordinates braking by modulating brake line pressure to all four wheels, controlling the rotational wheel lock-up before it occurs. . . .

* * * *

[Complaint Exhibit A]

(b) ABS BRAKESAFE™

Mechanical Safety Braking System With Anti-lock Benefits

PROTECT YOUR FAMILY, YOURSELF & OTHERS WITH MORE EFFICIENT STOPPING.

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

* * * *

What BrakeSafe™ offers:

* * * *

* With this system you will notice a Softer Pedal which minimizes premature lock-up and increases vehicle stability in emergency situations.

* Controlled stopping and positive steering control during panic stops and dangerous driving conditions make this BrakeSafe™ system especially attractive for motor homes, trailer pullers and commercial vehicles.

* * * *

* In summary, Safer Operation, Greater Control, and Reduced Break Wear more than justify the small investment.

Affordable Aerospace Technology

For years, the aerospace and aviation industries have equipped military fighter jets and state-of-the-art airliners with hydraulic anti-skid, anti-locking braking systems. In the late 1980's, electronic variations were offered on expensive European luxury cars, and later on selected domestic models.

Insurance Discounts

Since insurance companies support this type of safety product, your BrakeSafe™ installation certificate may entitle you to a discount on your yearly premium.

* * * *

While results can vary substantially by road conditions, vehicle weight and other factors, BrakeSafe™ has been found to reduce stopping distances up to 20% when aggressively decelerating from 60 to 0 mph.

[Depiction of two sets of tire tracks, one long and wavy, extending from 0 to 85 on a graph, and the other short and straight, extending from 0 to 55 on the graph.]

* * * *

Does it work?

"We have tested and used it (BrakeSafe) in competition and it greatly enhances our stopping ability. Your product has allowed us to go much deeper into turns while avoiding wheel lockup."

Croydon Kemp CROCYCO RACING

". . . I had no choice but to apply maximum brakes at approximately 115 MPH. There was no lock up and no skip and the car stopped immediately. Had it not been for this system (BrakeSafe™), there would have been a mojour [sic] accident. . ."

Bob Beaucond NORTH COUNTY MUSTANG RACING TEAM

WARRANTY

. . . . BrakeSafe™ is in compliance with the Wheel Slip Brake Control System Road Test Code SAE J46, and National Highway Traffic Safety Administration. (DOT) 49 Code of the Federal Regulations CH. V (10-1-87) Edition 571.105-SA Anti-lock System.

[Complaint Exhibit B]

Initial Decision

123 F.T.C.

(c) PROTECT YOUR FAMILY

ABS BRAKESAFE™ (As used in the airline industry)

* Mechanical Safety Braking System with Anti-lock Benefits

* Safer, Skid Resistant Stopping

* Controls Premature Lock-up

* Shorter, Smoother Braking

* Efficiency in Emergencies

* * * *

NOW YOU CAN BRAKESAFE™, NO MATTER WHAT YOU DRIVE.

[Complaint Exhibit C]

(d) THE ABS OF BRAKES

BrakeSafe is an enhanced braking system with ABS benefits. . . . Some of the many enhancements to conventional braking is that you normally stop straighter and shorter. . . . In independent testing, the BrakeSafe devices have proven [sic] to stop at least 20 percent shorter when travelling at 60 mph. . . . In some cases, your customers may also be offered decreased insurance premiums.

[Complaint Exhibit D]

7. On May 22, 1996, a Partial Summary Decision was issued in which, *inter alia*, respondents' advertising claims were discussed and analyzed at length. Thus, it has previously been found that respondents' ads, logos and promotional material make and have made the claim that the ABS BrakeSafe braking device is an antilock braking system. (Partial Summary Decision, at p. 27) (May 22, 1996).

8. In truth and in fact, ABS BrakeSafe is not an antilock braking system. Therefore, respondents' representation set forth in finding 7 was, and is, false and misleading.

9. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(d) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration⁶;

⁶ This finding was articulated in my May 28, 1996 order clarifying the May 22, 1996 Partial Summary Decision.

(e) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(f) Consumer testimonials appearing in their ads and promotional materials reflect the typical or ordinary experience of members of the public who have used the ABS BrakeSafe device.

(g) Tests prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

(Partial Summary Decision, at pp. 27-28) (May 22, 1996).

10. In truth and in fact:

(a) ABS BrakeSafe does not prevent or substantially reduce wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

(b) Installation of ABS BrakeSafe will not qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(c) ABS BrakeSafe does not comply with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46 ("SAE J46"). SAE J46 sets forth a test procedure for evaluating the performance of antilock brake systems, but contains no performance standard. Moreover, ABS BrakeSafe has not been subjected to the testing set forth in SAE J46;

(d) ABS BrakeSafe does not comply with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration. The provision referred to establishes only a definition pertaining to antilock braking systems, and ABS BrakeSafe does not meet that definition;

(e) ABS BrakeSafe does not provide antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems;

(f) Testimonials from consumers appearing in the advertisements and promotional materials for ABS BrakeSafe do not reflect the typical or ordinary experience of members of the public who have used the product; and

(g) Tests do not prove that ABS BrakeSafe will reduce stopping distance when compared with vehicles not furnished with the braking device.

Therefore, respondents' representations as set forth in finding 9 were, and are, false and misleading.

11. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claims that:

(a) In emergency stopping situations, a vehicle equipped with ABS BrakeSafe will stop in a shorter distance than a vehicle that is not equipped with the device; and

(b) Installation of ABS BrakeSafe will make operation of a vehicle safer than a vehicle that is not equipped with the device.

(Partial Summary Decision, at p. 28) (May 22, 1996).

12. As was detailed in the Partial Summary Decision, respondents' ads, logos and promotional material make and have made the claim that at the time respondents made the representations set forth in findings 7, 9, and 11, they possessed and relied upon a reasonable basis that substantiated such representations.

13. In truth and in fact, at the time respondents made the representations set forth in findings 7, 9, and 11, they did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representations set forth in finding 12 were, and are, false and misleading.

II. CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. The acts and practices of respondents as described in findings 1 through 13 above constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

3. The following order is necessary and appropriate under applicable legal precedent and the facts of this case.

III. ORDER

DEFINITIONS

For the purposes of this order:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based upon 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; and

2. "*Purchasers for resale*" shall mean all purchasers of ABS BrakeSafe for resale to the public, including but not limited to franchisees, wholesalers, distributors, retailers, installers, and jobbers.

I.

It is ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director 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 ABS BrakeSafe 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 initials or term ABS in conjunction with or as part of the name for such product or the product logo.

II.

It is further ordered, That respondents, BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director 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 ABS BrakeSafe 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. Is an antilock braking system;

B. Prevents or substantially reduces wheel lock-up, skidding, or loss of steering control in emergency stopping situations;

C. Will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

D. Complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

E. Complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

F. Has been proven in tests to reduce stopping distances by at least 20% when the vehicle's brakes are applied at a speed of 60 mph; or

G. Provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems.

III.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director 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 any braking system, accessory, or device, 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:

A. In emergency stopping situations, a vehicle equipped with the system, accessory, or device will stop in a shorter distance than a vehicle that is not equipped with the system, accessory, or device; or

B. Installation of the system, accessory, or device will make operation of a vehicle safer than a vehicle that is not equipped with the system, accessory, or device;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director 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 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:

A. The contents, validity, results, conclusions, or interpretations of any test or study;

B. The compliance of any such product with any standard, definition, regulation, or any other provision of any governmental entity or unit, or of any other organization;

C. The availability of insurance benefits or discounts arising from the use of such product; or

D. That any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product represents the typical or ordinary experience of members of the public who use the product, unless:

(1) Such representation is true, or

(2) Respondents disclose clearly, prominently, and in close proximity to the endorsement or testimonial either:

(a) What the generally expected results would be for users of such product, or

(b) The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

V.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Michael Woodruff, individually and as an officer and director 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 any braking system, accessory, or device, or any other system, accessory, or device designed to be used in, on, or in conjunction with any motor vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the absolute or comparative attributes, efficacy, performance, safety, or benefits of such system, accessory, or device, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall:

A. Within forty-five (45) days after the date of service of this order, compile a current mailing list containing the names and last known addresses of all purchasers of ABS BrakeSafe since January 1, 1990. Respondents shall compile the list by:

1. Searching their own files for the names and addresses of such purchasers; and

2. Using their best efforts to identify any other such purchasers, including but not limited to sending by first class certified mail, return receipt requested, within five (5) days after the date of service of this order, to all of the purchasers for resale with which respondents have done business since January 1, 1990, an exact copy of the notice attached hereto as Appendix A. The mailing shall not include any other documents. In the event that any such purchaser for resale fails to provide any names or addresses of purchasers in its possession, respondents shall provide the names and addresses of all such purchasers for resale to the Federal Trade Commission within forty-five (45) days after the date of service of this order.

3. In addition, respondents shall retain a National Change of Address System ("NCOA") licensee to update this list by processing the list through the NCOA database.

B. Within sixty (60) days after the date of service of this order, send by first class mail, postage prepaid, to the last address known to respondents of each purchaser of ABS BrakeSafe identified on the mailing list compiled pursuant to subparagraph A of this Part, an exact copy of the notice attached hereto as Appendix B. The mailing shall not include any other documents. The envelope enclosing the notice shall have printed thereon in a prominent fashion the phrases "FORWARDING AND RETURN POSTAGE GUARANTEED" and "IMPORTANT NOTICE--U.S. GOVERNMENT ORDER ABOUT ABS BRAKESAFE BRAKING DEVICE."

C. Send the mailing described in subparagraph B of this Part to any person or organization not on the mailing list prescribed in subparagraph A of this Part about whom respondents later receive information indicating that the person or organization is likely to have been a purchaser of ABS BrakeSafe, and to any purchaser whose notification letter is returned by the U.S. Postal Service as undeliverable and for whom respondents thereafter obtain a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondents' receipt of a corrected address or information identifying each such purchaser.

D. In the event respondents receive any information that, subsequent to its receipt of Appendix A, any purchaser for resale is using or disseminating any advertisement or promotional material that contains any representation prohibited by this order, immediately notify the purchaser for resale that respondents will terminate the use of said purchaser for resale if it continues to use such advertisement or promotional material.

E. Terminate within ten (10) days the use of any purchaser for resale about whom respondents receive any information that such purchaser for resale has continued to use any advertisement or promotional material that contains any representation prohibited by this order after receipt of the notice required by subparagraph A of this Part.

VII.

It is further ordered, That respondents BST Enterprises, Inc., a corporation, its successors and assigns, and Michael Woodruff shall for five (5) years after the last correspondence to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. The list compiled pursuant to subparagraph A of Part VI of this order;

B. Copies of all notification letters sent to purchasers pursuant to subparagraphs B and C of Part VI of this order;

C. Copies of notification letters sent to purchasers for resale pursuant to subparagraphs A and D of Part VI of this order, and all other communications with purchasers for resale relating to the notices required by Part VI of this order.

VIII.

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 or assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

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

B. 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.

IX.

It is further ordered, That respondent BST Enterprises, 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 ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's future 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.

X.

It is further ordered, That respondent BST Enterprises, Inc., its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

XI.

It is further ordered, That respondent Michael Woodruff shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. 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 duties and responsibilities.

XII.

It is further ordered, That this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order,

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and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XIII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, 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.

APPENDIX A

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Reseller:

Our records indicate that you are or have been a distributor or retailer of the ABS BrakeSafe, a brake product. This letter is to advise you that the Federal Trade Commission recently obtained an order against BST Enterprises, Inc. regarding certain claims made for the ABS BrakeSafe device. Under that order, we are required to notify our distributors, wholesalers and others who have sold ABS BrakeSafe to stop using or distributing advertisements or promotional materials containing these claims. We are also asking for your assistance in compiling a list of ABS BrakeSafe purchasers, so that we may contact them directly. Please read this letter in its entirety and comply with all parts.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises' advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;
- (c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;
- (d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;
- (e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;
- (f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency stopping situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

We need your assistance in complying with this order.

Please immediately send us the names and last known addresses of all persons or businesses, including other resellers, to whom you have sold an ABS BrakeSafe since January 1, 1990. We need this list in order to provide the notification required by the FTC Order. If you do not provide this information, we are required to provide your name and address to the FTC.

Please stop using the ABS BrakeSafe promotional materials currently in your possession. These materials may contain claims that the FTC has determined to be false or unsubstantiated. You also should avoid making any of the representations as described in this letter. Under the FTC Order, we must stop doing business with you if you continue to use the prohibited materials or make the prohibited representations.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

APPENDIX B

[BST Enterprises, Inc. letterhead]

Dear ABS BrakeSafe Customer:

Our records indicate that you previously purchased an ABS BrakeSafe for your vehicle. This letter is to advise you that the Federal Trade Commission ("FTC") recently obtained an order against BST Enterprises, Inc. regarding certain claims made for ABS BrakeSafe. Please read this letter in its entirety.

The FTC's Decision and Order

The Federal Trade Commission has determined that the following claims made for the ABS BrakeSafe device in BST Enterprises, Inc.'s advertisements, logos and promotional material are FALSE and MISLEADING:

- (a) ABS BrakeSafe is an antilock braking system.
- (b) ABS BrakeSafe prevents or substantially reduces wheel lock-up, skidding, and loss of steering control in emergency stopping situations;

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(c) Installation of ABS BrakeSafe will qualify a vehicle for an automobile insurance discount in a significant proportion of cases;

(d) ABS BrakeSafe complies with a performance standard set forth in Wheel Slip Brake Control System Road Test Code SAE J46;

(e) ABS BrakeSafe complies with a standard pertaining to antilock braking systems set forth by the National Highway Traffic Safety Administration;

(f) ABS BrakeSafe provides antilock braking system benefits, including wheel lock-up control benefits, that are at least equivalent to those provided by original equipment manufacturer electronic antilock braking systems; and

(g) Tests prove that ABS BrakeSafe will reduce stopping distances by at least 20% when the vehicle's brakes are applied at the speed of 60 mph.

The FTC Order requires BST Enterprises, Inc. to cease and desist from making these false claims for the ABS BrakeSafe device.

In addition, the FTC Order requires BST Enterprises, Inc. to cease and desist from making claims that ABS BrakeSafe will shorten stopping distances in emergency situations or make a vehicle safer, unless at the time of making such representation it possesses competent and reliable scientific evidence substantiating the representation.

If you have any questions, you may call Sydney Knight of the Federal Trade Commission at (202) 326-2162. Thank you for your cooperation.

Very truly yours,

Michael Woodruff
President
BST Enterprises, Inc.

FINAL ORDER

The Administrative Law Judge filed his Initial Decision in this matter on October 16, 1996, and entered a Default Judgment against the respondents. An appropriate order against the respondents to remedy the violations was appended to the Initial Decision and Default Judgment. Service of the Initial Decision and Default Judgment was completed on March 27, 1997. Neither the respondents nor complaint counsel filed an appeal.

The Commission having determined that this matter should not be placed on its docket for review and that the Initial Decision and the order therein shall become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, 16 CFR 3.51(a).

It is ordered, That the Initial Decision and the Order therein shall become the Final Order and Opinion of the Commission on the date of issuance of this order.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, June 3, 1997*

This consent order prohibits each dealer, among other things, from agreeing with any other Detroit area dealer or dealer association to establish, maintain or adhere to any hours of operation, or requesting or encouraging any dealer or dealer association to maintain any hours of operation; prohibits each from exchanging information with any dealer or dealer association concerning hours of operation except in certain circumstances; and limits a minimum weekly hours-of-operation requirement to the time during which the dealers were already in compliance.

Appearances

For the Commission: *Ernest Nagata, Willard Tom and William Baer.*

For the respondents: *Lawrence Raniszeski, Colombo & Colombo, Bloomfield Hills, MI. John Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI. and Kenneth Wilson, Stringari, Fritz, Kreger, Ahearn, Goodnow, Bennett & Hunsinger, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondents identified in Attachment A to this order, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order for Count I of the complaint, an admission by the identified respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only, and waivers and other provisions as required by the Commission's Rules; and

* Complaint previously published at 108 FTC 193.

The Secretary of the Commission having thereafter withdrawn Count I of the of the complaint from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent dealers identified in Attachment A are all corporations with their principal places of business located at the addresses shown in Attachment A.

2. Individual respondents identified in Attachment A are officers of various dealers, as shown in Attachment A, and as such they formulate, direct and control the acts and practices of the dealers for which they are officers.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as it relates to Count I of the complaint and of the identified respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for the purposes of this order, the following definitions shall apply:

1. "*Person*" means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. "*Dealer*" means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. "*Dealer association*" means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. "*Detroit area*" means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. "*Hours of operation*" means the times during which a dealer is open for business to sell or lease motor vehicles.

6. "*Weekday hours*" means the hours of 9:00 a.m. to 6:00 p.m. Monday through Friday.

7. "*Non-weekday hours*" means hours other than 9:00 a.m. to 6:00 p.m. Monday through Friday.

8. "*Respondent*" means any dealership, individual, or association respondent.

9. "*Commission*" means Federal Trade Commission.

I.

It is further ordered, That the order issued in this matter by the Commission on February 22, 1989, as modified by the order issued by the Commission on June 20, 1995, shall be and hereby is incorporated as part of this order except as provided below:

A. Respondents' compliance to date with Part III of said orders shall constitute full compliance with Part III.

B. The period for which compliance reports are required under Part X of the order of February 22, 1989, shall run for five (5) years from the effective date of the order of June 20, 1995. Any reports filed pursuant to said orders to date shall be construed to have been filed in compliance with said orders as modified herein.

C. All other obligations under said orders shall be construed to have commenced on the effective date of the order of June 20, 1995, and shall run for the periods specified in said orders.

ATTACHMENT A

Dealer Respondents

Crestwood Dodge, Inc.
32850 Ford Road
Gardner City, MI 48135

Bob Borst Lincoln-Mercury, Inc.
a/k/a Bob Borst Lincoln-Mercury Sales Inc.
1950 W. Maple Road
Troy, MI 48084

Bob Dusseau, Inc.
a/k/a Bob Dusseau Lincoln-Mercury
31625 Grant River Avenue
Farmington, MI 48024

Individual Respondents

Robert C. Borst
c/o Bob Borst Lincoln-Mercury, Inc.,
1950 W. Maple Road
Troy, MI 48084

Robert Dusseau, a/k/a/ Robert F. Dusseau
c/o Bob Dusseau Lincoln-Mercury
31625 Grant River Avenue
Farmington, MI 48024

Robert Maxey
c/o Bob Maxey Lincoln-Mercury Sales Inc.
16901 Mack Avenue
Detroit, MI 48224

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Bob Maxey Lincoln-Mercury Sales, Inc.
16901 Mack Avenue
Detroit, MI 48224

Crest Lincoln-Mercury Sales, Inc.
36200 Van Dyke Avenue
Sterling Heights, MI 48077

Stewart Chevrolet, Inc.
23755 Allen Road
Woodhaven, MI 48183

Woody Pontiac Sales, Inc.
12140 Joseph Campau
Hamtramck, MI 48212

Jack Demmer Ford, Inc.
a/k/a/ Jack Demmer Ford
37300 Michigan Avenue
Wayne, MI 48184

Al Long Ford, Inc.
13711 E. Eight Mile Road
Warren, MI 48089

Ed Schmid Ford, Inc.
21600 Woodward Avenue
Ferndale, MI 48220

Ray Whitfield Ford
a/k/a/ Ray Whitfield Ford, Inc.
10725 S. Telegraph Road
Taylor, MI 48180

William Ritchie, a/k/a/ William R. Ritchie
c/o Crest Lincoln-Mercury Sales, Inc.
36200 Van Dyke Avenue
Sterling Heights, MI 48077

Gordon L. Stewart, a/k/a/ Gordon Stewart
c/o Stewart Chevrolet, Inc.
23755 Allen Road
Woodhaven, MI 48183

Woodrow W. Woody
c/o Woody Pontiac Sales, Inc.
12140 Joseph Campau
Hamtramck, MI 48212

John E. Demmer, a/k/a/ Jack E. Demmer
c/o Jack Demmer Ford, Inc.
37300 Michigan Avenue
Wayne, MI 48184

Edward F. Schmid, a/k/a/ Edward Schmid
c/o Ed Schmid Ford, Inc.
21600 Woodward Avenue
Ferndale, MI 48220

Raymond J. Whitfield
a/k/a/ Raymond Whitfield
c/o Ray Whitfield Ford
10725 S. Telegraph Road
Taylor, MI 48180

IN THE MATTER OF
MAHLE GMBH, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3746. Complaint, June 4, 1997--Decision, June 4, 1997

This consent order requires Mahle, among other things, to divest, within 10 days, Metal Leve's U.S. piston business, which includes plants in Orangeburg and Sumter, South Carolina, and a research and development center in Ann Arbor, Michigan, as well as technology outside the United States which supports the business of manufacturing and selling pistons in the United States.

Appearances

For the Commission: *Howard Morse, Morris Bloom and William Baer.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C. and Jay Herbst, Driggers, Schultz, Herbst & Patterson, Troy, MI.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mahle GmbH, the parent company of Mahle, Inc., has acquired more than 50 percent of the voting securities of Metal Leve, S.A., the parent company of Metal Leve, Inc., in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. THE RESPONDENTS

Mahle GmbH and Mahle, Inc.

1. Respondent Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46,

D-70376 Stuttgart, Germany. Mahle GmbH has had annual worldwide sales of approximately \$1.7 billion.

2. Respondent Mahle, Inc., a majority-owned subsidiary of Mahle GmbH, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 Mahle Drive, Morristown, Tennessee. Mahle, Inc. has had annual U.S. sales of approximately \$135 million.

3. Mahle GmbH, which operates in the United States through Mahle, Inc., manufactures and sells pistons for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Mahle, Inc. produces pistons in the United States at plants located in Tennessee.

4. At all times relevant herein, Mahle GmbH and Mahle, Inc. (collectively, "Mahle") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

Metal Leve, S.A. and Metal Leve, Inc.

5. Respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business located at Rua Brasilio Luz 535, Sao Paulo SP 04746-901, Brazil. Metal Leve, S.A. has had annual worldwide sales of approximately \$315 million.

6. Respondent Metal Leve, Inc., a wholly-owned subsidiary of Metal Leve, S.A., is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan. Metal Leve, Inc. has had annual U.S. sales of more than \$60 million.

7. Metal Leve, S.A., which operates in the United States through Metal Leve, Inc., manufactures and sells pistons, pins, bearings, bushings, and thrust washers for internal combustion engines and is a leading producer of articulated pistons and large bore two-piece pistons. Metal Leve, Inc. produces pistons in the United States at two plants in South Carolina, and conducts research and development at a facility in Michigan.

8. At all times relevant herein, Metal Leve, S.A. and Metal Leve, Inc. (collectively, "Metal Leve") have been, and are now, corporations as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Mahle GmbH and Mahle, Inc. have been, and are now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

II. THE ACQUISITION

9. On or about June 26, 1996, Mahle GmbH acquired more than 50 percent of the voting securities of Metal Leve, S.A. (the "Acquisition"), for approximately \$40 million.

III. THE RELEVANT MARKETS

10. Research, development, design, production and sale of articulated pistons constitute one relevant line of commerce within which to analyze the effect of the Acquisition on competition. A piston is an engine component that fits snugly into the hollow of an engine cylinder and moves back and forth under pressure generated by combustion within the cylinder. In a reciprocating engine, pistons are connected to piston rods which turn the crankshaft to generate the power that makes the engine turn. Each engine cylinder contains a separate piston. Articulated pistons are two-piece pistons with a crown made of steel and a skirt made of aluminum, in which the crown and skirt are able to articulate; that is, to move independently of each other. The crown and skirt are joined together by means of a piston pin. Articulated pistons of up to 150 millimeter in diameter are used in engine applications, such as Class 8 diesel truck engines, which require pistons that can withstand high temperatures and pressures to maintain engine performance while meeting increasingly stringent government emissions requirements. There are no economic substitutes for these articulated pistons.

11. Research, development, design, production and sale of large bore two-piece pistons constitute another relevant line of commerce within which to analyze the effect of the Acquisition on competition. Large bore two-piece pistons are pistons with a crown made of steel and a skirt made of aluminum in bore sizes ranging from 150 to 300 millimeters and higher. The crown and skirt of a large bore two-piece piston may be separate pieces joined together by the piston pin, as in

an articulated piston, or may be permanently joined together, as in a composite piston. Large bore two-piece pistons are used in high output diesel and natural gas engines, such as new generation locomotive engines and stationary power generators as well as engines for various marine and industrial applications. There are no economic substitutes for large bore two-piece pistons.

12. The United States is one relevant geographic area within which to analyze the likely effect of the Acquisition on competition in articulated pistons. Several factors limit the competitive significance of foreign-made articulated pistons in the United States. Articulated pistons are designed specifically for the U.S. market to meet technical requirements largely attributable to pollution control regulations. In addition, relatively high manufacturing costs in Europe make articulated pistons manufactured overseas uncompetitive in the United States. Moreover, engine manufacturers' use of just-in-time inventory management practices creates a preference for articulated piston suppliers located in the United States. As a result, articulated pistons consumed in the United States are manufactured in the United States, with the exception of a small quantity of specialized articulated pistons manufactured by Mahle outside the United States.

13. The relevant geographic area within which to analyze the likely effect of the Acquisition on competition in the large bore two-piece pistons may be worldwide. There are significant imports of large bore two-piece pistons into the United States from Europe. Factors that limit the competitive significance of imported articulated pistons in the United States do not have a significant impact on large bore two-piece pistons imports, in part because large bore two-piece pistons are used in engines that are produced in smaller quantities.

IV. CONCENTRATION

14. Prior to the acquisition, Mahle had more than a 50 percent share and Metal Leve had nearly a 45 percent share of United States sales of articulated pistons, producing a combined market share of more than 95 percent. The United States articulated piston market is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The Acquisition increased the HHI by more than 4,500 points to nearly 9,500 points. The only other firm currently selling articulated pistons in the market is a weak competitor that has been losing business to Mahle and Metal Leve.

15. The market for two-piece large bore pistons is also highly concentrated. There are currently only four producers of two-piece large bore pistons in the world. Mahle and one other firm dominate the worldwide large bore two-piece piston market, while Metal Leve has made sales and is aggressively bidding in the market.

V. ENTRY CONDITIONS

16. Entry into the articulated piston or large bore two-piece piston markets would not be timely, likely, or sufficient to deter or offset the adverse effects of the Acquisition on competition, because an entrant would have to develop manufacturing expertise, satisfy time-consuming customer qualification procedures, and acquire manufacturing equipment at a significant sunk cost. Engine manufacturers tend to be risk averse in choosing piston suppliers, because the cost of a piston tends to be small relative to the costs associated with poor piston performance or piston failure.

VI. EFFECT OF THE PROPOSED MERGER ON COMPETITION

17. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States articulated piston market, because, among other things:

a. It increases concentration substantially in a highly concentrated market;

b. It eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;

c. It creates a monopoly or near monopoly;

d. It eliminates competition between the two closest substitutes among differentiated products in the articulated piston market;

e. It facilitates the unilateral exercise of market power by the merged firm;

f. It will likely result in increased prices for articulated pistons; and

g. It will likely result in reduced innovation as a result of delayed or reduced product development.

18. The Acquisition will substantially lessen competition or tend to create a monopoly in the United States large bore two-piece piston market, because, among other things:

- a. It increases concentration substantially in a highly concentrated market;
- b. It eliminates actual, direct, substantial, and potentially increased competition between Mahle and Metal Leve;
- c. It eliminates a maverick competitor which has introduced increased competition in the market;
- d. It facilitates coordinated interaction among sellers of large bore two-piece pistons in the United States;
- e. It will likely result in increased prices for large bore two-piece pistons and
- f. It may allow the merged firm to reduce innovation by delaying or reducing product development.

VII. VIOLATIONS CHARGED

19. The Acquisition by Mahle GmbH of more than 50 percent of the voting securities of Metal Leve, S.A., described in paragraph nine, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Mahle GmbH, the parent corporation of Mahle, Inc., of more than 50 percent of the voting securities of Metal Leve, S.A., the parent corporation of Metal Leve, Inc., and having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered a comment filed thereafter, and having modified paragraph II.A in one respect, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Mahle GmbH is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Pragstrasse 26-46, D-70376 Stuttgart, Germany.

2. Respondent Mahle, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1 Mahle Drive, Morristown, Tennessee.

3. Respondent Metal Leve, S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Brazil, with its office and principal place of business located at Rua Brasilio Luz 535, Sao Paulo, SP 04746-901, Brazil.

4. Respondent Metal Leve, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 560 Avis Drive, Ann Arbor, Michigan.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Commission*" means the Federal Trade Commission.

B. "*Respondents*" means Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., their directors, officers, employees, agents

and representatives, predecessors, successors and assigns; their subsidiaries, divisions, and groups and affiliates controlled by Mahle GmbH, Mahle, Inc., Metal Leve, S.A., and Metal Leve, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Mahle GmbH*" means Mahle GmbH, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mahle GmbH, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. "*Mahle, Inc.*" means Mahle, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Mahle, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

E. "*Metal Leve, S.A.*" means Metal Leve, S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Metal Leve, S.A., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

F. "*Metal Leve, Inc.*" means Metal Leve, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Metal Leve, Inc., and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

G. "*Articulated piston*" means any two-piece piston consisting of a separate crown and skirt, as well as each individual piece of an articulated piston, including, but not limited to, forgings, castings, and finished pistons.

H. "*Other diesel piston*" means any type of diesel piston, other than an articulated piston, including, but not limited to, forgings, castings and finished pistons.

I. "*Other piston*" means any other diesel piston or other type of piston, other than an articulated piston, including, but not limited to, castings and finished pistons.

J. "*Metal Leve, Inc. Business*" means:

1. All assets, properties, business and goodwill, tangible and intangible, of Metal Leve, Inc., including, but not limited to:

a. The manufacturing facilities located at Orangeburg and Sumter, South Carolina,

b. The research and development facility and corporate offices located at Ann Arbor, Michigan; and

2. All assets, properties, business and goodwill, tangible and intangible, of Metal Leve, S.A. worldwide relating to: (i) the research, development, manufacture, or sale of articulated pistons or other pistons manufactured in the United States, (ii) the research, development, manufacture, or sale of articulated pistons anywhere in the world, and (iii) the research, development, manufacture or sale of other diesel pistons sold in the United States; including, without limitation, the following:

a. All machinery, fixtures, equipment, tools and other tangible personal property, but excluding machinery, fixtures, and equipment located outside the United States related to the manufacture of other diesel pistons sold in the United States;

b. All rights, titles and interests in and to owned or leased real property together with appurtenances, licenses and permits, but excluding real property located outside the United States related to the manufacture of other diesel pistons sold in the United States or to the manufacture of articulated pistons sold in Brazil;

c. All inventory;

d. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;

e. All research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of articulated pistons;

f. All Metal Leve, S.A. research and development projects for Metal Leve, Inc., including, but not limited to, all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses

thereto, relating to all such research and development projects, including, but not limited to, the following: (i) lightweight articulated ppt, (ii) oxidation resistant steels, (iii) iron aluminide, (iv) steel material evolution, (v) thermal barrier steel crown coatings, open versus closed articulated gallery, (vi) analytical software development, (vii) rapid solidification aluminum alloy, and (viii) bowl rim life prediction.

g. Rights that are equal to the rights held by Metal Leve, S.A. to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to the manufacture or sale of other diesel pistons sold in the United States or other pistons manufactured in the United States;

h. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

i. All rights under warranties and guarantees, express or implied;

j. All books, records, and files; and

k. All items of prepaid expense.

Provided, that this definition of the Metal Leve, Inc. Business does not include research and development conducted after the divestiture required by this order.

K. "*Metal Leve, S.A. Piston Business*" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of articulated pistons and other pistons by Metal Leve, S.A. or Metal Leve, Inc. anywhere in the world, including, without limitation, the following:

1. The Metal Leve, Inc. Business, plus all Metal Leve S.A. assets anywhere in the world relating to research, development, manufacture or sale of articulated pistons or other pistons, including, but not limited to:

- a. The manufacturing facilities located at Santo Amaro and Limeira in Brazil,
 - b. The research and development facility located at Santo Amaro in Brazil;
2. All trademarks;
 3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
 4. Inventory and storage capacity;
 5. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, and advertising materials;
 6. Exclusive rights to all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas relating to the manufacture of articulated pistons or other pistons by Metal Leve;
 7. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;
 8. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
 9. All rights under warranties and guarantees, express or implied;
 10. All books, records, and files; and
 11. All items of prepaid expense.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, no later than ten (10) days after the date on which this order becomes final, the Metal Leve, Inc. Business as a fully viable and competitive ongoing business. Provided, however, that Metal Leve S.A. may retain a non-exclusive licence from the acquirer of the Metal Leve, Inc. Business to intellectual property for the sole purpose of producing for Volvo Brazil and Volvo Sweden service part number

P-2067 in Brazil, and may retain the right to supply Volvo Brazil and Volvo Sweden service part number P-2067.

B. Respondents shall divest the Metal Leve, Inc. Business only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Metal Leve, Inc. Business is to ensure the continuation of the Metal Leve, Inc. Business as an ongoing, viable, and competitive operation engaged in the same business of researching, developing, manufacturing, and selling articulated pistons and other pistons, in which the Metal Leve, Inc. Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. A condition of approval by the Commission of the divestiture shall be the submission by the acquirer to the Commission of an acceptable five-year business plan for the Metal Leve, Inc. Business demonstrating that the acquirer will establish the Metal Leve, Inc. Business as a viable and competitive business free of all continuing relationships with respondents in the research, development, manufacture or sale of articulated pistons and other pistons, except as set forth in paragraph II.D, below.

D. On reasonable notice to Metal Leve, S.A. from an approved acquirer, Metal Leve, S.A. shall provide technical assistance and know-how to the acquirer with respect to the Metal Leve, Inc. Business. Such technical assistance shall include, without limitation, consultation with knowledgeable employees of Metal Leve, S.A. and training at the manufacturing facilities of Metal Leve, S.A. Metal Leve, S.A. may charge the reasonable costs incurred in providing such technical assistance, including reimbursement (commensurate with the salary and benefits of Metal Leve, S.A. personnel involved) for the time plus expenses of Metal Leve, S.A. personnel providing the technical assistance. Metal Leve, S.A. shall continue to provide such technical assistance until the acquirer of the Metal Leve, Inc. Business is satisfied that it is capable of producing, and of developing for production, commercially saleable articulated pistons and other pistons utilizing the assets of the Metal Leve, Inc. Business; provided, however, Metal Leve, S.A. shall not be required to continue providing such technical assistance and training for more than two (2) years after the date on which the divestiture required by this order is made.

E. Pending divestiture of the Metal Leve, Inc. Business, respondents shall take such actions as are reasonably necessary to maintain the viability, competitiveness, and marketability of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the Metal Leve, Inc. Business and the Metal Leve, S.A. Piston Business.

F. Respondents shall comply with all terms of the Agreement to Hold Separate signed by the respondents and accepted by the Commission on August 30, 1996, which is attached to this order and made a part hereof, and which shall continue in effect until such time as respondents have accomplished the divestiture required by this order.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Metal Leve, Inc. Business within ten (10) days of the date this order becomes final, then the Commission may appoint a trustee to divest the Metal Leve, Inc. Business. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business and to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by any of the respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondents shall consent to the

following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Metal Leve, Inc. Business and shall have the power to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business in order to accomplish the divestiture required by this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Metal Leve, Inc. Business, to add to the Metal Leve, Inc. Business all or any part of the Metal Leve, S.A. Piston Business, and to divest such additional ancillary assets of Metal Leve S.A. and effect such additional arrangements, in order to assure the viability, competitiveness, and marketability of the Metal Leve, Inc. Business so as to expeditiously accomplish the remedial purposes of this order.

4. The trustee shall have twelve (12) months to accomplish the divestiture required by this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional terms of six (6) months each.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business, or to any other

relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the respondent shall extend the time for divestiture under this paragraph III in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission (and, in the case of a court-appointed trustee, by the court), of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's accomplishing the divestiture required by this order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any

claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Metal Leve, Inc. Business or the Metal Leve, S.A. Piston Business.

12. The trustee shall report in writing to respondents and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in the sale of articulated pistons or other pistons in the United States within the year preceding such acquisition; provided, however, an acquisition of securities will be exempt from the requirements of this paragraph if, after such acquisition of securities, respondents will hold cumulatively no more than two (2) percent of the outstanding shares of any class of securities of such person; or

B. Enter into any agreement or other arrangement to transfer direct or indirect ownership, management, or control of any assets used for or previously used for (and still suitable for use for) the manufacture or sale of articulated pistons or other pistons in the United States; provided, however, prior notice shall not be necessary for: the acquisition of assets in the ordinary course of business or the acquisition of assets valued at less than \$100,000 from the same person within any twelve (12) month period; or for transfers to or from manufacturers of diesel engines.

The prior notifications required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that: no filing fee will be required for any such notification; notification shall be filed with the Secretary of the Commission and a copy shall be delivered to the Bureau of Competition; notification need not be made to the United States Department of Justice; and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to the consummation of any such transaction (hereinafter referred to as the "initial phase of the waiting period"). If, within the initial phase of the waiting period, the Commission or its staff makes a written request for additional information and documentary material, respondents shall not consummate the transaction until at least twenty (20) days after complying with such request for additional information and documentary material. Early termination of the waiting periods in this paragraph may, where appropriate, be granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, and prior notification shall not be required by this paragraph for acquisitions by respondents Mahle GmbH or Mahle, Inc. of Metal Leve, S.A. stock or assets.

V.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which respondents intend to comply, are complying, and have complied with paragraphs II and III of this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted

respondents or that have been contacted by respondents. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VI.

It is further ordered, That one (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with paragraph IV of this order.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Mahle GmbH, Mahle, Inc., Metal Leve, S.A., or Metal Leve, Inc. that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondents, and without restraint or interference, to interview officers, employees, or agents of respondents.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and among Mahle GmbH, a German corporation and an entity included within its "ultimate parent entity" as that term is defined in 16 CFR 801.1(a)(3), MABEG, e.V., with its principal office and place of business at Pragstrasse 26-46, D-70376 Stuttgart, Germany; Mahle Inc., a corporation organized and existing under the laws of Delaware and a wholly-owned subsidiary of Mahle GmbH, with its principal office and place of business at 1 Mahle Drive, Morristown, Tennessee, (collectively referred to as "Mahle"); Metal Leve, S.A., a Brazilian corporation with its principal office and place of business at Rua Brasilo Luz 535, Sao Paulo, SP 04746-901, Brazil; Metal Leve, Inc., a corporation and an indirect wholly-owned subsidiary of Metal Leve S.A. organized and existing under the laws of Michigan, with its principal office and place of business at 560 Avis Drive, Ann Arbor, Michigan (collectively referred to as "Metal Leve"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on June 11, 1996, Mahle entered into a Purchase Agreement to acquire 50.1% of the voting shares of Metal Leve S.A. (hereinafter the "Acquisition"); and

Whereas, this Acquisition was subject to the prior notification requirements of the Hart Scott Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a ("HSR Act"); and

Whereas, on or before June 26, 1996, Mahle consummated the Acquisition without MABEG, e.V. or Mahle filing notification with the Commission or the Department of Justice pursuant to the HSR Act, and without observing the waiting periods required by that Act; and

Whereas, on July 22, 1996, Mahle, on behalf of MABEG, e.V. and Metal Leve submitted filings pursuant to the HSR Act; and

Whereas, Mahle and Metal Leve produce pistons for sale in the United States; and

Whereas, the Commission is now investigating the Acquisition to determine if it violates Section 7 of the Clayton Act, 15 U.S.C. 18;

Section 5 of the FTC Act, 15 U.S.C. 45; or any other statute enforced by the Commission; and

Whereas, the Commission is concerned that if an understanding is not reached, further changes in the operation and organization of Metal Leve by Mahle or its nominees during the period prior to the final resolution of the Commission's investigation of the Acquisition, may preclude an effective remedy; and

Whereas, the Commission is concerned that it is necessary to preserve the Commission's ability to seek an effective remedy and the Commission's right to seek to restore Metal Leve as a viable competitor; and

Whereas, the purpose of this Agreement is to:

(i) Preserve Mahle's and Metal Leve's piston businesses and other businesses as viable independent businesses pending the Commission's investigation, and

(ii) Prevent any anticompetitive effects resulting from the Acquisition; and

Whereas, Mahle and Metal Leve entering into this Agreement shall in no way be construed as an admission by Mahle or Metal Leve that the Acquisition is in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act; and

Whereas, Mahle and Metal Leve understand that this Agreement shall in no way limit civil penalties of up to \$10,000 per day under Section 7A(g)(1) of the Clayton Act for failing to file notifications and for continuing to hold stock in violation of the HSR Act; and

Whereas, Mahle and Metal Leve understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement; and

Whereas, the Commission has not yet determined whether the Acquisition will be challenged under any statute it enforces.

Now, therefore, Mahle and Metal Leve agree, in consideration of the Commission's agreement that the Commission will not seek further relief from Mahle or Metal Leve under Section 7A(g)(2) of the Clayton Act, 15 U.S.C. 18(A)(g)(2), except that the Commission may exercise any and all rights to enforce this Agreement, and, in the event that the Parties do not comply with the terms of this Agreement, to seek further relief, as follows:

1. Mahle and Metal Leve agree to execute and be bound by this Agreement.

2. Mahle and Metal Leve agree that from the date they sign this Agreement until the earliest of the dates listed in subparagraphs 2.a - 2.b, they will comply with the provisions of paragraph 3 of this Agreement:

a. The expiration of all waiting periods under the HSR Act with respect to the Acquisition;

b. Such time as specified in any Consent Agreement accepted by the Commission in resolution of antitrust concerns raised by the Acquisition.

3. Mahle will hold Metal Leve separate and apart on the following terms and conditions:

a. Metal Leve shall be held separate and apart and shall be operated independently of Mahle (meaning here and hereinafter, Mahle excluding Metal Leve) except to the extent that Mahle must exercise direction and control over Metal Leve to assure compliance with this Agreement;

b. Mahle shall place its Metal Leve shares in trust pending the outcome of the Commission's investigation, and shall not vote those shares or in any other manner exercise control over Metal Leve;

c. Mahle shall not exercise direction or control over, or influence directly or indirectly, Metal Leve or any of its operations or businesses, and Metal Leve shall not receive direction from Mahle;

d. Mahle and Metal Leve shall maintain the viability and marketability of Metal Leve as a separate entity and shall not reorganize its operations in any way that would reduce the value or competitiveness of Metal Leve or Metal Leve Inc.'s business;

e. Mahle shall not permit any director, officer, employee, consultant or agent of Mahle, or any person affiliated with or associated with Mahle, to also be a director, officer, or employee of Metal Leve;

f. No Mahle employees, consultants, or agents shall consult with, advise on, or participate in any manner in the planning or conduct of Metal Leve operations;

g. Except as required by law, and except to the extent necessary information is exchanged among outside counsel in defending investigations or litigation, Metal Leve shall not give and Mahle shall

not receive or have access to, or use of, any of Metal Leve's confidential information and Mahle shall not give and Metal Leve shall not receive or have access to, or use of, any of Mahle's confidential information, except as such information would be available to Mahle or Metal Leve in the normal course of business if the Acquisition had not taken place ("confidential information," as used herein, means competitively sensitive or proprietary information and includes but is not limited to financial information, customer lists, price lists, prices, engineering, manufacturing, and marketing methods, patents, technologies, processes, research and development or other trade secrets);

h. Mahle shall not change the composition of the Board of Directors or any officers of Metal Leve; and

i. Metal Leve shall not pay to Mahle, nor shall Mahle accept from Metal Leve any dividends.

4. Should the Commission or the United States institute any action under this Agreement, the FTC Act, or the Clayton Act, arising from this Acquisition, Mahle and Metal Leve waive any objection based on lack of personal jurisdiction. Mahle and Metal Leve appoint the attorneys identified below to accept service of process in any such action.

5. Should the Commission seek in a proceeding to compel Mahle to divest itself of Metal Leve or to compel Mahle to divest any assets or businesses of Metal Leve, or seek any other injunctive or equitable relief, neither Mahle nor Metal Leve shall raise any objection based upon this Agreement; and should the United States seek civil penalties under the HSR Act, neither Mahle nor Metal Leve shall raise any objection based on this Agreement. Mahle and Metal Leve also waive the right to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Mahle and Metal Leve made to their principal offices, Mahle and Metal Leve shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Mahle or Metal Leve and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Mahle or Metal Leve relating to compliance with this Agreement;

b. Upon five (5) days' notice to Mahle and Metal Leve, and without restraint or interference from them, to interview their officers or employees, who may have counsel present, regarding any such matters.

7. For the purpose of determining or securing compliance with this Agreement:

a. Metal Leve shall provide the Commission with reports every 30 days following the signing of this Agreement by Metal Leve which describe each change in organization, production, investment, sales, or research and development conducted by Metal Leve or its U.S. subsidiary;

i. Since June 11, 1996 and

ii. Since the date of the last report filed under this subparagraph;
and

b. Mahle shall provide the Commission with reports every 30 days following the signing of this Agreement which describe its compliance with this Agreement.

8. The Parties agree to publicize this Agreement by taking the following actions:

a. The Commission making public this Agreement after acceptance by the Commission;

b. Mahle and Metal Leve promptly providing copies of this Agreement to all of Mahle and Metal Leve's officers and directors;
and

c. Mahle and Metal Leve promptly providing notice of this Agreement to all Mahle and Metal Leve employees in the United States and to all U.S. pistons customers.

9. This Agreement shall be effective and binding immediately upon signing by Mahle and Metal Leve, but is subject to acceptance of the Commission.

Complaint

123 F.T.C.

IN THE MATTER OF

AMERIFIT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3747. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the Connecticut-based marketer of diet supplements to pay \$100,000 for disgorgement, and prohibits the use of the name "Fat Burners" unless it is part of the trade name, "Fat Burners Diet, Exercise and Supplement System," and that the material containing the name includes the specified disclosure statements clearly and prominently. The consent order also requires the respondent to possess scientific substantiation for any claim that a food, drug or dietary supplement will cause weight loss or reduce body fat.

Appearances

For the Commission: *Jeffrey Feinstein.*

For the respondent: *Nancy Buc and Phillip Katz, Buc & Bearsdley, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that AmeriFIT, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent AmeriFIT, Inc., is a Delaware corporation with its principal office or place of business at 166 Highland Park Drive, Bloomfield, Connecticut.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed products to the public, including "Fat Burners," "Fast Burners," "Improved Formula Fat Burners," and "Extra Strength Fat Burners" (collectively, "the Fat Burners products"). These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the products referred to

in paragraph two, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements:

A. "WHEN IT COMES TO WEIGHT LOSS THERE'S NOTHING LIKE IT! FAT BURNERS™ is a 100% natural lipotropic formula designed to help people from every walk of life achieve the physique they desire. Fat that once created personal unhappiness and posed a hazard to one's health can now be utilized to one's advantage. FAT BURNERS™ may help active individuals lose weight and increase vascularity by increasing the body's ability to burn fat for energy. . . . 100% NATURAL WEIGHT LOSS SYSTEM." (Exhibit A).

B. "LOSE WEIGHT NOW! . . . introducing FAT BURNERS, America's choice for nutritional weight loss support. If your goal is a thinner, more attractive body, then let FAT BURNERS lead the way." (Exhibit B).

5. Through the means described in paragraph four, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that the Fat Burners products cause weight loss or reduce body fat.

6. Through the means described in paragraph four, and through the use of the trade names "Fat Burners" and "Fast Burners," respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five at the time the representations were made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. The acts and practices of respondent 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.

Complaint

123 F.T.C.

EXHIBIT A



EXHIBIT A

1454

EXHIBIT B

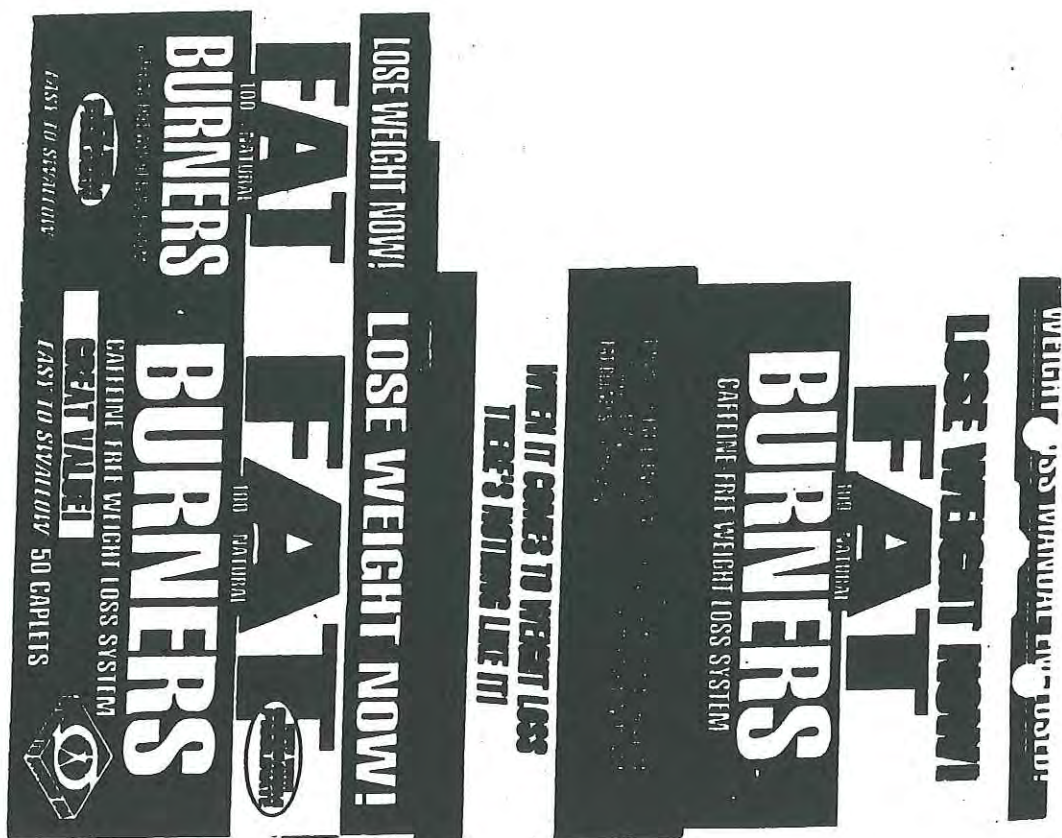


EXHIBIT B

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and determined that it had reason to believe that respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent AmeriFIT, Inc., is a Delaware corporation with its principal office or place of business at 166 Highland Park Drive, Bloomfield, Connecticut.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondent*" shall mean AmeriFIT, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. "*The Fat Burners products*" shall mean products using the terms "fat burners" and "fast burners" in their trade names, including but not limited to, Fat Burners, Fast Burners, Improved Formula Fat Burners, and Extra Strength Fat Burners.

I.

It is ordered, That respondent, 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 the Fat Burners products or any other food, drug, or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication:

A. That such product can or will cause weight loss; or

B. That such product can or will reduce body fat,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, directly or though any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of Fat Burners 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 "Fat Burners" 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 the name "Fat Burners Diet, Exercise, and Supplement System" if the material containing the name clearly and prominently contains the following disclosure:

"THE DIETARY SUPPLEMENT IN THIS SYSTEM IS FOR NUTRITIONAL USE ONLY AND DOES NOT CONTRIBUTE TO WEIGHT LOSS OR LOSS OF BODY FAT."

For 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 such 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 portions 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 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 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; and

E. On a product label, the disclosure shall be on the front panel of the label in immediate proximity to the largest presentation of the name, in a prominent type thickness and in a type size 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.

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

III.

It is further ordered, That respondent 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, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., the sum of one hundred thousand dollars (\$100,000). Respondent shall make this payment on or before the thirtieth day following the date of issuance of this order. In the event of any default of 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.

IV.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for 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.

V.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutritional Labeling and Education Act of 1990.

VI.

It is further ordered, That respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements, labeling, and promotional materials containing the representation;

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

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

VII.

It is further ordered, That, for a period of five years commencing with the date of issuance of this order, respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

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

X.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

2943174 CANADA INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3748. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the Canadian company and its officer to have scientific substantiation for claims that any product or program controls appetite, increases human metabolism, reduces body fat, causes weight loss, causes long-term or permanent weight loss, reduces cholesterol, or provides any weight-related benefit. The consent order also requires scientific substantiation for claims about the benefits or efficacy of any drug or device. Finally, the consent order prohibits misrepresentations about the existence or results of any test or study.

Appearances

For the Commission: *Ronald Waldman and Donald G. D'Amato.*

For the respondents: *Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that 2943174 Canada Inc., a corporation, and Patrice Runner, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

2. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of 2943174 Canada Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Svelt-PATCH," a skin patch that purports to melt away body fat. The Svelt-PATCH is a "drug" or "device" within the meaning of Sections 12 and 15 of the

Federal Trade Commission Act. Advertisements for Svelt-PATCH have appeared in numerous publications, including but not limited to: TV Guide, Woman's Day, Cosmopolitan, Red Book Magazine, Woman's World, American Woman, McCalls, Complete Woman, Family Magazine, Ladies Home Journal, Women's Own, The National Enquirer, The Star, USAir, World Traveler, Luxury Lifestyle, Farm Magazine, Hemisphere, Soap Opera Digest, Dell Puzzle, Sterling Woman's Group, Low Fat Meals, Black Group, Grit, Destination, Hairdo Ideas, Harris Hairdo, Lose Weight Stay Fit, All Around Kentucky, Mother Earth News, True Story Plus, The Globe, The Examiner, The Sun, San Antonio, The Denver Post, The New York Daily News, The Weekly World News, The LA Daily News, The Chicago Sun Times, The Boston Globe, Newsday, The Topeka News, The New York Post, and have been distributed as free standing inserts through Valassis FSI.

4. 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.

5. Respondents have disseminated or have caused to be disseminated advertisements for Svelt-PATCH, including but not necessarily limited to the attached Exhibit A (a newspaper advertisement). These advertisements contain the following statements:

"LOSING WEIGHT:

'Amazing Skin Patch Melts Away Body Fat'

Results of a study conducted for the United Research Center by G. Fleming

* Clinically tested in the United States

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals.

... [H]ere are the results:

* The measured effectiveness of the weight-loss patch was 100%: absolutely all participants lost weight.

* Fifty-six percent of the participants lost at least 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).

* Average weight losses [sic] in women was 4.9 pounds the first week, 12.8 pounds the first month, and 21.9 pounds in 2 months.

* Average weight loss in men was 4.7 pounds the first week, 15.7 pounds the first month, and 25.1 pounds in 2 months.

....

Svelt PATCHES contain concentrated fucus. In contrast with most weight-loss products--which only work for a few hours following their consumption--SveltPATCH fucus is absorbed by your body, through the skin, *the entire* day and while you sleep--up to 24 hours per day.

....
How fucus helps your body
☒ Controls your appetite.
☒ Stimulates your metabolism
☒ Maintains weight loss . . .
☒ Reduces cholesterol
(Exhibit A)

6. Through the means described in paragraph five, respondents have represented, expressly or by implication, that:

- A. Svelt-PATCH controls appetite.
- B. Svelt-PATCH significantly increases human metabolism.
- C. Svelt-PATCH significantly reduces body fat.
- D. Svelt-PATCH causes significant weight loss.
- E. Svelt-PATCH causes long-term or permanent weight loss.
- F. Svelt-PATCH lowers serum cholesterol levels.

7. Through the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that clinical evidence prove that Svelt-PATCH causes significant weight loss.

10. In truth and in fact, clinical evidence does not prove that Svelt-PATCH causes significant weight loss. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. 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.

EXHIBIT A

LOSE WEIGHT: **"Amazing Skin Patch Melts Away Body**

Results of a study conducted for the United Research Center by G. Fleming

- Clinically tested in the United States
- Recommended by doctors and pharmacists
- Hundreds of thousands of boxes sold in a few months in European pharmacies (simply by word-of-mouth).

Is the once-a-day *Swift PATCH* really revolutionary? And does it really give the promised results?

Following a survey, the UNITED Research Center is so convinced of the efficiency of this new weight-loss plan that now, for the first time, it is making an at-home, risk-free trial offer of the famous *Swift PATCH* Weight-Loss Plan to anyone wishing to lose weight and stay slim — with no obligation to buy. Read how you can take advantage of this special offer.



The new *Swift PATCH* Weight-Loss Plan is now available in the United States without prescription.

Below you will discover:

- How the dual-action *Swift PATCH* Weight-Loss Plan works.
- How it makes you lose weight—really lose weight. Effectively. By eating up to 5 times daily. With no medication. No strenuous exercise.
- Why it guarantees such long-lasting results.
- How, for the first time in the United States you can receive your genuine *Swift PATCH* Weight-Loss Plan, with the same *Swift PATCHES* as those sold in European pharmacies, for a 30-day at-home risk-free trial offer—with no obligation to buy.

After having surpassed the effectiveness of all methods for quelling smoking, Anti-Tobacco Patches created a world-wide revolution.

Now the new *Swift PATCH* Weight-Loss Plan is also enjoying phenomenal success in Europe. Within the next few years, this plan is likely to take the lead over all other weight-loss programs.

Finally available in the United States, you can now obtain an at-home risk-free trial of this plan—with no obligation to buy. That way, you can see the spectacular results of the *Swift PATCH* Weight-Loss Plan for yourself. Here is how it works:

The weight-loss plan of the 21st century is now available.

Yes. The *Swift PATCH* Weight-Loss Plan can finally help you lose weight. Really

lose weight. Quickly. Easily. Eating up to 5 meals a day. With no medication. Without any strenuous exercise. This Plan guarantees long-lasting results. With a minimum loss of water weight. And a minimum loss of muscle.

Thousands have been proven. Thousands of them.

How many pounds do you want to lose? 15 pounds, 25 pounds, 35 pounds? More than 45 pounds? The new *Swift PATCH* Weight-Loss Plan can easily help you lose weight.

Doctor Marvin Kaplan observed weight losses of as much as: 16 pounds the first week • 25 pounds in 2 weeks • 33 pounds in 3 weeks • 41 pounds in 1 month • 71 pounds in 2 months.

Weight-loss patches have been scientifically tested in the USA and are used in European hospitals and clinics.

In the United States, Dr. Marvin Kaplan recently tested the weight-loss patch on 100 individuals. All participants had already tried many other weight-loss schemes, over the

past years, without success. Twenty-five percent of them were then doubtful about how well the weight-loss patch would work. But here are the results:

- The measured effectiveness of the weight-loss patch was 100%: steadily all participants lost weight.
- Fifty-six percent of the participants lost at least 20 pounds in 2 months (between 20 and 71 pounds in only 2 months).
- Average weight losses in women was 4.9 pounds the first week, 12.8 pounds the first month, and 28.9 pounds in 2 months.

Average weight loss in men was 4.7 pounds the first week, 13.7 pounds the first month, and 25.1 pounds in 2 months.

How does the *Swift PATCH* Weight-Loss Plan work?

The *Swift PATCH* Weight-Loss Plan includes:

1. A weight-loss plan which begins by explaining in detail:

- How to let your body burn up 77% more calories than it absorbs — easily and eating up to 5 meals a day.
- How to easily speed up your body's metabolism.

• How to maintain losses of water and fat

- How to minimize muscle loss — and even increase muscle mass to get your body back in shape.

2. Stick-on *Swift PATCHES*.

Just put one stick-on *PATCH* anywhere on your body. Replace it with another stick-

What is focus?

Focus is a type of natural digest containing very high levels of essential ingredients. It's called Focus because it's the first to discover focus's ability to absorb fat and to trigger the "metabolism" of fat. Focus is now recommended by many physicians to those who want to lose weight.

Focus is your daily focus. It also contains an extraordinary amount of essential ingredients for your body. These elements are things lacking in our daily diet.

How focus helps your body

1) Controls your appetite.

2) Stimulates your metabolism: induces shock, stimulates, promotes, regulates and vitamin C stimulates cellular respiration.

3) Stimulates the metabolism of glucose, and helps your body maintain food into energy (metabolism) by regulating the metabolism of fat.

4) Controls and balances the metabolism by providing hormones through the very large quantity of fat which contains many hormones.

5) Acts on the muscular system: stimulates, relaxes, and provides energy and control help several muscles that produce muscle tone when metabolism is high.

6) Stimulates cellular respiration with iron.

7) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

8) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

9) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

10) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

11) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

12) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

13) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

14) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

15) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

16) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

17) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

18) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

19) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

20) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

21) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

22) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

23) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

24) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

25) Stimulates weight loss with hydroxy-methyl-glutaryl-coenzyme A.

Exhibit A

EXHIBIT A



The Swelt PATCH speeds Up The Body's Metabolism And Burns Up Fat

It's the Swelt PATCH that speeds up the body's metabolism and burns up fat. It's the Swelt PATCH that speeds up the body's metabolism and burns up fat. It's the Swelt PATCH that speeds up the body's metabolism and burns up fat.

And because you wear it day and night, you can't even remember to stop sleeping. "We tested the Swelt PATCH on men and women of all ages, and the results were amazing. It changes the way your body works, so you can lose weight without any effort."

Every one of these people had spent many years trying—unsuccessfully—to lose weight. But the Swelt PATCH changed that. It's a whole new way of thinking about weight control.

"Most of the people who use the Swelt PATCH are men and women who are in good health. In fact, it's a lot better than any other weight-loss product."

"The Swelt PATCH is a lot better than any other weight-loss product. It's a lot better than any other weight-loss product. It's a lot better than any other weight-loss product."

"The Swelt PATCH is a lot better than any other weight-loss product. It's a lot better than any other weight-loss product. It's a lot better than any other weight-loss product."

Are there any drawbacks to the Swelt PATCH Weight-Loss Plan?

Although the Swelt PATCH Weight-Loss Plan promises truly fast, effective results, it is completely natural. It poses no risk if you are in good health. In fact, it lets your body work better.

The Plan lets you lose weight quickly and efficiently—and obtain long-lasting results. • By eating up to 5 times a day • Without any medication • Without strenuous exercise

Research Center—at the address indicated below. You will receive the Swelt PATCH Weight-Loss Plan at your home. Just follow the Swelt PATCH Weight-Loss Plan as indicated.

If, for any reason whatsoever, you're not 100% satisfied with the results of the Swelt PATCH Weight-Loss Plan, simply send the Weight-Loss Plan back to us within 90 days, and we will give you a 100% refund. Yes, A ONE-HUNDRED PERCENT REFUND. And we'll do so without asking you any questions. A cheque in your name for this full refund

will promptly be sent to you.

This is a written, formal guarantee, enabling you to try the new Swelt PATCH Weight-Loss Plan without any obligation on your part.

Only read this if you have decided NOT to benefit from this risk-free trial offer

Perhaps you believe you're a special, difficult, or desperate case. Or perhaps you're still somewhat skeptical. That's perfectly

reasonable. If so, at least take the time to read our guarantee. Show the Swelt PATCH Weight-Loss Plan to your physician. Ask him or her opinion. If, for any reason, you are not completely satisfied with the results, just return your Swelt PATCH Weight-Loss Plan. You will be refunded in full. This offer is valid only if you return the Swelt PATCH Weight-Loss Plan within 90 days of purchase.

As you can see, that's a lot of guarantee on your part. We only request that you return the Swelt PATCH Weight-Loss Plan within 90 days of purchase. If you do not, you will be considered to have accepted the results of the Swelt PATCH Weight-Loss Plan.

You will soon realize your Swelt PATCH Weight-Loss Plan is working. And you will see the results. You will lose weight quickly, easily, and without any effort. You will see your body transformed—and enjoy long-lasting results. You will be proud of your new appearance and your new, healthy, confident life.

Act now. Don't wait until later. That way you might forget—and later regret having missed this special opportunity of obtaining you to take a home trial—with no obligation to buy. Fill out the coupon below right now and mail it today.

You will receive the Swelt PATCH Weight-Loss Plan within 90 days of purchase. You will be refunded in full. This offer is valid only if you return the Swelt PATCH Weight-Loss Plan within 90 days of purchase.

Free: If you mail your coupon before 5 p.m. Friday of next week, we will include, in addition to your shipment, a free magnificent surprise gift.

Declare: If you are a doctor and would like to receive the Swelt PATCH Weight-Loss Plan, just enclose your business card along with your letterhead and the coupon below.

Each Swelt PATCH Weight-Loss Plan is accompanied with copies of numerous scientific studies on fats and on the Swelt PATCH.

Here is how the Swelt PATCH Weight-Loss Plan will change your life

Through the Swelt PATCH Weight-Loss Plan, you'll be losing weight 24 hours per day. Even while you sleep. Day after day, you'll see the results on the scale. Week after week your body will be transformed—and your figure will become slimmer and more attractive. You will be able to lose your excess weight efficiently and quickly, and experience long-lasting results. Do you know what this really means?

• You will be able to wear the fashionable clothing you like, and you'll feel good about it.

• You will have greater self-confidence, and a personal image that pleases you. You will feel more at ease.

• You will appear younger and in better health. You will be in better shape, more vital, and more active.

• Your love life will be more interesting. • Your entire life will improve. Your spouse, your family, and your friends will find you more attractive.

For the first time, a risk-free home trial — with no obligation to buy

Just fill out the coupon below and mail it today to the exclusive distributor—the United

IMPORTANT NOTICE

The free trial agreement between the United States and Canada has recently come into effect. In addition, as you probably know, for several months now, the exchange rate between the American dollar and the Canadian dollar has been VERY favorable for Americans. So we have looked into it and found a way for YOU to benefit from this situation. Here's how:

By ordering your Swelt PATCH Weight-Loss Plan directly from Canada and paying, in cash, in US dollars, YOU can take advantage of this really interesting exchange rate and save (see the accompanying table). Furthermore, you'll have no state tax to pay.

To take these benefits to good account—with the assurance of the same written guarantee of complete satisfaction if you're not 100% satisfied—just send this coupon today with your usual method of payment (check or money order).

Swelt PATCH Weight-Loss Plan	Total price (in Can. dollars)*	YOU pay only (in US dollars)**
2 weeks	\$ 26	US \$ 24.95
4 weeks	\$ 59	US \$ 39.95
8 weeks	\$ 95	US \$ 59.95
12 weeks	\$ 130	US \$ 79.95
16 weeks	\$ 153	US \$ 99.95
20 weeks	\$ 177	US \$ 119.95

* Including taxes, handling and shipping. ** No tax to add. Handling and shipping extra.

Coupon for a 90-day risk-free trial — with no obligation to buy

Mail today to:
United Research Center,
1414 Place Bonaventure, Montreal, Qc, CANADA, H5A 1H3

YES

I would like to take an 84-day risk-free trial of the new Swelt PATCH Weight-Loss Plan. It is agreed that I, for any reason whatsoever, (in cash 100% satisfaction with the results of the Swelt PATCH Weight-Loss Plan) can simply send the Weight-Loss Plan back to you within 90 days. If I do, you kindly agree in writing to give me a 100% refund. And you will do so without asking me any questions. A check, in my name for this full refund will promptly be mailed to me. This is a written, formal guarantee, enabling

I want to buy	Quantity	Swelt PATCH Weight-Loss Plan including	Special introductory price	Shipping and handling	Total
☐ 2 to 4 weeks	2 weeks	14 Swelt PATCHES	\$ 24.95	+ \$ 2.00	\$ 26.95
☐ 4 to 8 weeks	4 weeks	28 Swelt PATCHES	\$ 39.95	+ \$ 4.00	\$ 43.95
☐ 8 to 12 weeks	8 weeks	56 Swelt PATCHES	\$ 59.95	+ \$ 6.00	\$ 65.95
☐ 12 to 16 weeks	12 weeks	84 Swelt PATCHES	\$ 79.95	+ \$ 6.00	\$ 85.95
☐ 16 to 20 weeks	16 weeks	112 Swelt PATCHES	\$ 99.95	+ \$ 8.00	\$ 107.95
☐ 20 weeks and +	20 weeks	140 Swelt PATCHES	\$ 119.95	+ \$ 12.00	\$ 131.95

Important: Affix 52¢ in stamps on the envelope (or 2 stamps of 52¢, or 2 stamps of 26¢ if you don't have exactly 52¢ in stamps).

O Miss First Name _____ Last name _____
O Mrs. Address _____
O Mr. _____
O Ms. _____
O Dr. _____

City _____ State _____

Zip code _____ Date of birth _____
Month _____ Day _____ Year _____

O I would prefer paying on credit (C.O.D.), although this will cost me \$ 3.00 extra for C.O.D. and insurance charges. Plus C.O.D. delivery at a P.D. Sur.

AONU

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1.a. Respondent 2943174 Canada Inc. is a Canadian corporation with its principal office or place of business at 1414 Place Bonaventure, Montreal, Quebec, H5A 1H3.

1.b. Respondent Patrice Runner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of 2943174 Canada Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondents*" shall mean 2943174 Canada Inc., a corporation, also doing business as UNITED RESEARCH CENTER, INC., its successors and assigns and its officers; Patrice Runner, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or program in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that such product:

- A. Controls appetite;
- B. Increases human metabolism;
- C. Reduces body fat;
- D. Causes weight loss;
- E. Causes long-term or permanent weight loss;
- F. Reduces cholesterol levels; or
- G. Provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Svelt-PATCH, or any other "drug" or "device" as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the health benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or device, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for 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.

V.

It is further ordered, That respondents shall pay to the Commission as consumer redress the sum of three hundred and seventy-five thousand dollars (\$375,000) no later than January 15, 1997. Such payment shall be deposited into an escrow account, to be

established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the direction of the Commission, be used by the Commission to provide direct redress to purchasers of Svelt-PATCH in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents 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.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer the funds from the escrow account to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

Respondents shall assist the Commission, and its agents, in locating and producing all records necessary to conduct any redress made under this paragraph, including, but not limited to, records identifying the names, addresses, and telephone numbers of consumers who paid for goods since January 1, 1994, and the amount the consumer paid including shipping and handling.

VI.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

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

D. All records needed to effectuate any redress made pursuant to paragraph V herein.

VII.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify

the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondent Patrice Runner, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment relating to the sale of any dietary supplement, drug, or device, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, weight loss or weight maintenance product or program, or any product or program designed or used to lower serum cholesterol, for which any health, weight loss, weight maintenance, or cholesterol reduction claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent 2943174 Canada Inc., and its successors and assigns, and respondent Patrice Runner shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

XI.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

WILLIAM E. SHELL, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3749. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the former officer of Interactive Medical Technologies, which market cellulose-bile products, from assisting entities that he knows or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, requires the monitoring of the business practices of certain parties to whom assistance is provided, and requires Shell to pay \$20,000 in redress over a period of one year; to post a \$1 million performance bond before he markets Lipitrol or any similar product, or holds any ownership interest or official position in any business that markets Lipitrol or any similar product; and a \$250,000 bond before he markets any weight loss, fat reduction or cholesterol reduction product or program or holds an ownership interest or official position in a business that markets any weight loss or fat or cholesterol reduction product or program.

Appearances

For the Commission: *Nadine Samter and Patricia Hensley.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Interactive Medical Technologies, Ltd., and Effective Health, Inc., corporations, and William Pelzer, Jr., individually and as a former officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc., and William E. Shell, M.D., individually and as a former officer of Interactive Medical Technologies, Ltd. ("respondents"), have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Interactive Medical Technologies, Ltd. ("IMT"), is a Delaware corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California.

2. Respondent Effective Health, Inc. ("EHI"), is a California corporation with its principal office or place of business at 2139 Pontius Avenue, Los Angeles, California. EHI is a wholly-owned subsidiary of IMT.

3. Respondent William Pelzer, Jr. ("Pelzer"), was chief executive officer and president of IMT and EHI from February 1993 to April 1995. Individually or in concert with others, he formulated, directed, controlled or participated in the acts and practices of IMT and EHI, including the acts and practices alleged in this complaint. His principal office or place of business is P.O. Box 269006, San Diego, California.

4. Respondent William E. Shell, M.D. ("Shell") was chairman of the board of IMT from January 1990 through February 1996, and served as that company's chief financial officer from May 1993 through June 1994. Individually or in concert with others, he formulated, directed, controlled or participated in the acts and practices of IMT and EHI, including the acts and practices alleged in this complaint. His principal office or place of business is 2934 ½ Beverly Glen Circle, Suite 209, Los Angeles, California.

5. Respondents IMT, EHI and Shell have advertised, labeled, offered for sale, sold and distributed products to the public, including Lipitrol, an over-the-counter fat reduction and weight-loss tablet. Lipitrol is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Respondents have advertised, distributed and sold Lipitrol, a combination of fiber and ox bile extract, to the public through direct mail.

6. Respondents also have assisted others who have advertised, labeled, offered for sale, sold and distributed products to the public, including SeQuester, an over-the-counter fat reduction and weight-loss tablet. SeQuester is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

7. 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.

Lipitrol Fat Reduction and Weight-Loss Tablets

8. Respondents IMT, EHI and Shell have disseminated or have caused to be disseminated advertisements for Lipitrol, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements:

A. INTRODUCING LIPITROL a patented dietary supplement that aids in your FIGHT against FAT by assisting in weight and cholesterol reduction.
NO ANCIENT FORMULA NO MAGIC NO MECHANICAL GADGETS NO SHOTS NO DRUGS
NO WILD PROMISES NO PATCHES NO SPECIAL FOOD TO PURCHASE NO SECRET

1477

Complaint

INGREDIENTS NO WRAPS NO SPECIAL TESTING MATERIALS O POWDERS O SURGERY
NO VERY LOW CALORIE DIETS NO GIMMICKS NO CURE-ALLS NO MOOD ELEVATORS
NO SUPER-SPEEDY WEIGHT LOSS NO HYPE DOESN'T EVEN DISSOLVE CELLULITE BUT
IT DOES WORK WHICH MAY SEEM LIKE A MIRACLE TO SOME PEOPLE

Effective Health knows of no other diet or weight loss program that is backed
by scientific data and a recognized patent for "Dietary Fat Reduction."

Lipitrol contains natural ingredients consisting of Activated Fiber Complex
(AFC). AFC forms an indigestible cellulose mesh containing molecules of bile.
Bile is the part of the digestive system which enables the body to use and/or store
fat. Fat droplets in stomach and intestines are naturally attracted to the AFC and
when they adhere to the enmeshed bile molecules, they can then be carried through
the intestinal tract and excreted rather than being absorbed for use or storage (sic).
If stools are lighter in color, or yellowish, and if they frequently tend to float
instead of sink in water, then the bile-bonded fat is now being excreted rather than
absorbed. The only adverse effect from using LIPITROL is occasional diarrhea
related to the excessive fat in the stools.

A major benefit of LIPITROL is that it imparts a feeling of satiety of fullness to
the user (sic). A second, highly significant benefit is the fact that LIPITROL has been
proven to lower blood cholesterol levels. Cholesterol is lowered as a result of the
weight loss.

.....
Effective Health believes LIPITROL meets an urgent need in society, and does
so in a healthy and genuine manner. LIPITROL is not an overnight solution to excess
weight, but it offers sincere and dedicated users an option whereby they can lose
weight and maintain the loss without doing violence to their lifestyles or drugging
their systems.

You have nothing to LOSE but FAT itself!
(Exhibit A -- direct mail solicitation)

B. NOW THERE'S AN EFFECTIVE WAY TO HELP REDUCE FAT -- NOW THERE'S
LIPITROL! -- DIETARY SUPPLEMENT

LIPITROL IS AN EFFECTIVE WEIGHT
CONTROL PRODUCT

LIPITROL can help you control
your weight by reducing FAT intake.
No kidding! LIPITROL actually helps
decrease the amount of FAT absorbed
by your body. . . .

IT HELPS FAT PASS THROUGH THE
BODY

LIPITROL'S fiber formula forms an
indigestible cellulose mesh
containing molecules of bile. Bile is
part of the digestive system which
enables the body to use and/or store
FAT. FAT droplets in the stomach and
intestines are naturally attracted to
the "Fiber Complex." When the FAT
adheres to the enmeshed bile

molecules, the FAT can then be
passed through the intestinal tract
and is excreted rather than absorbed
- Naturally and Comfortably. NO
DRUGS, NO CAFFEINE, NO DIURETICS -
EVER!

.....

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CONTROL FAT WITH LIPITROL:

Keeping FAT under control is important to good health.

FAT makes you FAT. There are 9 calories in 1 gram of FAT - plus your body stores FAT directly. Get FAT out of your diet. FAT laden diets may contribute to a variety of health problems including high blood pressure, diabetes, breast cancer, and heart disease.

Our clinical studies have shown LIPITROL to absorb approximately 5.9 grams of FAT per tablet from the foods you eat. Take hold of the FAT before the FAT takes hold of you. Use LIPITROL - Dietary Supplement DAILY!

....

A NATURAL FOOD PRODUCT

....

Remember, LIPITROL is not an overnight solution to excess weight, but offers you, the sincere and dedicated individual the option to reduce FAT absorption, lose weight, and maintain that loss, without doing harm to your body.

MORE ABOUT LIPITROL:

LIPITROL has been studied for over 7 years. One of the recent 4 week studies has indicated that diet and exercise will result in an average weight loss of about 2.1 lbs per month. With sensible eating, exercise and LIPITROL the average weight loss was 6.2 lbs per month -- with little or no FAT retention.

THE REAL ENEMY

Remember while excess "weight" is certainly a big concern, your real enemy is FAT. LIPITROL Fights FAT, and losing FAT takes time. Use LIPITROL for 60 days or more to see measurable results. LIPITROL helps remove a large portion of the FAT from the food you eat before it ends up on your body, or clogging your arteries.

You Have Nothing to LOSE, But Fat Itself!

(Exhibit B -- direct mail solicitation)

C. Effective Health Inc. is pleased to announce the development of LIPITROL through fat sequestrant technology. Our specially formulated product, marketed as a dietary food supplement, assists in weight and cholesterol reduction.

....

When taken as directed, our tablet attracts fat from the food you eat and helps eliminate it from your body. Cholesterol reduction occurs subsequent to weight loss. Overdoses result in nothing more serious than self/limiting diarrhea (sic).

....

LIPITROL has undergone independent open label trials. A technical brochure that substantiates the efficacy of LIPITROL is available upon request.

(Exhibit C -- direct mail solicitation)

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D.

Q: Should I Increase My Dosage?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and Fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets prior to every meal. Some people will even use 3 LIPITROL or more prior to their Fattiest meal. If diarrhea occurs, this is a form of controllable diarrhea and not the same as diarrhea caused by food poisoning. It does not require medication or any treatment. It just means that there is too much FAT in your stool to allow a normal bowel movement. This actually is a condition we regard as Desirable as it means the FAT is leaving your body. Whether the normal dosage or the Maxi FAT strategy described below is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: How Can I Get Maximum FAT Removal?

A: Each LIPITROL tablet has the capability to remove approximately 6 grams of FAT (the actual figure is 5.9 grams) from the food you eat. By determining as accurately as

possible, the number of grams of FAT you are consuming in your next meal, you can use that figure, divided by 6, and take the appropriate number of tablets to absorb that FAT -- this is what we call the Maxi-FAT strategy.

...

Q: When Should I Begin To See Weight Loss and/or Size Loss?

A: One of our four week studies indicates that diet and exercise alone will result in an average weight loss of about 2.1 pounds per month. With diet and exercise plus LIPITROL the average weight loss in our study was 6.2 pounds per month.

....

Q: NOTE: Please do not view your LIPITROL as an antidote for poor nutritional habits. Don't think that it is now o.k. to over indulge yourself and eat all the FAT-soaked food you want. NOT SO. You must realize that while some foods may be 40% or 50% FAT, the remaining 50% or 60% is not and still contains calories that won't be dealt with by taking LIPITROL.

....

(Exhibit D -- product package insert)

E.

Each LIPITROL tablet has been shown to absorb approximately 5.9 grams of FAT, from the foods you eat.

....

(Exhibit E -- product package label)

9. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that:

A. Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

B. Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

C. Scientific research demonstrates that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

E. Scientific research demonstrates that Lipitrol causes significant weight loss.

F. Scientific research demonstrates that Lipitrol lowers blood cholesterol levels.

10. In truth and in fact:

A. Lipitrol does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. Lipitrol does not absorb approximately 5.9 grams of dietary fat per tablet from consumed food.

C. Scientific research does not demonstrate that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that Lipitrol absorbs approximately 5.9 grams of fat per tablet from consumed food.

E. Scientific research does not demonstrate that Lipitrol causes significant weight loss.

F. Scientific research does not demonstrate that Lipitrol lowers blood cholesterol levels.

Therefore, the representations set forth in paragraph nine were, and are, false or misleading.

11. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph nine(A) and (B), at the time the representations were made.

12. In truth and in fact, respondents IMT, EHI and Shell did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph nine(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that Lipitrol:

- A. Causes significant weight loss.
- B. Lowers blood cholesterol levels.
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease.
- D. Causes significantly greater weight loss than diet and exercise alone.
- E. Is beneficial and safe when taken in amounts sufficient to cause diarrhea.

14. Through the means described in paragraph eight, respondents IMT, EHI and Shell have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made.

15. In truth and in fact, respondents IMT, EHI and Shell did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, at the time the representations were made. Therefore, the representation set forth in paragraph fourteen was, and is, false or misleading.

SeQuester Fat Reduction and Weight-Loss Tablets

16. Since at least May 1994, KCD, Incorporated, its holding corporation, KCD Holdings, Inc., their former principal, Clark M. Holcomb, and current principal, Bonnie L. Richards (collectively, "KCD"), have advertised, distributed and sold an over-the-counter fat reduction and weight-loss product to the public through, among other means, newspaper and radio advertisements disseminated nationally. KCD has wholesaled this product to retail drug stores and other retailers for resale to the general public. The product, sold under the name "SeQuester," is a combination of fiber and ox bile extract, and is the same or substantially the same as Lipitrol.

17. IMT, through its subsidiary EHI, Pelzer and Shell (hereinafter "IMT respondents") have provided KCD with, among other things, exclusive rights to sell SeQuester, technical assistance and "know how," clinical studies purporting to show that SeQuester is an effective fat reduction and weight-loss product, and certain

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promotional materials and information. Under the licensing agreement between the IMT respondents and KCD, KCD was required to make royalty payments to the IMT respondents based on sales of SeQuester.

18. KCD has disseminated or has caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits F through J. These advertisements contain the following statements and depictions:

F.	THIS
	IS WHAT
	SEQUESTER
	DOES TO
	THE FAT
	IN FOOD
	YOU
	EAT

Introducing SeQuester - the revolutionary tablet that "shrinks" the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat - safely and naturally - before it's absorbed, so it won't wind up on your body.

SeQuester's unique, patented ingredients bind fat molecules to vegetable fiber passing them gently and harmlessly through your digestive tract. It's like you never ate them at all. Shrink fat with SeQuester. Take advantage of introductory savings, and discover the safe, natural approach to fat reduction. It's in the diet section, today.

(Exhibit F - newspaper advertisement)

G. THE FAT STOPS HERE

Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "shrink" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "remove" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy. Just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.

(Exhibit G - newspaper advertisement)

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H. For the holidays, don't cut it all out. Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say, "no." So consider your choices:

Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this coupon and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and effortlessly through the digestive tract. Just take one or more tablets 30 minutes before meals.

This season, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drugstores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of sensible nutrition and moderate exercise. By following this program, studies suggest that SeQuester contributes to a safe, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

(Exhibit H - newspaper advertisement)

I.

Q. SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

(Exhibit I - product package insert)

J.

SeQuester

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

(Exhibit J - product package)

19. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that:

A. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

B. SeQuester significantly reduces the body's absorption of sugar from consumed food.

C. Scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that SeQuester causes significant weight loss.

20. In truth and in fact:

A. SeQuester does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. SeQuester does not significantly reduce the body's absorption of sugar from consumed food.

C. Scientific research does not demonstrate that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that SeQuester causes significant weight loss.

Therefore, the representations set forth in paragraph nineteen were and are, false or misleading.

21. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph nineteen(A) and (B), at the time the representations were made.

22. In truth and in fact, KCD did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph nineteen(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph twenty-one was, and is, false or misleading.

23. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. SeQuester causes significantly greater loss of weight and body fat than diet and exercise alone.

D. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease, and other health problems associated with a high-fat diet.

F. Use of SeQuester in amounts sufficient to cause diarrhea is beneficial and safe.

24. Through the means described in paragraph eighteen, KCD has represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph twenty-three, at the time the representations were made.

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

26. The IMT respondents knew or should have known that the advertisements referred to in paragraph eighteen, including but not limited to the advertisements attached as Exhibits F through J, contained the false and misleading representations set forth in paragraphs nineteen through twenty-five above; but the IMT respondents nevertheless have provided services and promotional materials to assist KCD's marketing and sale of SeQuester, including but not limited to:

A. Studies purporting to show that SeQuester effectively reduces the body's absorption of fat from consumed food and causes significant weight loss;

B. The licensing rights to market and sell SeQuester to consumers;

C. Technical information regarding SeQuester; and

D. Various promotional materials and information.

27. Through the means described in paragraph twenty-six, the IMT respondents have provided means and instrumentalities and/or

have provided substantial assistance to KCD in furtherance of the unfair or deceptive acts or practices alleged in paragraphs nineteen through twenty-five, which the IMT respondents knew or should have known were unfair or deceptive.

28. 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.

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Complaint

EXHIBIT A

INTRODUCING

LIPITROL

a patented dietary supplement
that aids in your FIGHT against FAT
by assisting in weight and cholesterol reduction.

NO ANCIENT FORMULA NO MAGIC NO MECHANICAL GADGETS
NO SHOTS NO DRUGS NO WILD PROMISES NO PATCHES
NO SPECIAL FOOD TO PURCHASE NO SECRET INGREDIENTS NO WRAPS
NO SPECIAL TESTING MATERIALS NO POWDERS NO SURGERY
NO VERY LOW CALORIE DIETS NO GIMMICKS NO CURE-ALLS
NO MOOD ELEVATORS NO SUPER-SPEEDY WEIGHT LOSS NO HYPE
DOESN'T EVEN DISSOLVE CELLULITE

BUT IT DOES WORK,

WHICH MAY SEEM LIKE A MIRACLE TO SOME PEOPLE

Effective Health knows of no other diet or weight loss program that is backed by scientific data and a recognized patent for "Dietary Fat Reduction".

LIPITROL contains natural ingredients consisting of Activated Fiber Complex (AFC). AFC forms an indigestible cellulose mesh containing molecules of bile. Bile is the part of the digestive system which enables the body to use and/or store fat. Fat droplets in stomach and intestines are naturally attracted to the AFC and when they adhere to the emulsified bile molecules, they can then be carried through the intestinal tract and excreted rather than being absorbed for use or storage. If stools are lighter in color, or yellowish, and if they frequently tend to float instead of sink in water, then the bile-bonded fat is now being excreted rather than absorbed. The only adverse effect from using LIPITROL is occasional diarrhea related to the excessive fat in the stools.

A major benefit of LIPITROL is that it imparts a feeling of satiety or fullness to the user. A second, highly significant benefit is the fact that LIPITROL has been proven to lower blood cholesterol levels. Cholesterol is lowered as a result of the weight loss.

Recommended dosage is 1 or 2 tablets with a full glass of water one-half hour prior to meals. A diet plan is included with each bottle and mild exercise is also suggested. Of course it is always necessary to consult with your physician before starting any weight loss program.

Effective Health believes LIPITROL meets an urgent need in society, and does so in a healthy and genuine manner. LIPITROL is not an overnight solution to excess weight, but it offers sincere and dedicated users an option whereby they can lose weight and maintain the loss without doing violence to their lifestyles or drugging their systems.

Our Special Price to you is **\$29.95** -- 90 tablet bottle - shipping/handling included
-- Calif. residents please add state tax

Send check or money order to: **EFFECTIVE HEALTH, INC.**
2139 Pontius Avenue
Los Angeles, CA 90025

You have nothing to LOSE but FAT itself!

COMPLAINT EXHIBIT A

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EXHIBIT B

THE ANSWER TO YOUR QUESTIONS: THE FIBER IN LIPITROL NOW THERE'S AN EFFECTIVE WAY TO HELP REDUCE FAT --NOW THERE'S LIPITROL! -- DIETARY SUPPLEMENT

LIPITROL IS AN EFFECTIVE WEIGHT CONTROL PRODUCT

LIPITROL can help you control your weight by reducing FAT intake. No loading! LIPITROL actually helps decrease the amount of FAT absorbed by your body. LIPITROL is produced under the U.S. Patent for "Dietary Fat Reduction," U.S. Patent 4,485,850.

IT HELPS FAT PASS THROUGH THE BODY

LIPITROL'S fiber formula forms an indigestible cellulose mesh containing molecules of bile. Bile is part of the digestive system which enables the body to use and/or store FAT. FAT droplets in the stomach and intestines are naturally attracted to the "Fiber Complex". When the FAT adheres to the unmetabolized bile molecules, the FAT can then be passed through the intestinal tract and is excreted rather than absorbed. - Naturally and Comfortably.

NO DRUGS. NO CAFFEINE. NO DIURETICS -- EVER!

Adults: Take one (1) or (2) tablets with a full glass of water 1/2 hour before each meal.

Doctor:

The claims made in this folder are based on known scientific evidence concerning the attributes of vegetable fiber and their effect on absorption of FAT and resulting weight loss.

We claim no miracles. We are offering help for individuals who wish to reduce FAT retention and lose weight.

Technical material is available.

SKEPTICAL?

TAKE THIS TO YOUR DOCTOR:

CONTROL FAT WITH LIPITROL:

Keeping FAT under control is also important to good health. FAT makes you FAT. There are 9 calories in 1 gram of FAT - plus your body stores FAT directly. Get FAT out of your diet. FAT laden diets may contribute to a variety of health problems including high blood pressure, diabetes, breast cancer, and heart disease.

Our clinical studies have shown LIPITROL to absorb approximately 5.9 grams of FAT per tablet from the foods you eat. Take hold of the FAT before the FAT takes hold of you. Use LIPITROL - Dietary Supplement DAILY!

A NATURAL FOOD PRODUCT

LIPITROL is composed of microcellulose particles (fiber), purified bile and all natural vegetable fibers from barley/wheat, lemon pectin, carrot and acerola. Remember LIPITROL is not an overnight solution to excess weight, but offers you, the sincere and dedicated individual the option to reduce FAT absorption, lose weight, and maintain that loss, without doing harm to your body.

ALWAYS CONSULT WITH A PHYSICIAN BEFORE STARTING
ANY DIET OR EXERCISE PROGRAM.

HOW CAN I ORDER LIPITROL?

I understand that if for any reason I am not satisfied with LIPITROL, I may return the unused portion, within 30 DAYS for a 100% REFUND of the purchase price. No fee and/or bill!

☐ 90 lb supply - \$29.95 Please include \$3.00 for postage and handling
☐ 180 lb supply - \$43.95

California residents please add sales tax

I am enclosing ☐ CHECK ☐ MONEY ORDER FOR \$

NAME

STREET ADDRESS

APT BOX NO

CITY

STATE

ZIP

MAIL THIS ORDER FORM ALONG WITH YOUR PAYMENT TO
EFFECTIVE HEALTH INC.
2139 Portun Ave. • L.A. CA 90025
Please send technical material ☐

COMPLAINT EXHIBIT B

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EXHIBIT B

**Which of
these five
questions on
health will
you miss?**

- 1: What is a direct cause of chronic constipation?
☐ Low acid in foods ☐ Low fiber in foods ☐ Low protein in foods
- 2: What is one of the contributors to diarrhea?
☐ Low acid in foods ☐ Low fiber in foods ☐ Low protein in foods
- 3: What allows more fat into your body to produce cholesterol?
☐ Low acid in foods ☐ Low fiber in foods ☐ Low protein in foods
- 4: What is one of the many contributors to weight gain?
☐ Low acid in foods ☐ Low fiber in foods ☐ Low protein in foods
- 5: What can help with #1, 2 & 3 - plus help you lower your weight?
☐ High acid in foods ☐ High fiber in foods ☐ High protein in foods

**AFTER YOU'VE CHECKED YOUR ANSWERS IN THE APPROPRIATE BOXES, OPEN
UP TO WHAT COULD BE YOUR GREATEST WEIGHT LOSS DISCOVERY EVER...**

MORE ABOUT LIPITROL:

LIPITROL has been studied and tested for over 7 years. One of the recent 4 week studies has indicated that diet and exercise alone will result in an average weight loss of about 2.1 lbs per month. With sensible eating, exercise and LIPITROL the average weight loss was 6.2 lbs per month - with little or no FAT retention.

THE REAL ENEMY

Remember while excess "weight" is certainly a big concern, your real enemy is FAT. LIPITROL Fights FAT, and losing FAT takes time. Use LIPITROL for 60 days or more to see measurable results. LIPITROL helps remove a large portion of the FAT from the food you eat, before it ends up on your body, or clogging your arteries

You Have Nothing to LOSE, But FAT itself.

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EXHIBIT C

EHI Effective Health Inc.

2139 Pentium Avenue, Los Angeles, California 90025 310-477-1173 Fax 310-473-5441

Effective Health Inc. is pleased to announce the development of LIPITROL through fat sequestrant technology. Our specially formulated product, marketed as a dietary food supplement, assists in weight and cholesterol reduction.

LIPITROL is the creation of noted California Cardiologist and Director of the Beverly Hills Cardiology Research Group, Dr. William E. Shell. Dr. Shell has published more than 100 scientific articles and holds multiple patents.

LIPITROL's activated fiber preparation is produced by means of an exclusive process, U.S. Patent # 4,865,850. In addition, each tablet contains natural vegetable fibers from barley/rice, lemon pectin, carrot and acerola. LIPITROL contains no chemicals or additives, nor anything artificial.

When taken as directed, our tablet attracts fat from the food you eat and helps eliminate it from your body. Cholesterol reduction occurs subsequent to weight loss. Overdoses result in nothing more serious than self-limiting diarrhea. We ALWAYS recommend to first consult with your physician before use, follow a properly balanced diet (plan included) and exercise.

LIPITROL has undergone independent open label trials. A technical brochure that substantiates the efficacy of LIPITROL is available upon request.

Howard Greenberg
Marketing Director

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EXHIBIT D

EH1-1

THE REAL ENEMY... YOUR real enemy is not "weight."
YOUR real enemy is FAT! LIPITROL helps fight FAT.

HEALTHY HEART OBJECTIVES...

Number 1: To feed my body less FAT.
Number 2: To train my body to burn FAT more efficiently.

PROBABLE BENEFITS...

* Improved health * Reduced FAT intake * Reduced body weight * Increased energy level and productivity

THE EFFECTIVE HEALTH WAY TO TAKE YOUR LIPITROL

LIPITROL is a tested product which will help you lose FAT. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of these programs cause us to lose water weight, and weight that we gain back as soon as we stop the program. LIPITROL fights FAT, and losing FAT takes time. Read and follow these instructions carefully. Make LIPITROL a consistent part of your weight loss program. Give yourself 60 or more days to see measurable results. Follow our carefully designed guidelines and get into the Good Exercise habit. Good Luck!

Q: How Shall I Begin?

A: Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking LIPITROL during or after a meal will not produce satisfactory results. Just be sure that "before you take your first bite, take your LIPITROL!"

Thank you for purchasing LIPITROL...
This natural patented product helps reduce FAT absorption and let's you lose weight naturally and comfortably.
"Take hold of the FAT. Before the FAT takes hold of you!"

Please study the important information contained in this pamphlet. It is designed to help you get the maximum benefit from LIPITROL. You can take this pamphlet with you! It contains many tips on food selection, food preparation, exercise and how to use LIPITROL most effectively.

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PAGE 1	THE REAL ENEMY
PAGE 1	HEALTHY HEART OBJECTIVES
PAGE 1	THE EFFECTIVE HEALTH WAY TO TAKE YOUR LIPITROL
PAGE 6	WHY DIETS OFTEN BACKFIRE
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PAGE 8	FOUR ESSENTIALS OF COORDEXERCISE
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PAGE 9	FAT FIGHTING TIPS
PAGE 10	HOW YOU CAN HAVE GOOD FOOD HABITS... Through the "Pyramid"
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COMPLAINT EXHIBIT D

Complaint

EXHIBIT D

Q: How Many Tablets Should I Take Per Day?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people, the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3, 4, 5 and 6 tablets per day to see which is most effective for them.

Q: How Will I Know My Dosage Is Satisfactory?

A: You're on the right track when one or more of the following occur: 1) Stools appear lighter in color; 2) Stools appear bulkier; 3) Stools may float in water. These indications result from FATS being passed through your digestive tract and eliminated in the stool.

Q: Should I Increase My Dosage?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets prior to every meal. Some people will even use 3 LIPITROL or more prior to their fattiest meal. If diarrhea occurs, this is a form of controllable diarrhea and not the same as diarrhea caused by food poisoning. It does not require medication or any treatment. It just means that there is too much FAT in your stool to allow a normal bowel movement. This actually is a condition we regard as Desirable as it means the FAT is leaving your body. Whether the normal dosage or the Maxi FAT strategy described below is appropriate for you depends upon how your body responds to each dosage and upon the advice of your physician.

Q: How Can I Get Maximum FAT Removal?

A: Each LIPITROL tablet has the capability to remove approximately 6 grams of FAT (the actual figure is 5.6 grams) from the food you eat. By determining as accurately as possible the number of grams of FAT you are consuming in your next meal, you can use that figure, divided by 6, and take the appropriate number of tablets to absorb that FAT—this is what we call the Maxi-FAT strategy.

Q: Won't It Be Using More LIPITROL With the Maxi-FAT strategy?

A: Yes, you will. If economics is a serious concern, then stay with the 2 tablets with each meal approach. If you want optimum results, then Maxi-FAT is for you. Just remember each gram of FAT contains 9 calories. Each tablet can absorb approximately 6 grams of FAT or 54 calories. It takes about 3,500 unused calories to add a pound of weight to your body. In other words, the Maxi-FAT strategy is designed to absorb more FAT or calories than you take more tablets.

Q: If I Eat A 100% FAT-Free Meal, Should I Still Take My LIPITROL?

A: If one of your meals contains absolutely no FAT, it is not necessary to take LIPITROL for that particular meal.

Q: Should I Take vitamin supplements while taking LIPITROL?

A: If you wish to take vitamin supplements, we advise doing

so 1 hour prior to taking your LIPITROL—or 2 hours after taking LIPITROL. While we have observed no evidence of FAT-soluble vitamin deficiency during our human testing, however over an extended period of time, it is possible that levels of vitamins A, D, E, and K may drop, particularly if you follow the Maxi-FAT strategy.

Q: What about additional side effects?

A: 3 out of 10 people in our test group experienced excess gas when taking LIPITROL. If this is a concern we strongly recommend that you go to a healthy food store and get a jar of activated charcoal tablets. They are very inexpensive. Activated charcoal is a fine aid to digestion, does not enter your blood stream and has the ability to absorb excess gas.

Q: Why Is Exercise So Important?

A: Reducing one's FAT intake (through a balanced diet and LIPITROL) are only part of the strategy for burning the "stored" FAT in our bodies. Consistent Regular Exercise actually increases our body's metabolism so that we burn FAT at a higher rate than when our lifestyles are sedentary. Most Important: Check with your physician before beginning any weight loss or exercise program.

Q: When Should I Begin To See Weight Loss and/or Size Loss?

A: One of our four week studies indicates that diet and exercise alone will result in an average weight loss of about 21 pounds per month. With diet and exercise plus LIPITROL,

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the average weight loss in our study was 6.3 pounds per month. Everyone is unique, and we encourage our followers to make LIFTROL a consistent part of their weight loss program for at least 60 or more days in order to experience the best measure to how well LIFTROL is going to work for them.

Q: Any hints to help me be consistent with LIFTROL?

A: Yes. Lots of people tend to forget their LIFTROL when they go to work, on vacation, etc. An easy solution is to purchase an extra bottle, or spill your current bottle into two or more containers.

Q: How Long Will I Need To Take LIFTROL?

A: The answer depends upon where you are today, and where you want to be tomorrow. Many people can testify from experience that a "quick" weight loss program often backfires into a quick weight gain after the program is over. One of the reasons this tragedy occurs is because radically changing what you eat, does not necessarily impact your health, ability to burn, or metabolism; the FATs Using LIFTROL, plus lifestyle habits and CardioExercise can result in losing FAT while also stepping up body metabolism so that after you reach your goal, you keep the weight and FAT off!

NOTE: Please do not view your LIFTROL as an antidote for poor nutritional habits. Don't think that it is now O.K. to over indulge yourself and eat all the FAT-packed food you want. NOT SO. You must realize that while some foods may be 40% or 50% FAT, the remaining 50% or 60% is not and still

contains calories that won't be dealt with by taking LIFTROL. In fact, you may be your own worst enemy by trying to beat the system.

Do You Have Other Questions? Please feel free to drop us a note at the address listed on page 14.

WHY DO DIETS OFTEN BACKFIRE?

Think of your body as a calorie burning machine. It runs on fuel (i.e. calories), which are obtained from food. The rate at which you burn fuel is your metabolism. Here are two ways you can inhibit your calorie machine to burn slower (i.e. slow your metabolism). 1. Deplete it of fuel. When you fast or severely restrict your calorie intake, your body's natural protective mechanism is to "slow down" in an effort to conserve its fuel resources. Unfortunately, after prolonged exposure to this conservation mechanism (file in a very low calorie diet), your metabolism tends to stay slow even after the diet is concluded. When normal calorie intake is resumed, your body is likely to burn fewer calories per day than when you started the diet. The calorie machine has been told to "burn less" - "conserve fuel". And unless the body is given new orders to "burn more fuel", it will continue to do slow burn mode. This is why so many people have lost significant amounts of weight, only to gain it back again soon afterward! 2. Become Less Active. It should be obvious that the more sedentary we become, the less fuel we will need to meet our body's decreasing activity levels. The body adjusts accordingly, and our metabolism slows down.

GOOD EXERCISE HABITS (Training your body to burn FAT)

Your body runs 24 hours a day, always burning fuel. In your normal routine you may be very tired at the end of the day, however you have not burned any stored FAT because you did not change your body's metabolism. Unfortunately, many people believe that pushing, pushing, and shoving with persistence are required for FAT burning and good health. This is unfund! During such high demand (anaerobic) activity your body will call upon its ultra high power fuel source—glucose (sugar), and no FAT burning activity will take place—even though you have worked very hard. You must exercise just hard enough and long enough to burn up your body's need for fuel—gradually—then you will be giving instructions that will last long after the 12 to 45 minutes of exercise has passed. In practical terms, if you are huffing and puffing, you need to slow down (i.e. walk, slow jog, slow, pedal slower, etc.). Why? Because to you (at this point in time), this is a high demand activity which tells your body to burn glucose not FAT. Also, if your heart rate becomes too high during exercise, it is dangerous, and you will likely not be able to sustain the exercise activity long enough to persuade your body that you really do want to make those metabolism changes! On the other hand, when you give sensible exercise instructions to your body several days per week, over miles or miles, your body really believes that you want it to burn FAT. And do you know what? It does!

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EXHIBIT D

FOUR ESSENTIALS OF GOOD EXERCISE

1. *Without* (think you are presently participating in a consistent exercise program, do not attempt any exercise program without first consulting your physician.)

Exercise comes in many forms. Beginner to competitive, indoor and outdoor. Expensive and inexpensive. Standing up and sitting down.

No matter what form of exercise you choose, be certain it achieves these four essentials:

1. *Talable*—While exercise should cause you to breathe faster than when you are not exercising, you should not get out of breath. During the exercise, you should be able to carry on a high conversation or sing a simple song, but maybe not an opera.

2. *Undertimed*—At least 12 minutes for beginning joggers, and at least 30 minutes for most walkers. Remember, regardless of your choice of exercise, if you really want to "get in shape," don't make a 20 minute workout "harder." Instead make it longer: a 25, then 30, then 35 minute workout, and so on.

3. *Frequent*—A reasonable exercise has some benefit, however it takes properly to convince your body that you really want it to continue. FAT while increasing muscle and metabolism. Make it your goal to exercise daily. Begin with at least three days per week. Count how many minutes you exercise each week—not how far you run, walk, bicycle, etc.

4. *Involves* at least the major groups of your lower body—the legs, and buttocks. (Other muscle groups can be added.)

GOOD EXERCISES (i.e., they get the four essentials) include: Walking, hiking, jogging, cross-country skiing, aerobic dancing, stair climbing, jumping rope, bench stepping, roller skating, freestyle, rowing, and other water sports.

EXERCISES that are *not* as good for you, too long and get too out of shape for the four essentials include: Tennis, basketball, squash, softball, golf, weight lifting, downhill skiing.

WHY YOU SHOULD NOT "GO ON A DIET"

Millions of Americans have gained their health, lost the weight, and then regained it faster than they lost it! This is not fair, so work no hard and only end up right back where we started! Instead, let us go on a "quest"—a "mission." If you prefer, Our objective is not calorie deprivation! Our objective is good health through the choosing and using of gradual, maintainable lifestyle changes—and using LIFTROL everyday.

Instead of going on a diet, just reduce the FATS in your meals.

Remember: You will automatically have a reduction in calories, plus cholesterol loss as a result of the lost weight. FATS have more than twice the calories of carbohydrates and protein. It is more important to count the FATS in your foods than to count the calories.

FAT FIGHTING TIPS:

In addition to taking LIFTROL, before every meal, you should: 1. Trim all FAT and remove all skin from meats and

poultry. And meats are high in FAT. Meat preparations include: baste, broil, boil, steam or open grill only. 2. Keep away from eggs. Use egg whites or egg substitutes as an alternative. 3. Eliminate butter and cheese, palm and coconut oil, butter and lard which is high in cholesterol. 4. Keep away from greases, gravies and sauces. 5. Cheeses are great—watch the dressing. Order all dressings on the side and use sparingly. Use reduced or low calorie dressing only. 6. Do not be a member of the cream pile club, take home what you cannot finish. Many restaurants serve more than one person can eat. Get two meals out of one.

Additional Tips: Drink eight, 8 oz. glasses of water daily. Chew food slowly and completely. Put your fork or spoon down between bites. Never take less than 20 minutes to finish a meal. Try a smaller plate. Do not skip meals, you will only overeat later. Eat dinner as early as possible.

At The Market: Make a list before you go shopping. Do not shop on an empty stomach. Read all labels carefully. Some products that claim to have "low" or "no" cholesterol may be high in FAT. Look for variety and choose good fats.

Really Check: It's a tough assignment to tackle all of these FAT reducing tips at the same time. Consider trying one or two per month until they become your food habits. Always look for new ways to reduce FATS in your diet.

HOW YOU CAN HAVE GOOD FOOD HABITS—Through the Pyramid. The Healthy, Balanced Diet includes daily quantities of foods

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EXHIBIT D

poultry. Red meats are high in FAT. Meat preparations include bologna, ham, beef, bacon or open grill only. 2. Keep away from eggs. Use egg whites or egg substitutes as an alternative. 3. Eliminate butter and cheese, palm and coconut oils, tallow and lard which is high in cholesterol. 4. Keep away from unsaturated FATS (help lower cholesterol). 5. Keep away from gravies, creams and sauces. 6. Grains are great—watch the dressing. Order all dressings on the side and use sparingly. Use reduced or low calorie dressing only. 7. Do not be a member of the clean plate club, take home what you cannot finish. Many restaurants serve more than one person served. Eat two meals out of five. Additional tips: Drink eight, 8-oz. glasses of water daily. 8. Eat food slowly and completely. Put your fork or spoon down between bites. Never take less than 20 minutes to finish a meal. Try a smaller plate. Do not skip meals, you will only overeat later. Eat dinner as early as possible. At The Market: Make a list before you go shopping. Do not shop on a empty stomach. Read all labels carefully. Some products that claim to have "low" or "no" cholesterol may be high in FAT. Look for variety and choose good foods. Keatinge's: Check it's a tough department to tackle all of these. 1. All reducing tips at the same time. Consider trying one or two per month until they become your fixed habits. Always look for new ways to reduce FATS in your diet.

HOW YOU CAN HAVE GOOD FOOD HABITS—Through the "Pyramid" The Healthy, Balanced Diet includes daily quantities of foods from each of the 5 Basic Food Groups. These are 1. All Fruits & Vegetables: With the exception of avocados and olives (which have a very high FAT content), nearly all fruits and vegetables are low in FAT and calories, while high in fiber. Average serving size: 1 cup. Average daily servings: 5-6. Vegetables have high nutrition, lowest calories. 2. Grains: Grains are high in fiber, low in fat, and are great—watch the dressing. Order all dressings on the side and use sparingly. Use reduced or low calorie dressing only. 3. Protein: Protein is essential for health. Choose lean meats, poultry, fish, eggs, seafood and legumes (e.g., beans, split peas, lentils), with a wide variance of FAT content. The safest choices are high in fiber and protein while low in FAT. The worst choices are high in fat and protein content include eggs, bacon, ham, sausage, bologna, liverwurst, sardines and pepperoni. Do not eat nuts and seeds. A half of a pound contains about 500 calories and 1/2 cup cereal, peas, and rice. 1 slice bread. Average daily servings: 5-6. 4. Milk: Products include yogurt, cheese and milk, having a wide range of FAT content. Cheese ranges from 50% FAT (as a percentage of calories) to 0% or higher FAT content in Cheddar, Boursin, American and Cream cheeses. Use these high FAT cheeses as a flavorful garnish—and as a main ingredient. Average serving size: 1 cup milk, (skim or low FAT), yogurt (low FAT), or cottage cheese (low FAT); 1 ounce cheese. Average daily servings: 3-4. Skim, low FAT milk are best. No ice cream. Substitute non-fat frozen yogurt or ice milk products. 5. Meats: Includes beef, pork, poultry, fish, eggs, seafood and legumes (e.g., beans, split peas, lentils), with a wide variance of FAT content. The safest choices are high in fiber and protein while low in FAT. The worst choices are high in fat and protein content include eggs, bacon, ham, sausage, bologna, liverwurst, sardines and pepperoni. Do not eat nuts and seeds. A half of a pound contains about 500 calories and 1/2 cup cereal, peas, and rice. 1 slice bread. Average daily servings: 5-6.

75% FAT. Safe choices also include skinless chicken and turkey (white meat) and meat white fish. Average serving size: 3 ounces. Average daily servings: 2.

Study the "Food Pyramid" conceived by the U.S. Department of Agriculture. The Pyramid displays a well balanced diet in graphic form, and recommends limited use of FATS and sugars in our diet.

MEAT SUBSTITUTES APPROX. 1500 CALORIES

Facilitate weight loss by selecting the appropriate quantities of food from the proper food groups.

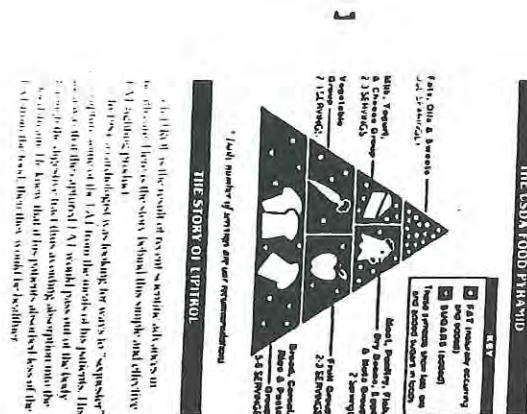
	Milk	Meat	Fruit	Vegetable	Cereal/Bread
Day 1	3	2	4	2	4
Day 2	2	3	2	3	4
Day 3	2	2	3	3	3
Day 4	3	2	4	4	2
Day 5	2	3	4	2	3
Day 6	3	3	2	2	2
Day 7	3	2	2	2	4

NOTE: 3 extra exchanges of foods per day are allowed.

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EXHIBIT D



With counsel of medical colleagues throughout the United States, the tests were tested in the laboratory and ultimately among family, friends and patients. In a large percentage of cases, people reported the first signs that the product really worked for them—namely a lightening in the skin tone or bulk. And some patients even reported a buoyancy (floating) of their state.

Interestingly, the tests also showed reductions in body weight, and taken an accompanying drop in blood cholesterol and triglyceride levels, as a result of the weight loss. Two additional special clinical studies known as "double blind placebo" trials were completed during 1990 through October 1991.

LIPTROL causes some of the FATS to become attached to the particles of the blood. The blood is made with natural fiber ingredients (barley/rice, human protein, carrot and almond), a "bile receptor" (sodium chloride complex) and micro-capsules. LIPTROL removes FATS before it is absorbed by the body, so it does not end up in your body, or blocking your arteries.

LIPTROL is patented under U.S. Patent 4,965,451, and is manufactured exclusively for Effective Health Inc.

**YOU HAVE NOTHING TO LOSE,
BUT FAT DOES!**

**EFFECTIVE HEALTH INC.,
Los Angeles, CA 90025**

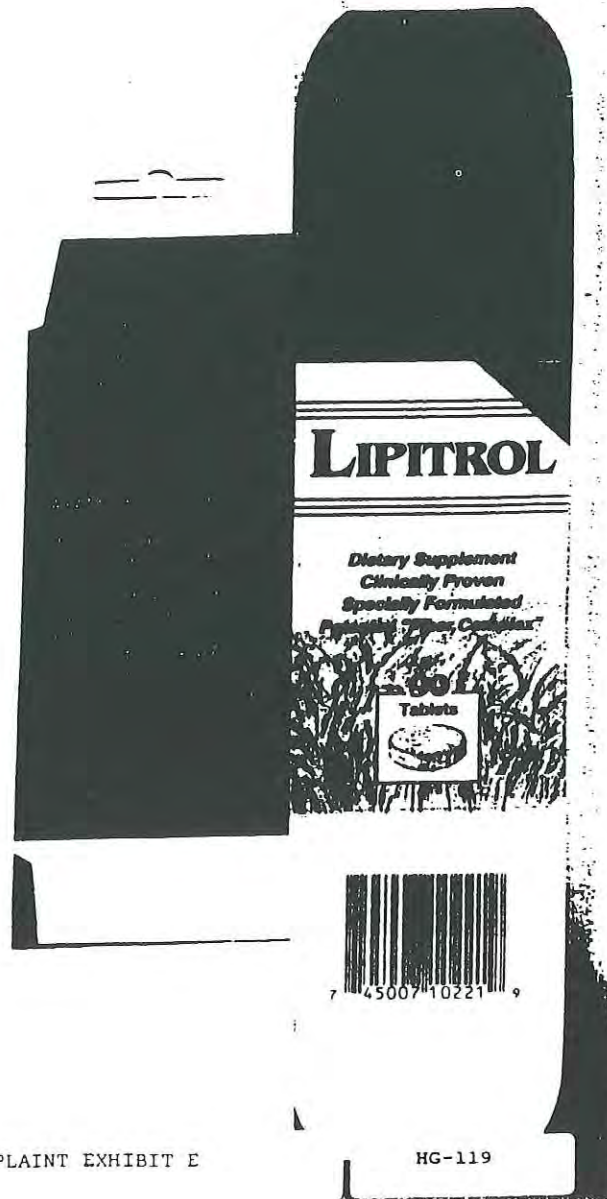


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EXHIBIT E



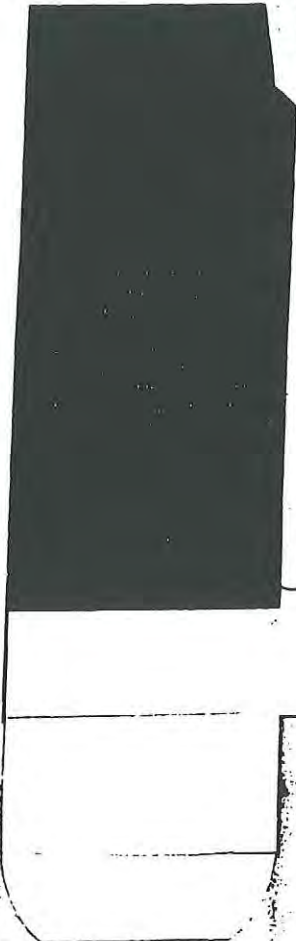
COMPLAINT EXHIBIT E

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EXHIBIT E



LIPITROL

RECOMMENDED USE:
For Adults Only. Take 1 or 2 tablets, 3 times per day with full glass of water, 1/2 hour before meals. Each LIPITROL tablet has been shown to absorb approximately 5.9 grams of FAT, from the foods you eat.

NOTICE:
Before considering any weight control program it is advisable to consult with your physician. Do not use in the presence of diarrhea or abdominal pain. Store in a cool dry place.

INGREDIENTS:
Barley/Fiber Fiber, Sodium Cholest Complex, Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicon Dioxide, Magnesium Stearate & Acacia Powders.

COATING:
Hydroxypropylmethylcellulose, Propylene Glycol and Carnuba

Nutritional Information per Tablet
Only 2 Calories Each

Protein	35.0 mg
Fiber	180.0 mg
Ash	44.0 mg
Fat	60.0 mg
Carbohydrates	340.0 mg
Moisture	38.0 mg
Total Weight = 700 Milligrams	
Vitamins & Minerals = Less than 2% RDA	

By: Effective Health, Inc. L.A. CA 90025
Phone # 4 255 888 Made in U.S.A.

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EXHIBIT F

THIS IS WHAT SEQUESTER™ DOES TO

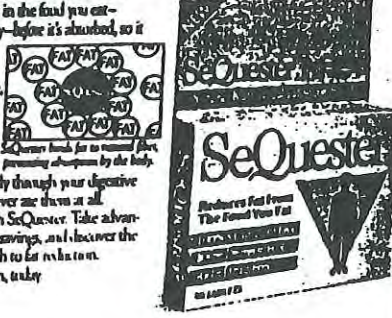
Introducing
SeQuester—the revolutionary
tablet that “shrinks” the amount
of dietary fat your body absorbs.

SeQuester is a lab-tested formula
that neutralizes fat in the food you eat—
safely and naturally—before it’s absorbed, so it
won’t wind up in
your body.

SeQuester’s unique,
patented ingredi-
ents bind fat mole-
cules to vegetable
fiber, passing them
gently and harmlessly through your digestive
tract. It’s like you never ate them at all.

Shrink fat with SeQuester. Take advan-
tage of involuntary savings, and discover the
safe, natural approach to fat reduction.
It’s in the diet section, baby.

THE FAT IN FOOD YOU EAT



The diagram shows a central circle labeled 'FAT' surrounded by smaller circles labeled 'FIBER'. Arrows point from the fiber circles towards the fat circle, indicating the binding process. Below this, text reads: 'SeQuester binds fat to natural fiber, preventing absorption by the body.'

(STORE IMPRINT)

AD #2

SQ-141

COMPLAINT EXHIBIT F

Complaint

123 F.T.C.

EXHIBIT G

THE EAT STOPS HERE.

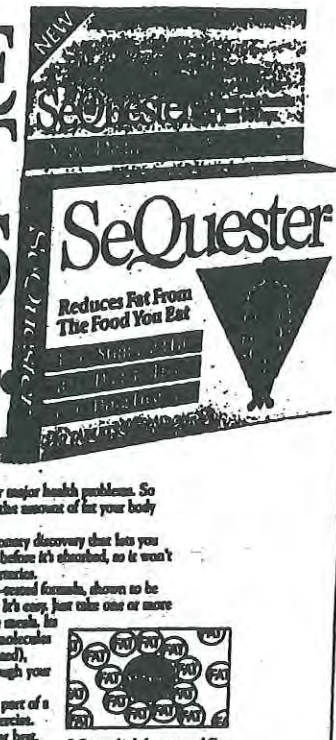
Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "block" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "rescue" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-created formula, shown to be effective in lowering fat absorption. It's easy, just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fat diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.



SeQuester
Reduces Fat From
The Food You Eat

SeQuester binds fat to natural fiber, preventing absorption by the body.

\$2.00 OFF

SeQuester

0001-74

MANUFACTURER'S COUPON

(STORE IMPRINT GOES HERE.)

SQ-142

AD #3

COMPLAINT EXHIBIT G

1477

Complaint

EXHIBIT H



**For the holidays, don't cut it all out.
Just take SeQuester.**

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't back away, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say "no." So consider your choices. Either you can cut out all those rich, delicious foods that make life wonderful.

Or you can cut out this unpleasant burden placed on SeQuester—a revolutionary discovery that helps your body maintain fat reserves from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, and know that their extra fat content won't be showing up on your scale—or in your mirror—after January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules so excess very easily slips, so they pass gently and safely through the digestive tract. Just take one or more tablets 30 minutes before meals.

This means, make SeQuester the centerpiece of all your holiday meals. You'll find it to be more digestible and palatable, everywhere.

NOTE: SeQuester should be used for the purpose of weight control and fat reduction. It is not intended for use as a substitute for a low-fat diet. SeQuester is not a diet and will not replace a healthy diet and exercise plan.

SeQuester
A Natural Dietary Supplement

RA-43

SeQuester is now available at Rite Aid.

RA-43

COMPLAINT EXHIBIT H

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EXHIBIT I



SeQuester.

A guide to a healthy lifestyle

INSIDE:
 Valuable tips on SeQuester use.
 Plus: sensible eating & exercise habits.

NOTE: The following is the copy for the SeQuester insert

COMPLAINT EXHIBIT I

SQ-22

SOLE IMPORTERS • 2817 TOWNSEND DRIVE • SUITE 100 • WESTLAKE VILLAGE, CALIF. 91361
 (818) 354-0087 • FAX (818) 354-1120

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EXHIBIT I

Page 2
SeQuester

Thank you for purchasing SeQuester™. This natural patented product helps reduce fat absorption and let's you lose weight naturally and comfortably.

Take hold of the fat, before the fat takes hold of you!

Please study the important information contained in this pamphlet. It is designed to help you get the maximum benefit from SeQuester. It contains many tips on food selection, food preparation, exercise and how to use SeQuester most effectively.

THE REAL ENEMY: Your real enemy is not *weight*. Your real enemy is *fat*. SeQuester helps fight fat.

HEALTHY HEART OBJECTIVE:

Number 1: To feed my body less fat.

Number 2: To train my body to burn fat more efficiently.

PROBABLE BENEFITS:

- Improved Health • Reduced fat intake • Reduced body weight
- Increased energy level and productivity

THE EFFECTIVE, HEALTHY WAY TO TAKE YOUR SEQUESTER:

SeQuester is a tested product that will help you lose fat. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of those programs cause us to lose water weight, and even muscle weight. But, weight is not our number one enemy – fat is. SeQuester fights fat, and *losing fat takes time*. Read and follow these instructions carefully. Make SeQuester a consistent part of your weight loss program. Give yourself 90 or more days to see measurable results. (The initial few days of your SeQuester program may even show some weight increase. Don't panic. This is normal.) Follow our GoodFood dietary guidelines and get into the good exercise habit. Good luck!

Q: HOW SHALL I BEGIN?

A: Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking SeQuester during or after a meal will not produce satisfactory results. Just be sure that before you take your first bite, take your SeQuester.

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EXHIBIT I

Page 3
SeQuester

Q: HOW MANY TABLETS SHOULD I TAKE PER DAY?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3 to 6 tablets per day to see which is most effective for them.

Q: HOW WILL I KNOW MY DOSAGE IS SATISFACTORY?

A: You're on the right track when one or more of the following occur: (1) Stools appear lighter in color; (2) Stools appear bulkier; (3) Stools may float in water. These indications result from fats being passed through your digestive tract and eliminated in the stool.

Q: SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: IF I EAT A 100% FAT-FREE MEAL, SHOULD I STILL TAKE MY SEQUESTER?

A: If one of your meals contains absolutely no fat, it is not necessary to take SeQuester for that particular meal.

Q: SHOULD I TAKE VITAMIN SUPPLEMENTS WHILE TAKING SEQUESTER?

A: If you wish to take vitamin supplements, we advise doing so 1 hour prior to taking your SeQuester or 2 hours after taking SeQuester. We have observed no evidence of fat-soluble vitamin deficiency during our human testing, however taking a multiple vitamin/mineral supplement is always a good idea.

Q: WHAT ABOUT ADDITIONAL SIDE EFFECTS?

A: Three out of 10 people in our test group experienced excess gas when taking SeQuester. If this is a concern we strongly recommend that you get some activated charcoal tablets. They are very inexpensive and can be found

EXHIBIT J

SeQuester™

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

The combination of special ingredients, through our patented manufacturing process, negatively affects the availability of fat and sugar. The mechanism that produces this action remains unclear.

100% money back guarantee.

Sequester should be used with a properly balanced diet and exercise program.

NUTRITIONAL INFORMATION PER TABLET (ONLY 2 CALORIES EACH)

Protein	35.0 mg	Fiber	180.0 mg
Fat	0.06 grams	Carbohydrates	340.0 mg
Vitamins & Minerals = less than 25% RDA		Total Tablet Weight = 700 milligrams	

RECOMMENDED USE: For adults only. Take 1 or 2 tablets 3 times per day 1/2 hour before meals with a *FULL* glass of water.

NOTICE: Before considering any weight loss program, it is advisable to consult with your physician. This product, when used in excess, may cause diarrhea, abdominal cramping, or gas. If this occurs, product dosage should be temporarily reduced or discontinued. Store in a cool dry place.

INGREDIENTS: Activated-Fiber Complex (Barley/Rice Fiber, Sodium Choleate Complex), Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicone Dioxide, Methylcellulose, Magnesium Stearate, Acerola and Propylene Glycol.

Manufactured Exclusively For:
KCD, Inc. Westlake Village, CA 91361

Made in the USA
U.S. Patent #4,865,850

COMPLAINT EXHIBIT J

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondent William E. Shell, M.D., having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent William E. Shell, M.D. was an officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc. He formulated, directed and controlled the policies, acts and practices of said corporations. His home address is at 3048 Nicada Drive, in the City of Los Angeles, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That for purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondent*" shall mean William E. Shell, M.D., individually and as a former officer of IMT.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product prevents or reduces the body's absorption of fat from consumed food or absorbs any amount of fat from consumed food unless the representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product:

- A. Provides any weight loss benefit;
- B. Lowers blood cholesterol levels;
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease; or
- D. Can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product or program, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondent shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;

B. The licensing or other contractual rights to market any such product or program;

C. Any technical assistance; or

D. Any advertising, labeling or promotional materials.

VI.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part V of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

A. Take reasonable steps sufficient to determine, commencing with the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondent is or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.

B. Immediately terminate any business relationship with any person who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

VII.

It is further ordered, That:

A. Respondent, directly or through any corporation, subsidiary, division or other device, shall not:

1. Advertise, promote, offer for sale, sell or distribute Lipitrol or any weight loss, fat reduction or cholesterol reduction product composed of any combination of fiber and bile extract, unless he first obtains a performance bond in the principal amount of one million dollars (\$1,000,000);

2. Hold any ownership interest, share or stock in, other than a passive investment, or serve as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product composed of any combination of fiber and bile extract, unless he first obtains a performance bond for each such business entity or activity in the principal sum of one million dollars (\$1,000,000);

3. Advertise, promote, offer for sale, sell or distribute any weight loss, fat reduction or cholesterol reduction product or program, not including the treatment of patients in connection with his private medical practice, unless he first obtains a performance bond in the principal amount of two hundred and fifty thousand dollars (\$250,000); or

4. Hold any ownership interest, share or stock in, other than a passive investment, or serve as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, not including the treatment of patients in connection with his private medical practice, unless he first obtains a performance bond for each such business entity or activity in the principal sum of two hundred and fifty thousand dollars (\$250,000).

B. Each such bond shall be deemed continuous and remain in full force and effect as long as respondent engages in or holds any ownership interest, share or stock in, or serves as an officer, director or trustee of, any business entity engaged, in whole or in part, in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction and for at least three (3) years after respondent has ceased to engage in any such activity.

C. Each such bond shall cite this order as the subject matter of the bond, and shall provide surety thereunder against financial loss due, in whole or in part, to any violation of Sections 5 and 12 of the FTC Act, to any violation of the provisions of this order, or to any other cause attributable to respondent's engaging or participating in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction.

D. Each such bond shall be an insurance agreement providing surety for financial loss issued by a surety company that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring and that is admitted to conduct surety business in each state where the entity to be insured does business. Each such bond shall be in favor of both: (1) the Commission for the benefit of consumers injured due, in whole or in part, to any violation of Sections 5 and 12 of the Federal Trade Commission Act, to any violation of the provisions of this order, or to any other cause attributable to respondent's engaging or participating in the advertising, promotion, offering for sale, sale or distribution of any product or program that is related to weight loss, fat reduction or cholesterol reduction; and (2) any consumer so injured. Each such bond shall be executed in favor of the Commission or in favor of any injured consumer if the Commission or the consumer demonstrates, by a preponderance of the evidence, that respondent has violated any condition of the bond.

E. Respondent shall provide a copy of each such bond required by this Part to the Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington, at least ten (10) days before commencing any activity or business for which the bond is required.

F. Respondent may not disclose the existence of the performance bond to any consumer, or other purchaser or prospective purchaser, to whom a covered weight loss, fat reduction or cholesterol reduction product or program is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond is required by order of the Commission in settlement of charges that respondent engaged in false and misleading representations.

G. The bond required by this Part shall be in addition to, and not in lieu of, any other bond required by law.

H. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VIII.

It is further ordered, That respondent, his successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of twenty thousand dollars (\$20,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in four installments, the first payment of five thousand dollars (\$5,000) to be made within 60 days after the date that this order becomes final; the second payment of five thousand dollars (\$5,000) to be made no later than the first day of the fourth month thereafter; the third payment of five thousand dollars (\$5,000) to be made no later than the first day of the eighth month thereafter; and the final payment of five thousand dollars (\$5,000) to be made within one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondent's indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondent shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of twenty thousand dollars (\$20,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondent in Part VIII(A) of this order. The respondent shall, within seven (7) days of the date that this order becomes final, file all documents necessary to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The

respondent shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected and recorded. The Commission will release this security interest upon receipt of all payments required by Part VIII(A) of this order.

D. The funds paid by respondent, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Lipitrol in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents 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.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondent relinquishes all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

IX.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such 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.

X.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

XI.

It is further ordered, That respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

A. All advertisements or promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations or other evidence in his possession or control that contradict, qualify or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XII.

It is further ordered, That respondent shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XIII.

It is further ordered, That respondent shall, for a period of five (5) years after the date of issuance of this order, notify the Commission within thirty (30) days of his affiliation with any business or

employment involving any activities related to the advertising, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. The notice shall include respondent's new business address and telephone number, current home address, and a description of the nature of the business or employment, respondent's interest in the new business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIV.

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

XV.

This order will terminate on June 16, 2017, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

IN THE MATTER OF

WILLIAM PELZER, JR.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3750. Complaint,* June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the former officer of Interactive Medical Technologies, Ltd. and Effective Health, Inc., which market cellulose-bile products, from assisting entities that he knows or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, and requires the monitoring of the business practices of certain parties to whom assistance is provided.

Appearances

For the Commission: *Nadine Samter and Patricia Hensley.*

For the respondent: *William Baker, Baker & Baker, Santa Ana, CA.*

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondent William Pelzer, Jr., having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating

* Complaint previously published at 123 FTC 1477 (1997).

its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent William Pelzer, Jr., was an officer of Interactive Medical Technologies, Ltd., and Effective Health, Inc. He formulated, directed and controlled the policies, acts and practices of said corporations. His address is at P.O. Box 269006, in the City of San Diego, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That for purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondent*" shall mean William Pelzer, Jr., individually and as a former officer of IMT and EHI.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondent knows or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or

cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;

B. The licensing or other contractual rights to market any such product or program;

C. Any technical assistance; or

D. Any advertising, labeling or promotional materials.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part I of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

A. Take reasonable steps sufficient to determine, at the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondent is or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.

B. Immediately terminate any business relationship with any person who respondent knows or should know, is making any false or misleading benefits, performance, efficacy or safety claim or any

benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

III.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any 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.

IV.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

V.

It is further ordered, That respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations or other evidence in his possession or control that contradict, qualify or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

It is further ordered, That respondent shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject

matter of this order and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order and, for a period of five (5) years thereafter, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent shall, for a period of ten (10) years after the date of issuance of this order, notify the Commission within thirty (30) days of his affiliation with any business or employment involving any activities related to the labeling, advertising, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program. The notice shall include respondent's new business address and telephone number, current home address, and a description of the nature of the business or employment, respondent's interest in the new business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

IX.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF
INTERACTIVE MEDICAL TECHNOLOGIES, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3751. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based companies, which market cellulose-bile products, to have scientific substantiation for claims regarding the benefits or safety of any product or program, including claims that it reduces the body's absorption of fat or sugar; provides any weight loss benefit, allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems; reduces the risk of these health problems; or can be used safely and beneficially in amounts sufficient to cause diarrhea. The consent order also prohibits the respondents from misrepresenting the existence or results of any test or study, from assisting entities that they know or should know are making false, misleading or unsubstantiated claims for any weight loss, fat reduction or cholesterol reduction product or program, requires them to monitor the business practices of certain parties to whom they provide assistance, and requires Interactive Medical Technologies and Effective Health, Inc. to pay \$35,000 in redress over a period of one year.

Appearances

For the Commission: *Nadine Samter* and *Patricia Hensley*.

For the respondents: *Edward Swanson*, *Swanson & Meepos*, Santa Monica, CA.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents Interactive Medical Technologies, Ltd. ("IMT") and Effective Health, Inc. ("EHI") having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

Respondents IMT and EHI, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents IMT and EHI of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement

* Complaint previously published at 123 FTC 1477 (1997).

purposes only and does not constitute an admission by these respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondents IMT and EHI have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Interactive Medical Technologies, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2139 Pontius Avenue, in the City of Los Angeles, State of California.

2. Respondent Effective Health, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2139 Pontius Avenue, in the City of Los Angeles, State of California.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondents*" shall mean Interactive Medical Technologies, Ltd., and Effective Health, Inc.,

corporations, their successors and assigns and their officers, agents, representatives and employees.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product prevents or reduces the body's absorption of fat from consumed food or absorbs any amount of fat from consumed food unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product:

- A. Provides any weight loss benefit;
- B. Lowers blood cholesterol levels;
- C. Reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease; or
- D. Can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program or any food, drug or dietary supplement, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V.

It is further ordered, That respondents shall not provide means and instrumentalities or substantial assistance or support to any person or entity who respondents know or should know is making any false or misleading benefits, performance, efficacy or safety claim, or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any weight loss, fat reduction or cholesterol reduction product or program. "Assistance" includes, but is not limited to, providing:

A. Any tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of any such product or program;

B. The licensing or other contractual rights to market any such product or program;

C. Any technical assistance; or

D. Any advertising, labeling or promotional materials.

VI.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, when providing assistance, as "assistance" is defined in Part V of this order, to any person or entity that is engaged in the labeling, advertising, promotion, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program, shall:

A. Take reasonable steps sufficient to determine, commencing with the beginning of any business relationship, or with entry of this order if a relationship already exists, and continuing on a regular basis throughout the relationship, whether any labeling, advertising, promotion, offering for sale, sale or distribution of any such product or program by any person to whom respondents are or will be providing assistance involves any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence. Such steps shall include evaluating, on a basis independent of such person, the truthfulness of and substantiation for, representations made to consumers. For purposes of this order, evaluating includes, but is not limited to, reviewing all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any benefits, performance, efficacy or safety claims to consumers.

B. Immediately terminate any business relationship with any person who respondents know or should know is making any false or misleading benefits, performance, efficacy or safety claim or any benefits, performance, efficacy or safety claim that is not substantiated by competent and reliable scientific evidence.

VII.

It is further ordered, That respondents IMT and EHI, corporations, their successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of thirty-five thousand dollars (\$35,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in three installments, the first payment of eleven thousand dollars (\$11,000) to be made no later than the date that this order becomes final; the second payment of eleven thousand dollars (\$11,000) to be made no later than the first day of the sixth month thereafter; and the third payment of thirteen thousand dollars (\$13,000) to be made no later than one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondents' indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondents shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of twenty-four thousand dollars (\$24,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondents in Part VII(A) of this order. The respondents shall, within seven (7) days of the date that this order becomes final, file all documents necessary to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The respondents shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected

and recorded. The Commission will release this security interest upon receipt of all payments required by Part VII(A) of this order.

D. The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Lipitrol in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents 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.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for such 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.

IX.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in

labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

X.

It is further ordered, That respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

A. All advertisements or promotional materials containing the representation;

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

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

XI.

It is further ordered, That respondents IMT and EHI shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order and, for a period of five (5) years thereafter, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary,

parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or change in corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at other such 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.

XIV.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the

deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

IN THE MATTER OF

KCD HOLDINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3752. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based companies, which market cellulose-bile products, and its officers to have scientific substantiation for claims regarding the benefits or safety of any product or program, including claims that it reduces the body's absorption of fat or sugar; provides any weight loss benefit, allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems; reduces the risk of these health problems; or can be used safely and beneficially in amounts sufficient to cause diarrhea. The consent order also prohibits the respondents from misrepresenting the existence or results of any test or study, and requires KCD, KCD Holdings and Richards to pay \$150,000 in redress over a period of one year.

Appearances

For the Commission: *Nadine Samter and Patricia Hensley.*

For the respondents: *Geoffrey Levitt, Venable, Baetjer, Howard & Civiletti, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that KCD, Incorporated, KCD Holdings, Inc., and Deerfield Corporation, corporations, and Clark M. Holcomb, individually and as a former officer of KCD, Incorporated, and KCD Holdings, Inc., and Bonnie L. Richards, individually and as a current officer of KCD, Incorporated, and KCD Holdings, Inc., and Gerald E. Hatto, individually and as an officer of Deerfield Corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent KCD Holdings, Inc. ("KCD Holdings"), is a Nevada corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California.

2. Respondent KCD, Incorporated ("KCD"), is a California corporation with its principal office or place of business at 2835 Townsgate Road, Suite 110, Westlake Village, California. KCD is a wholly-owned subsidiary of KCD Holdings.

3. Respondent Deerfield Corporation ("Deerfield") is a California corporation with its principal office or place of business at 1455 Valley High Avenue, Thousand Oaks, California. Respondent Deerfield is now and has been at all times relevant to this complaint an advertising agency of KCD and KCD Holdings.

4. Respondent Clark M. Holcomb ("Holcomb") was the president, director and a majority shareholder of KCD Holdings and KCD from November 1993 through April 1996. Individually or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of KCD Holdings.

5. Respondent Bonnie L. Richards ("Richards") is vice president, secretary, and director of KCD Holdings and KCD. Individually or in concert with others, she formulates, directs, controls or participates in the acts and practices of KCD Holdings and KCD, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of KCD Holdings.

6. Respondent Gerald E. Hatto ("Hatto") is an officer and the owner of Deerfield. Individually or in concert with others, he formulates, directs, controls or participates in the acts and practices of Deerfield Corporation, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Deerfield.

7. Respondents have advertised, labeled, offered for sale, sold and distributed products to the public, including SeQuester, an over-the-counter fat reduction and weight-loss tablet. SeQuester is a "food" and/or "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

8. Since at least May 1994, respondents KCD, KCD Holdings, Holcomb and Richards ("KCD respondents") have advertised, distributed and sold an over-the-counter fat reduction and weight-loss product to the public through, among other means, newspaper and radio advertisements disseminated nationally. The KCD respondents have wholesaled this product to retail drug stores and other retailers for resale to the general public. The product, sold under the name "SeQuester," is a combination of fiber and ox bile extract.

9. 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.

10. The KCD respondents have prepared and disseminated or have caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits A through E. Respondents Deerfield and Hatto have prepared and disseminated or have caused to be disseminated advertisements for SeQuester, including but not necessarily limited to the attached Exhibits A through C and E. These advertisements contain the following statements and depictions:

A. **THIS
IS WHAT
SEQUESTER
DOES TO
THE FAT
IN FOOD
YOU
EAT**

Introducing SeQuester - the revolutionary tablet that "shrinks" the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat - safely and naturally - *before* it's absorbed, so it won't wind up on your body.

SeQuester's unique, patented ingredients bind fat molecules to vegetable fiber passing them gently and harmlessly through your digestive tract. It's like you never ate them at all. Shrink fat with SeQuester. Take advantage of introductory savings, and discover the safe, natural approach to fat reduction. It's in the diet section, today.

(Exhibit A -- newspaper advertisement)

B. **THE FAT STOPS HERE**

Dietary fat is a prime cause of overweight, heart disease, high cholesterol, and other major health problems. So imagine a tablet that can "shrink" the amount of fat your body absorbs.

Imagine SeQuester. A revolutionary discovery that lets you "remove" fat from the food you eat before it's absorbed, so it won't wind up on your body. Or in your arteries.

SeQuester is a safe, natural, lab-tested formula, shown to be effective in lowering fat absorption. It's easy. Just take one or more SeQuester tablets 30 minutes before meals. Its unique, patented formula binds fat molecules to natural vegetable fiber (as illustrated), passing it gently and harmlessly through your digestive tract.

SeQuester is intended for use as part of a program of sensible nutrition and exercise. Unlike fad diets that are ineffective at best, unhealthy at worst, SeQuester contributes to a safe, gradual loss of body fat and weight significantly better than what you're likely to accomplish through dieting and exercise alone.

So get control of fat, before fat controls you. Take advantage of our introductory savings on SeQuester, and experience for yourself this patently superior approach to fat reduction. Look for SeQuester in the diet section, today.

(Exhibit B -- newspaper advertisement)

C. For the holidays, don't cut it all out.

Just take SeQuester.

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are gaining on us. So many parties, so much good food, so hard to say, "no." So consider your choices:

Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this coupon and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat retention from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and effortlessly through the digestive tract. Just take one or more tablets 30 minutes before meals.

This season, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drugstores and supermarkets, everywhere.

NOTE: SeQuester is intended for use as part of a complete program of sensible nutrition and moderate exercise. By following this program, studies suggest that SeQuester contributes to a safe, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

(Exhibit C -- newspaper advertisement)

D.

Q. SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

(Exhibit D -- product package insert)

E.

SeQuester

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

(Exhibit E -- product package label)

The KCD Respondents

11. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

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Complaint

A. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

B. SeQuester significantly reduces the body's absorption of sugar from consumed food.

C. Scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research demonstrates that SeQuester causes significant weight loss.

12. In truth and in fact:

A. SeQuester does not prevent or significantly reduce the body's absorption of fat from consumed food.

B. SeQuester does not significantly reduce the body's absorption of sugar from consumed food.

C. Scientific research does not demonstrate that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

D. Scientific research does not demonstrate that SeQuester causes significant weight loss.

Therefore, the representations set forth in paragraph eleven were, and are, false or misleading.

13. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and(B), at the time the representations were made.

14. In truth and in fact, the KCD respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eleven(A) and (B), at the time the representations were made. Therefore, the representation set forth in paragraph thirteen was, and is, false or misleading.

15. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. SeQuester causes significantly greater loss of weight and body fat than diet and exercise alone.

D. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease, and other health problems associated with a high-fat diet.

F. Use of SeQuester in amounts sufficient to cause diarrhea is beneficial and safe.

16. Through the means described in paragraph ten, the KCD respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph fifteen, at the time the representations were made.

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

Respondents Deerfield and Hatto

18. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that:

A. SeQuester causes significant weight loss.

B. Use of SeQuester allows consumers to eat high-fat foods without gaining weight.

C. Use of SeQuester allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

D. SeQuester prevents or significantly reduces the body's absorption of fat from consumed food.

E. SeQuester reduces the risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet.

F. SeQuester significantly reduces the body's absorption of sugar from consumed food.

19. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph eighteen, at the time the representations were made.

20. In truth and in fact, respondents Deerfield and Hatto did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph eighteen, at the time the representations were made. Therefore, the representation set forth in paragraph nineteen was, and is, false or misleading.

21. Through the means described in paragraph ten, including but not limited to the advertisements attached as Exhibits A through C and E, respondents Deerfield and Hatto have represented, expressly or by implication, that scientific research demonstrates that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

22. In truth and in fact, scientific research does not demonstrate that SeQuester:

A. Prevents or significantly reduces the body's absorption of fat from consumed food.

B. Causes significant weight loss.

Therefore, the representation set forth in paragraph twenty-one was, and is, false or misleading.

23. Respondents Deerfield and Hatto knew or should have known that the representations set forth in paragraphs eighteen, nineteen and twenty-one were, and are, false or misleading.

24. 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.

Complaint

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EXHIBIT A

THIS IS WHAT SEQUESTER DOES TO

**THE FAT
IN FOOD
YOU
EAT.**

Introducing SeQuester—the revolutionary tablet that “shrinks” the amount of dietary fat your body absorbs.

SeQuester is a lab-tested formula that neutralizes fat in the food you eat—safely and naturally—before it’s absorbed, so it won’t wind up in your body.

SeQuester’s unique, patented ingredients bind fat molecules to vegetable fiber, passing them gently and harmlessly through your digestive tract. It’s like you never ate them at all.

Shrink fat with SeQuester. Take advantage of immediate savings, and discover the safe, natural approach to fat reduction. It’s in the diet section, today.



(STORE IMPRINT)

PD # 2

SQ-141

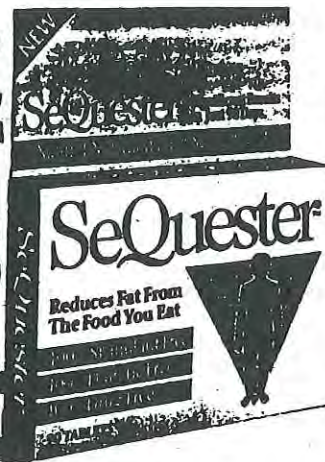
COMPLAINT EXHIBIT A

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EXHIBIT B

THE EAT STOPS HERE



SeQuester
Reduces Fat From
The Food You Eat

Dietary fat is a
prime cause of over-
weight, heart
disease, high cholesterol, and other major health problems. So
imagine a tablet that can "absorb" the amount of fat your body
absorbs.

Imagine SeQuester. A revolutionary discovery that lets you
"remove" fat from the food you eat before it's absorbed, so it won't
wind up on your body. Or in your arteries.

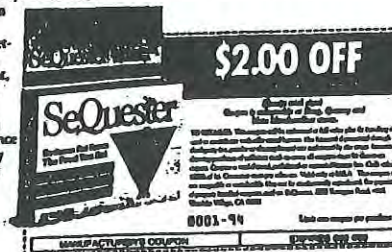
SeQuester is a safe, natural, lab-tested formula, shown to be
effective in lowering fat absorption. It's easy. Just take one or more
SeQuester tablets 30 minutes before meals. Its
unique, patented formula binds fat molecules
to natural vegetable fiber (as illustrated),
passing it gently and harmlessly through your
digestive tract.

SeQuester is intended for use as part of a
program of sensible nutrition and exercise.
Unlike fad diets that are ineffective at best,
unhealthy at worst, SeQuester contributes to
a safe, gradual loss of body fat and weight
significantly better than
what you're likely to
accomplish through diet-
ing and exercise alone.

So get control of fat,
before fat controls you.
Take advantage of our
introductory savings on
SeQuester, and experience
for yourself this patently
superior approach to fat
reduction. Look for
SeQuester in the diet
section, today.



SeQuester binds fat to natural fiber,
preventing absorption by the body.



\$2.00 OFF

SeQuester
Reduces Fat From
The Food You Eat

8001-94

MADE IN U.S.A. COUPON

(STORE IMPRINT GOES HERE.)

SQ-142

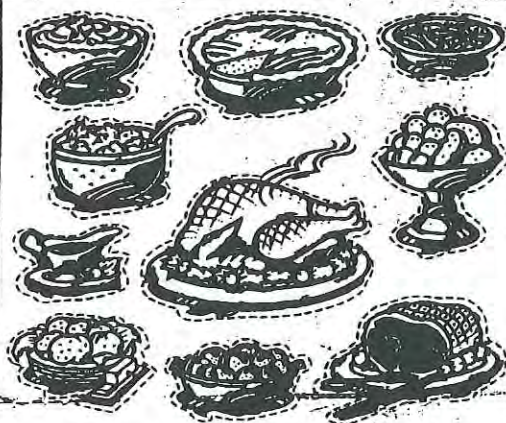
AD #3

COMPLAINT EXHIBIT B

Complaint

123 F.T.C.

EXHIBIT C



**For the holidays, don't cut it all out.
Just take SeQuester.**

SEQUESTER REDUCES FAT FROM THE FOOD YOU EAT.

Don't look now, weight watchers, but the holidays are passing on us. So many parties, so much good food, so hard to say "no." So consider your choices. Either you can cut out all those rich, delicious foods that make life worthwhile.

Or you can cut out this program and introduce yourself to SeQuester - a revolutionary discovery that helps your body minimize fat absorption from the food you eat.

With SeQuester, you can plan on enjoying reasonable portions of all those great holiday foods, confident that their entire fat content won't be showing up on your scale - or in your arteries - come January 1st.

SeQuester is a safe, natural dietary supplement. Its unique, patented formula helps bind fat molecules to natural vegetable fiber, so they pass gently and efficiently through the digestive tract. Just take one or more tablets 30 minutes before meals.

SeQuester helps bind fat to natural fiber.

This means, make SeQuester the centerpiece of all your holiday meals. You'll find it in better drug stores and supermarkets, everywhere.

NOTE: SeQuester is included for use as part of a complete program of sensible eating and moderate exercise. By following this program, studies suggest that SeQuester maintains a healthy, gradual loss of body fat and weight significantly more successful than dieting and exercise alone.

SeQuester
Before you enter a line, take SeQuester.



SeQuester
\$2.00 OFF
RITE AID

SeQuester is now available at Rite Aid.

RA-43

COMPLAINT EXHIBIT C

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Complaint

EXHIBIT D



SeQuester.
A guide to a healthy lifestyle

INSIDE:
Valuable tips on SeQuester use.
Plus: sensible eating & exercise habits.

NOTE: The following is the copy for the SeQuester insert

COMPLAINT EXHIBIT D

SQ-22

ROTTEN CORP. ORAILED • 2807 TOWNSHIP, BRAND • SUITE 10 • WESTERN AVENUE, CANADA
807-444-6687 • FAX 807-444-1120

Complaint

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EXHIBIT D

Page 2
SeQuester

Thank you for purchasing SeQuester™. This natural patented product helps reduce fat absorption and let's you lose weight naturally and comfortably.

Take hold of the fat, before the fat takes hold of you!

Please study the Important Information contained in this pamphlet. It is designed to help you get the maximum benefit from SeQuester. It contains many tips on food selection, food preparation, exercise and how to use SeQuester most effectively.

THE REAL ENEMY: Your real enemy is not *weight*. Your real enemy is *fat*. SeQuester helps fight fat.

HEALTHY HEART OBJECTIVE:

Number 1: To feed my body less fat.

Number 2: To train my body to burn fat more efficiently.

PROBABLE BENEFITS:

- Improved Health • Reduced fat intake • Reduced body weight
- Increased energy level and productivity

THE EFFECTIVE, HEALTHY WAY TO TAKE YOUR SEQUESTER:

SeQuester is a tested product that will help you lose fat. Many of us are used to weight loss programs which "take the weight off" nearly overnight. Many of those programs cause us to lose water weight, and even muscle weight. But, weight is not our number one enemy – fat is. SeQuester fights fat, and *losing fat takes time*. Read and follow these instructions carefully. Make SeQuester a consistent part of your weight loss program. *Give yourself 90 or more days to see measurable results. (The initial few days of your SeQuester program may even show some weight increase. Don't panic. This is normal.)* Follow our GoodFood dietary guidelines and get into the good exercise habit. Good luck!

Q: HOW SHALL I BEGIN?

A: Begin by taking one or two tablets with a full glass (8 ounces) of water or juice. Take your tablet(s) 1/2 hour prior to every meal. Taking SeQuester during or after a meal will not produce satisfactory results. *Just be sure that before you take your first bite, take your SeQuester.*

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Complaint

EXHIBIT D

Page 3
SeQuester

Q: HOW MANY TABLETS SHOULD I TAKE PER DAY?

A: If you eat three meals per day, you will use a minimum of 3 tablets per day. For most people the maximum daily dosage is 6 tablets, i.e., 2 before every meal. Most people vary their dosage between 3 to 6 tablets per day to see which is most effective for them.

Q: HOW WILL I KNOW MY DOSAGE IS SATISFACTORY?

A: You're on the right track when one or more of the following occur: (1) Stools appear lighter in color; (2) Stools appear bulkier; (3) Stools may float in water. These indications result from fats being passed through your digestive tract and eliminated in the stool.

Q: SHOULD I INCREASE MY DOSAGE?

A: After two or three days, increase your dosage to 2 tablets prior to your largest and fattiest meal of the day. If no diarrhea results from 2 tablets at your largest meal, you may choose to use 2 tablets before every meal. Some people will even use 3 or more SeQuester tablets prior to their fattiest meal. If diarrhea occurs, it is controllable. It does not require medication or any treatment. It just means that there is too much fat in your stool to allow a normal bowel movement. This actually is a condition we regard as desirable as it means the fat is leaving your body. Whatever is appropriate for you depends upon how your body responds to lesser dosages, and upon the advice of your physician.

Q: IF I EAT A 100% FAT-FREE MEAL, SHOULD I STILL TAKE MY SEQUESTER?

A: If one of your meals contains absolutely no fat, it is not necessary to take SeQuester for that particular meal.

Q: SHOULD I TAKE VITAMINS SUPPLEMENTS WHILE TAKING SEQUESTER?

A: If you wish to take vitamin supplements, we advise doing so 1 hour prior to taking your SeQuester or 2 hours after taking SeQuester. We have observed no evidence of fat-soluble vitamin deficiency during our human testing, however taking a multiple vitamin/mineral supplement is always a good idea.

Q: WHAT ABOUT ADDITIONAL SIDE EFFECTS?

A: Three out of 10 people in our test group experienced excess gas when taking SeQuester. If this is a concern we strongly recommend that you get some activated charcoal tablets. They are very inexpensive and can be found

Complaint

123 F.T.C.

EXHIBIT E

SeQuester™

Natural Nutritional Fat Sequestrant*

*SeQuester is a specially formulated patented product which, when used as directed, reduces fat and sugar from the foods you eat.

Tests have shown SeQuester effects metabolizable energy, thus increasing fecal energy (calorie) excretion and reduces hunger feelings without increasing total calorie intake.

The combination of special ingredients, through our patented manufacturing process, negatively affects the availability of fat and sugar. The mechanism that produces this action remains unclear.

100% money back guarantee.

Sequester should be used with a properly balanced diet and exercise program.

NUTRITIONAL INFORMATION PER TABLET (ONLY 2 CALORIES EACH)

Protein	35.0 mg	Fiber	180.0 mg
Fat	0.06 grams	Carbohydrates	340.0 mg
Vitamins & Minerals = less than 25% RDA		Total Tablet Weight = 700 milligrams	

RECOMMENDED USE: For adults only. Take 1 or 2 tablets 3 times per day 1/2 hour before meals with a *FULL* glass of water.

NOTICE: Before considering any weight loss program, it is advisable to consult with your physician. This product, when used in excess, may cause diarrhea, abdominal cramping, or gas. If this occurs, product dosage should be temporarily reduced or discontinued. Store in a cool dry place.

INGREDIENTS: Activated-Fiber Complex (Barley/Rice Fiber, Sodium Choleate Complex), Cellulose, Acacia, Croscarmellose Sodium, Lemon Pectin, Stearic Acid, Carrot, Silicone Dioxide, Methylcellulose, Magnesium Stearate, Acerola and Propylene Glycol.

Manufactured Exclusively For:
KCD, Inc. Westlake Village, CA 91361

Made in the USA
U.S. Patent #4,865,850

COMPLAINT EXHIBIT E

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent KCD Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

2. Respondent KCD, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2835 Townsgate Road, Suite 110, in the City of Westlake Village, State of California.

3. Respondent Deerfield Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business

located at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

4. Respondent Clark M. Holcomb was an officer of KCD Holdings, Inc., and KCD, Incorporated. He formulated, directed and controlled the policies, acts and practices of these corporations. His home address is at 2190 Upper Ranch Road, in the City of Westlake Village, State of California.

5. Respondent Bonnie L. Richards is an officer of KCD Holdings, Inc., and KCD, Incorporated. She formulates, directs and controls the policies, acts and practices of these corporations. Her home address is at 4791 Parma Lane, in the City of Agoura Hills, State of California.

6. Respondent Gerald E. Hatto is an officer of Deerfield Corporation. He formulates, directs and controls the acts and practices of this corporation. His home address is at 1455 Valley High Avenue, in the City of Thousand Oaks, State of California.

7. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That for purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. "*KCD respondents*" shall mean KCD Holdings, Inc. ("KCD Holdings"), KCD, Incorporated ("KCD"), corporations, their successors and assigns and their officers; Clark M. Holcomb ("Holcomb"), individually and as a former officer of the corporations; Bonnie L. Richards ("Richards"), individually and as an officer of the corporations; and each of their agents, representatives and employees.

3. "*Deerfield respondents*" shall mean Deerfield Corporation ("Deerfield"), a corporation, its successors and assigns and its officers; Gerald E. Hatto ("Hatto"), individually and as an officer of the corporation; and each of their agents, representatives and employees.

4. Unless otherwise specified, "*respondents*" shall mean KCD Holdings, KCD and Deerfield, corporations, their successors and assigns and their officers; Holcomb, Richards and Hatto, individually and as officers or former officers of the corporations; and each of the above's agents, representatives and employees.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. Section 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, marketed or sold under any name, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that such product or program prevents or reduces the body's absorption of fat or sugar from consumed food, unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program:

- A. Provides any weight loss benefit;
- B. Causes greater loss of body fat than diet and exercise alone;
- C. Allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems associated with a high-fat diet; or
- D. Reduces, or reduces the risk of, high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That the KCD respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that any such product or program can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea, unless, at the time the representation is made, the KCD respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

V.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale or distribution of SeQuester or any product or program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy or safety of any such product or program unless, at the time the representation is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

VI.

It is further ordered, That with respect to the Deerfield respondents, it shall be a defense to Sections I, II and V of this order

that they neither knew nor had reason to know of an inadequacy of substantiation for any such representation; provided further that it shall be a defense to Section IV of this order that they neither knew nor had reason to know that the test, study or research did not prove, demonstrate or confirm that representation.

VII.

It is further ordered, That KCD Holdings, Inc., KCD Incorporated and Bonnie L. Richards, their successors and assigns, shall deposit into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order ("escrow account"), the sum of one hundred and fifty thousand dollars (\$150,000). This payment shall be made in the following manner:

A. By certified or cashier's check made payable to the Federal Trade Commission, in thirteen installments, the first installment of twenty-five thousand dollars (\$25,000) to be made no later than the date that this order becomes final; the next eleven payments of ten thousand, four hundred and sixteen dollars (\$10,416) to be made no later than the first day of each of the following eleven months; and the final installment of ten thousand, four hundred and twenty-four dollars (\$10,424) to be made no later than one year from the date that this order becomes final. The checks shall be deliverable to Regional Director, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington.

B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire amount due, together with interest, as computed pursuant to 28 U.S.C. 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. In order to secure payment of respondents' indebtedness to the Commission, within seven (7) days of the date that this order becomes final, respondents shall cause to be transferred to the Commission a security interest in the property described in Appendix A, which property has been determined by an independent appraisal to have a value of one hundred and twenty-five thousand dollars (\$125,000) or more in excess of all other perfected security interests, as security for the payments required to be made by respondents in Part VII(A) of this order. The respondents shall, within seven (7) days of the date that this order becomes final, file all documents necessary

to perfect and record the Commission's security interest in the property described in Appendix A, in conformity with appropriate state law. The respondents shall, within ten (10) days of the date that this order becomes final, furnish to counsel for the Commission complete documentation evidencing that the Commission's security interest in the property described in Appendix A has been correctly perfected and recorded. The Commission will release this security interest upon receipt of all payments required by Part VII(A) of this order.

D. The funds paid by respondents, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of SeQuester in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents 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.

E. At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any 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.

IX.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the Nutrition Labeling and Education Act of 1990.

X.

It is further ordered, That respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable written request make available to the Commission for inspection and copying:

A. All advertisements or promotional materials containing the representation;

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

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

XI.

It is further ordered, That respondents shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, such statements to be retained by respondents for a period of five (5) years. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

It is further ordered, That respondents KCD Holdings, KCD and Deerfield, and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

It is further ordered, That respondents Holcomb, Richards, and Hatto shall, for a period of five (5) years after the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of their current business or employment, and of their affiliation with any new business or employment. The notice shall include the respondents' new business addresses and telephone numbers, current home addresses, and a description of the nature of the business or employment and their duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIV.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, and at other such times as the Federal Trade 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.

XV.

This order will terminate on June 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

APPENDIX A

(CONFIDENTIAL APPENDIX A REDACTED FROM
PUBLIC RECORD VERSION)

Complaint

123 F.T.C.

IN THE MATTER OF

GUILDWOOD DIRECT LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3753. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the use of the name "Slimming Insoles" to represent that a product causes weight loss without scientific substantiation. The consent order requires the respondents to have scientific evidence to substantiate any claims regarding the effectiveness, benefits, and efficacy of any weight loss or fat loss product. In addition, the consent order requires testimonials to represent the typical experience of consumers or to clearly and prominently disclose the generally expected results. Furthermore the order prohibits the respondent from representing that Advance Bio/Natural Research Labs is an independent research organization and from misrepresenting the existence or results of any test or study. In addition the consent order requires the respondent to pay \$40,000 in consumer redress, of which all but \$7,500 is suspended.

Appearances

For the Commission: *Beth Grossman and Jeffrey Bloom.*

For the respondent: *Sheldon S. Lustigman, Lustigman Law Firm,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Guildwood Direct Limited ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Guildwood Direct Limited is a Delaware corporation with its principal office or place of business at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

2. Respondent has advertised, labeled, offered for sale, sold and distributed to the public Slimming Insoles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Insoles are "devices," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: The Salt Lake Tribune, The Denver Post, The Modesto Bee, The New York Post, The St. Louis Post, American Woman, Crochet World, Soap Opera Update, Women's Own, Low Fat Meals and Beautiful Brides, and have been distributed as free standing inserts by News America.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated advertisements for Slimming Insoles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR!"

"I LOST 74 POUNDS" Angela Meisel

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Erina Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to the under-performance of the dietary system, it should be stimulated to function effectively so the bodies [sic] metabolism works normally and does not store excess fat!

***No Dieting *No Pills**

***No Nervousness**

***No Frantic Exercising**

***No Strange Formulas**

***No Special Foods to Buy**

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal... You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU [sic] METABOLISM WORKING.

This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the

reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great! MEDICAL TEST RESULTS | VERY GOOD | 478 PEOPLE TESTED TESTIMONIALS ABOUND

"During 4 weeks I lost 6 pounds, the same happened to all of my friends." Carmen Schlashter

"I lost 8 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight." Mrs. Petra Jung

"I have lost 10 pounds without torturing myself." Gabriele Geiger

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit." Carmen Steffens-Baum

"TLL STAKE MY MEDICAL REPUTATION ON IT." R. Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight, and rid your body of the flab while aiding your dietary system. They WILL work for you, or we'll refund every cent you paid for them. NO questions asked." (Exhibit A - Print Advertisement).

B. [Heading at top of page:]

"ADVANCE BIO/NATURAL RESEARCH LABS RESEARCH REPORTS DATA CONTROL FILE NO 97644KC CASE HISTORIES [illegible] TEST GROUP NC-46009 CASE FILE REGARDING: DR. ROBERT METZ, M.D. SLIMMING INSOLES

STATEMENT: Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. [sic] Slimming Insoles

...
CASE 2

Control Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

58% of the individuals tested lost 14 lbs. or more.

27% of the individuals tested lost 10 lbs. to 14 lbs.

15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

...
CASE 7

Individual Success Story - Subject Gabriele Geiger

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone.

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals." (Exhibit B - Direct Mail Advertisement).

C. "Would you like to lose 10 lbs. like 15% of the test group did...or 14 lbs. like 27% did...or over 14 lbs. like 58% did? Or would you like to lose 20 lbs...30 lbs....50 lbs. or even 74 lbs. like Angela Meisel did -- without dieting or exercising?

Then you must read this important message and join the over 370,000 Europeans who have discovered a NEW secret to weight loss!

1558

Complaint

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 478 people, the medical test results were announced as "Very Good"! A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds" - with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

... Wouldn't you like to lose those extra pounds you put on over the years...And would you like to achieve all this without dieting or strenuous exercising?

...
**Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy--Not Fat!**

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat.

**Dr. Metz's Slimming Insoles Are The First And Only Insoles That
Reduce Weight And Regulate The Digestive System.**

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund -- no questions asked."
(Exhibit C - Direct Mail Advertisement).

5. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Slimming Insoles cause significant weight loss.

B. Slimming Insoles cause significant weight loss without changes in diet or exercise.

C. Testimonials from consumers appearing in the advertisements for Slimming Insoles reflect the typical or ordinary experience of members of the public who have used the product.

6. Through the trade name "Slimming Insoles," and the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that scientific studies demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise.

9. In truth and in fact, scientific studies do not demonstrate that Slimming Insoles cause significant weight loss without changes in diet or exercise. Therefore, the representation set forth in paragraph eight was, and is, false or misleading.

10. Through the means described in paragraph four, respondent has represented, expressly or by implication, that Advance Bio/Natural Research Labs is a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles.

11. In truth and in fact, Advance Bio/Natural Research Labs is not a *bona fide*, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles. Advance Bio/Natural Research Labs is a fictitious trading name utilized by Guildwood Direct Limited in its advertising. Therefore, the representation set forth in paragraph ten was, and is, false or misleading.

1558

Complaint

12. The acts and practices of respondent 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.

Complaint

123 F.T.C.

EXHIBIT A

REVOLUTIONARY EUROPEAN WEIGHT LOSS METHOD GUARANTEED BY DOCTOR



"I lost 74 Pounds"

The first and only massage insole in the world that reduces weight and regulates the digestive system!

Angela Meiser

Now, join the over 370,000 Europeans who have discovered the secret to weight loss!

For years Dr. Robert Metz, a European doctor and nutritionist, has been studying weight reduction by natural methods. His revolutionary invention Enna Solum (Slimming Insoles) is his brilliant breakthrough.

NOW AVAILABLE IN THE U.S.A.!

The first and only massage insole in the world which reduces weight and regulates the digestion system is now available in the U.S.A.!

ACUPRESSURE - A 5000 YEAR OLD CHINESE THERAPY!

Over 5000 years ago the Chinese discovered a natural way to stimulate the inner organs via the reflex zones of the soles of the feet. (The English neurologists Dr. Head and Dr. Fitzgerald have proved this natural Chinese philosophy). The unique effectiveness of Dr. Metz's Slimming Insoles works on this same completely natural method. With every step you take the insoles massage the reflex zones of the kidneys, bladder and stomach gently but effectively.

Since overweight problems are often linked to an under-performance of the dietary system, it should be stimulated to function effectively so the bodiless metabolism works normally and does not store excess fat!

- No Dieting • No Pills
- No Nervousness
- No Frantic Exercising
- No Strange Formulas
- No Special Foods to Buy

HELP TURN ON YOUR BODY'S FAT BURNING PROCESS!

When the digestive organs are stimulated, the body burns stored up fat in a natural way and digestion returns to normal. This happens without taking health-damaging medicines with



harmful side effects. You lose weight, simply by everyday walking. The result is a fabulous figure in a natural way.

EVERY STEP GENTLY MASSAGES YOUR REFLEX ZONES KEEPING YOU METABOLISM WORKING.

Your feet will tingle pleasantly when you walk and even when you sit they may feel more active than usual. This is due to the unusual massaging knobs on the insoles made of Nobamed. The knobs correspond exactly to the reflex zones in the soles of the



feet which reflect and stimulate the digestive organs.

This effect is based on the principle of Reflexology. All the body's organs have a reflex point on the soles of the feet. When these points are massaged the functions of the corresponding organ are stimulated. Dr. Metz discovered that this massage can also be effected by walking. The insole knobs are arranged so they massage the reflex zones of the body, stimulating the dietary system and metabolic function. So, get in step with this new European technology and start looking and feeling great!



TESTIMONIALS ABOUT

"During 4 weeks I lost 6 pounds, the same happened to all of my friends!"

Carmen Schlachter

"I lost 8 pounds within 8 weeks... Above all I like them (Slimming Insoles) because it's so easy to lose weight."

Mrs. Petra Jung

"I have lost 10 pounds without torturing myself"

Gabriela Geiger

"I can recommend it to everyone because it's not only to lose weight but they make you feel physically fit."

Carmen Steffens-Baum



"I'll stake my medical reputation on it."

R Metz, MD

DR. METZ SLIMMING INSOLES GUARANTEE:

Step by step the Slimming Insoles will help you become slimmer, healthier and feel more alive! You will be able to control your weight and rid your body of fat while using your dietary system. They WILL work for you or we'll refund every cent you paid for them. NO questions asked. Why wait one more day? Why not look and feel your absolute best?



INTERMED LABORATORIES, Dept. 3215
2101 West Lafayette, Detroit, MI 48216-1877

AA701

I want to start losing weight immediately send me the Slimming Insoles indicated below:

(Women's Sizes 6-10 Men's Sizes 8-13)

☐ One pair for only \$19.95 plus \$3.95 postage handling ☐ Women's ☐ Men's Size

☐ Two pair for only \$29.95 plus \$4.95 postage handling ☐ Women's ☐ Men's Size

Enclosed is ☐ Check ☐ Money order for \$

Charge my ☐ Visa ☐ MasterCard Exp. Dt.

Credit Card No.

Signature _____

Name _____

Address _____

City _____

State _____ Zip _____

CREDIT CARD ORDERS CALL TOLL FREE

1-800-922-2217

Monday to Friday 8:00AM TO 6:30PM EST

Sunday 10:00AM TO 5:00PM EST

Ask for Operator # AA702

1558

Complaint

EXHIBIT B



RESEARCH REPORTS

EXHIBIT B
Page 1**DATA CONTROL**

FILE NO.

97644.KC

CASE HISTORIES

Kohler

TEST GROUP

NC-46009

CASE FILE REGARDING:**DR. ROBERT METZ, M.D. SLIMMING INSOLES****STATEMENT:**

Tens of Thousands of Europeans have lost weight using Dr. Robert Metz's, M.D. Slimming Insoles

CASE 1

Taken From the European Television Program "Market Information".

The Dr. Metz Slimming Insoles, which we have been offering to our customers, have now finally received the recognition they deserve. On the 29th of May, 1995, the consumer television program "Market Information" portrayed the Slimming Insoles as an effective method to fight off excessive pounds. The test person, Mr. Kohler, whom the program had picked to do this test, lost 14 lbs. during the trial period. This weight loss was verified by weighing before and after, in the presence of the broadcaster. The original commentary of this critical program "The Slimming Insoles are the absolute best!"

CASE 2

Cont. of Weight Loss Evaluation on 478 Europeans Using Dr. Robert Metz's Slimming Insoles.

The Dr. Metz Slimming Insoles were distributed to a control group of 478 individuals. The results are as follows:

- 68% of the individuals tested lost 14 lbs. or more.
- 27% of the individuals tested lost 10 lbs. to 14 lbs.
- 15% of the individuals tested lost up to 10 lbs.

The Medical Weight Loss Evaluation is considered "VERY GOOD"

CASE 3

Individual Success Story - Subject H.W., St. Gallen

"I have tried umpteen diets in the past..."

"Lost pounds came back just as fast as I'd lost them. Since I have been using Dr. Metz's Slimming Insoles my weight has slowly but steadily gone down. I think Slimming Insoles are perfect, and can recommend them to anyone!"

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EXHIBIT B

EXHIBIT B

Page 2

CASE 4**Individual Success Story - Subject M.U., Lucerne**

"I feel better than ever before...I was skeptical to start with because there are so many quacks claiming to help you lose weight. But only a few weeks of using Dr. Metz's Slimming Insoles changed my opinion. Without taking medication whose side effects are unknown, I lost weight and feel better than I ever did before."

CASE 5**Individual Success Story - Subject P.M., Winterthur**

"I've lost 8 lbs...A colleague told me how easily and comfortably he was slimming using reflex zone massage. At first I laughed at him. But week by week I was taught a lesson. So I too ordered a pair of Slimming Insoles and now I'm impressed. After following the clear instructions exactly, I've lost 8 lbs. in only 6 weeks. The claim in your ad "A fabulous figure by the most natural method" is true. Congratulations to Dr. Metz on his Slimming Insoles."

CASE 6**Individual Success Story - Name Withheld on Request**

"It is really true that your massage insoles have positively influenced my biological balance. The tablets, capsules and powders I used to take in the past always made me feel sick and dizzy. The egg diet even made me throw up on the third day. It's a pity that Dr. Metz's Slimming Insoles weren't available before. If this wonderfully gentle method of slimming had been available ten years ago, I would have been spared a lot of suffering."

CASE 7**Individual Success Story - Subject Gabriele Gaiser**

"I have lost 10 lbs. without torturing myself with some kind of diet and without appetite reducers. I always had my difficulties with diets and afterwards I always gained back the weight I lost, sometimes even more than I had lost...I recommend Dr. Metz's Slimming Insoles to everyone."

CONCLUSION

Overall results indicate that Dr. Robert Metz's Slimming Insoles have a positive weight loss result on a large number of individuals. The all natural application of the insoles does not upset the body's ability to function in it's normal manner and does not stress the nervous system. The gentle massage action may also aid the feet for individuals who are forced to spend long periods walking.

Permission has been granted for the reproduction and release of all facts and information in this report

EXHIBIT C

**INTERMED LABORATORIES**2101 West Lafayette
Detroit, MI 48216-1877

EXHIBIT C

Page 1

**Would you like to lose 10 lbs. like 15% of the
test group did...or 14 lbs. like 27% did...
or over 14 lbs. like 58% did? Or would you like
to lose 20 lbs...30 lbs...50 lbs...or even
74 lbs. like Angela Meisel did —
without dieting or exercising?**

**Then you must read this important message
and join the over 370,000 Europeans who have
discovered a NEW secret to weight loss!**

Dear Friend,

I am very anxious to tell you the exciting news of a weight loss method that is sweeping Europe. A European Doctor has made what many consider to be a major breakthrough with a natural weight loss method. His name is Dr. Robert Metz and he is a medical doctor specializing in weight loss and control. In Europe, over 370,000 weight conscious individuals are now using Dr. Metz's All Natural Weight Loss Method.

Clinically tested in Europe among a group of 473 people, the medical test results were announced as "Very Good"! A second controlled and monitored test concluded Dr. Metz's weight loss system "as an effective method to fight off excess pounds"— with a 14 lb. weight loss achieved during the test period!

Happy Europeans have been sending Dr. Metz letters of thanks and appreciation, claiming weight losses of up to 74 lbs. And the losses were all achieved without dieting, strenuous exercising, or taking harmful pills and without buying costly, special foods.

Wouldn't you like to lose those extra pounds you put on over the years ... effortlessly slide into that slinky dress or slacks ... be the object of attention and admiration? Would you like to regain control of your weight without buying pills month after month ... without joining expensive weight loss programs ... without buying costly "special foods"? Would you like to regain your youthful appearance ... put the spring back in your step and face each day with a renewed vigor and vitality for life? And would you like to achieve all this without dieting or strenuous exercising?

If your answer is yes to any of these questions then you must read the exciting details about this amazing NEW discovery on the other side!!

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123 F.T.C.

EXHIBIT C

**Trigger Your Body's Natural Fat Burning Process
And Turn Food Into Energy— Not Fat!**

EXHIBIT

Page 2

After years of weight loss research, Dr. Metz discovered the value of reflexology, a natural method where the body's organs are stimulated to function more efficiently. Specific areas on the bottom of the feet can be massaged to stimulate the body's digestive organs. When the digestive organs are stimulated, the body burns the food we eat, turning it into energy, NOT FAT. In addition, the body's metabolism is activated and in this state it begins to burn stored up fat. The problem was how do you periodically massage the bottom of the feet in a convenient, cost effective manner?

A Weight Loss Method Designed For The 21st Century!

Dr. Metz and a team of specialists brilliantly solved the problem! They developed a pair of insoles with massaging knobs strategically placed on the insoles that come in contact with the bottom of the feet. Called Slimming Insoles, they gently massage the reflex zones on the bottom of the feet and stimulate the body's digestive and metabolic system. These insoles fit comfortably into any normal shoe and with every step you take, the insoles keep your digestive furnace burning fat. When you walk you may feel a pleasant tingling sensation. Even when you sit your feet may still feel stimulated - confirming that the massaging action is working. Sounds simple? The most effective things usually are.

**Dr. Metz's Slimming Insoles Are The First And Only Insoles That
Reduce Weight And Regulate The Digestive System.**

Many doctors believe the body has the ability to cure itself when the conditions are right. Dr. Metz's Slimming Insoles work in exactly this natural, convenient manner. You lose weight naturally, without introducing foreign drugs or chemicals into your body, which may be more harmful than beneficial!

**GOOD NEWS—Now, For The First Time
Dr. Metz's Slimming Insoles Are Available In The U.S.!**

Now it's your turn to find out what hundreds of thousands of Europeans already know about Dr. Metz's amazing weight loss method. By wearing the Slimming Insoles, you will experience all day comfort, and begin to lose weight in a sensible, natural, clinically proven way!

I have no doubt that the insoles will work for you as well as they have for thousands of happy, slimmer Europeans. So why not get in step and begin losing weight with every step. Dr. Metz and I are so sure that you will be thrilled with your progress - we both GUARANTEE IT. However, if for any reason you are not 100% satisfied, return the insoles for a complete refund — no questions asked.

Yours for a slimmer, healthier, more active you,

Justin T. Winslow
Justin T. Winslow
Director

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Guildwood Direct Limited, also doing business as Intermed Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1402 Pine Avenue, MPO Box 2130, Niagara Falls, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. "*Clearly and prominently*" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration 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 radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that the ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or the first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "*respondent*" shall mean Guildwood Direct Limited, a corporation, its successors and assigns and its officers, agents, representatives and employees.

4. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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, shall not make any representation, in any manner, expressly or by implication, that:

A. Such product causes significant weight loss, with or without changes in diet or exercise; or

B. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondent, 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, shall not use the name "Slimming Insoles" or any other name in a manner that represents, expressly or by implication, that the product causes weight loss, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent, 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, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or

ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondent, 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, shall not represent, in any manner, expressly or by implication, that Advance Bio/Natural Research Labs is a *bona fide*, independent research organization or that it has published a report containing the results of valid, independent testing of such product.

V.

It is further ordered, That respondent, 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, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. The existence, contents, validity, results, conclusions or interpretations of any test, study, or research; or

B. The existence, nature, purpose or activities of any organization.

VI.

It is further ordered, That:

A. Respondent shall pay to the Commission as consumer redress the sum of forty thousand dollars (\$40,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of seven thousand and five hundred dollars (\$7,500) no later than the date this order becomes final. Such payment shall be deposited into an escrow account to be designated by the Commission for the purpose of receiving payment due under this order.

B. In the event of respondent's default on the \$7,500 payment set forth in subpart A above, the amount of forty thousand dollars (\$40,000), less the sum of payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondent, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. Any funds paid by respondent pursuant to subparts A and B above shall be paid into a redress fund administered by the Commission and shall be used to provide direct redress to purchasers of the Slimming Insoles. If the Commission determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

D. The Commission's acceptance of this order is expressly premised upon the financial statements and related documents provided by respondent to the Commission on November 18, 1996. After service upon respondent of an order to show cause, the Commission may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondent shall be given an opportunity to present evidence on this issue. If, upon consideration of respondent's evidence and other information before it, the Commission determines that there are any material misrepresentations or omissions in said financial statements and related documents, that determination shall cause the entire amount of monetary liability of forty thousand dollars (\$40,000), less the sum

of any payments made under subpart A above, to become immediately due and payable to the Commission, and interest computed at the rate prescribed in 29 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under this subpart are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Commission may initiate to enforce this order.

VII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

IX.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Guildwood Direct Limited, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

XI.

This order will terminate on June 16, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not effect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

BODYWELL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3754. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order prohibits, among other things, the use of the name "Slimming Soles" to represent that a product causes weight loss without scientific substantiation. The consent order requires the respondents to have scientific evidence to substantiate any claims regarding the effectiveness, benefits, and efficacy of any weight loss or fat loss product. In addition, the consent order requires testimonials to represent the typical experience of consumers or to clearly and prominently disclose the generally expected results. Furthermore the order prohibits misrepresentations about the existence or results of any test or study, violations of the FTC Mail or Telephone Order Merchandise Rule, and requires the respondents to pay \$100,000 in redress.

Appearances

For the Commission: *Beth Grossman and Jeffrey Bloom.*

For the respondents: *Linda A. Goldstein and Jeffrey S. Edelstein, Hall, Dickler, Kent, Friedman & Wood, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BodyWell, Inc., a corporation, and Gerard du Passage, individually and as an officer of the corporation ("respondents") have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent BodyWell, Inc. is a New York corporation with its principal office or place of business at 27 West 20th Street, Suite 1001, New York, New York.

2. Respondent Gerard du Passage is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls or participates in the policies, acts or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of BodyWell, Inc.

3. Respondents have advertised, offered for sale, sold and distributed products to the public, including Slimming Soles, shoe insoles purported to cause weight loss by stimulating certain areas of the feet. Slimming Soles are "devices," within the meaning of

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Sections 12 and 15 of the Federal Trade Commission Act. Advertisements for these products have appeared in the following publications: Cosmopolitan, Redbook, McCall's, Family Circle, The Denver Post, The National Enquirer, The Globe/ National Examiner, The Star, Woman's Day, Woman's Own, Diets & Exercise, Grit, Woman's World, Soap Opera Weekly, Capper's, Soap Dish, Soap Opera Digest, True Story, Weekly World News, The Sun, First For Women, Craft Works, Senior Citizens, Flower & Garden, TV Host, Soap Opera Magazine, Popular Magazine Group, Family, Woman's Day Low Fat Meals, USAir, American Legion, Walking Magazine, Good Cooks' Companion, Northwest, Retired Military Family, TV Blue Print, Almanac for Farmers, Farmers Almanac and Blum's Almanac, and have been distributed as free standing inserts through Valassis FSI and News America.

4. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated advertisements for Slimming Soles, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

A. "The discovery of a German Doctor has revolutionized the field of weight loss!...

LOSE WEIGHT FAST AS YOU WALK!

SEE HOW DOCTOR METZ' SLIMMING SOLES CAN MAKE YOU LOSE OVER 15 LBS WITHOUT THE SLIGHTEST EFFORT!

...and without dieting! You walk all the time... When you go shopping, at home, at work... Well did you know that just by walking, you can lose over 15 lbs without any diet or without doing any extra exercise? And that's what Dr. Robert Metz, a German weight loss expert and inventor of the first Slimming Soles, has discovered!

Guarantee

In asking to use Dr. Metz' Slimming Soles on a trial basis, you are not taking any risk except to see your body, day after day, becoming healthier and rejuvenated, (excess weight is dangerous to your health). However, if for any reason whatsoever, you were not 100% satisfied with the results obtained, all you have to do is to return your pair of Slimming Soles in its original box, and you will be immediately reimburse [sic], no questions asked. This is a full Guarantee.

A revolutionary discovery...

You certainly know the basic principles of Reflexology. It's that Chinese technique that consists of stimulating specific points on the sole of the feet, which correspond to a specific organ of the body.

A wide variety of disorders can be treated in this way: headaches, back pain and many other symptoms.

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But what you don't know, it's what Dr. Robert Metz, a weight loss expert, has discovered.

This doctor has discovered that under your feet existed certain points that make you lose weight automatically if you stimulate them!

* These points "force" your body to get rid of its surplus fat.

* These points can make you lose over 15 lbs in just 6 weeks without dieting or doing any extra exercise!

From these observations, Dr. Metz invented and designed the first pair of Slimming Soles based on the technique of Reflexology. These sole [sic] will make you lose weight with every step you take!

Amazing results, scientifically proven!

A recent medical test has been conducted with 478 people who had all failed to lose weight using any known method. After 6 weeks, 58% of these people had lost 15 lbs or more, 27% had lost between 13 and 15 lbs., and 15% had lost 13 lbs. None of these people altered their eating habits, they didn't do any exhausting exercises or any particular form of gymnastics; all they did was slip Dr. Metz' Slimming Soles into their shoes!

And now put your body in a constant weight loss mode without any effort and without any diet, by Dr. Metz.

Now, you too can lose weight rapidly, without going on a special diet and without having to do any extra exercise. All you have to do is slip Dr. Metz' Slimming Soles into your everyday shoes and live normally.

Every time you walk, whether you're going shopping or you're simply around the house or at work, you'll be losing weight!

You don't have to change a thing in your eating habits, all you have to do is walk as you normally do, (without excess).

6 weeks to lose 16 lbs.

After 6 weeks, you should have already lost between 13 and 16 pounds (as proven by the tests!). And no one will know your secret since you were not on a diet!

...
By simply slipping the new Dr. Metz' Slimming Soles into your shoes, you should quickly lose between 13 to 16 lbs. If it's not the case and you lost only between 6 and 8 lbs instead of the 16 lbs you were looking for, all you have to do is to return your Dr. Metz' Slimming Soles in their original box and we will reimburse you immediately, no questions asked. It means that the trial won't have cost you a penny. But believe me with the Dr. Metz' Slimming Soles you will [sic] thrilled about the weight you have lost."

[In red type:] COUPON TO LOSE 16 LBS NO EFFORT!"

(Exhibit A - Print Advertisement)

B. [Large script:] "Lose 13 to 15 lbs.! With no Effort!

IT IS FINALLY POSSIBLE, THANKS TO DR. METZ' ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!

(script) and without dieting!

...

[A]re you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?

Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

...

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

* Points which "compel" your body to get rid of excess fat.

* Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology; they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

'I lost 9 pounds in six weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!' Mr. Peter Wintherthur

'I have had your insoles now for 7 days. I have lost 5 lbs.' BFB, Norristown, PA
AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE, WITHOUT EFFORT, AND WITHOUT DIETING!

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solum" Slimming soles, all you have to do is walk, just walk normally.

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it). You should find a new zest for life and a new energy.

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

...
Our Guarantee for a 90 Day Risk Free-Trial

In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge." (Exhibit B - Direct Mail Advertisement).

C. "COUPON TO LOSE 15 LBS. WITH NO EFFORT!

Yes, I want to lose 13 to 15 lbs. With no effort, just by slipping Dr Metz' Slimming Soles into my shoes.

I understand that I don't have to do anything else - no diet, no workout.

....
Allow 2-3 weeks for delivery."

(Exhibit C - Direct Mail Advertisement).

6. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that:

A. Slimming Soles cause significant weight loss.

B. Slimming Soles cause significant weight loss without changes in diet or exercise.

C. Consumers using Slimming Soles will lose 13 to 16 pounds within six weeks, and will do so without changes in diet or exercise.

D. Testimonials from consumers appearing in the advertisements for Slimming Soles reflect the typical or ordinary experience of members of the public who have used the product.

7. Through the trade name "Slimming Soles," and the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six, at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six, at the time the representations were made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. Through the means described in paragraph five, respondents have represented, expressly or by implication, that scientific studies demonstrate that Slimming Soles cause significant weight loss,

including 13 to 16 pounds within six weeks, without changes in diet or exercise.

10. In truth and in fact, scientific studies do not demonstrate that Slimming Soles cause significant weight loss, including 13 to 16 pounds within six weeks, without changes in diet or exercise. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In connection with the sale of Slimming Soles to consumers, respondents have represented, expressly or by implication, that Slimming Soles would be delivered to purchasers within a reasonable period of time.

12. In truth and in fact, in numerous instances, the Slimming Soles that were sold to purchasers have not been delivered to such purchasers within a reasonable period of time. Further, in numerous instances, respondents have failed to provide refunds of money paid by such purchasers within a reasonable period of time. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

13. 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.

Complaint

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EXHIBIT B

EXHIBIT B

Page 1

A BodyWell USA Exclusive. . .

**A German Doctor Revolutionizes
everything we believe about weight loss!**

*Lose 13 to 15 lbs.!
With no effort!*

**IT IS FINALLY POSSIBLE, THANKS TO DR. METZ'
ASTONISHING SLIMMING SOLES, WHICH CAN MAKE YOU
LOSE 13 TO 15 LBS. WITHOUT THE LEAST EFFORT!**

and without dieting!

Dear Friend,

Allow me to ask you this question:

You walk, don't you?

When shopping, or, perhaps, when going to work...

Well, are you aware that the simple fact of walking can make you to lose up to 15 lbs., without dieting or working out?



Yes, 15 lbs. can simply vanish by just walking the same number of steps that you normally do, no more, no less.

Slim down as you walk. . . that's the claim made by Dr. Robert Metz, a German weight-loss specialist and inventor of the first "Erina Solum" Slimming Soles!

AN ORIGINAL DISCOVERY...

This discovery is based on the principles of reflexology, the ancient Chinese technique which consists of stimulating certain points on the soles of the feet, points which correspond to specific body organs.

It is thus actually possible to treat various ailments, such as digestive problems, migraine headaches, stomach aches, and many other afflictions as well. . .

What Dr. Metz has discovered is that under your feet there are certain particular points which, when stimulated, automatically make you lose weight!

- * Points which "compel" your body to get rid of excess fat.
- * Points which can make you to lose 15 pounds in 6 weeks, without dieting and without exercising!

Please turn the page

BODY WELL USA, 175 FIFTH AVE., SUITE 2151, NEW YORK, NY 10010

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In light of these observations, Dr. Metz developed and refined the first Slimming Soles based on the technique of Reflexology: they will make you lose weight every time you take a step!

ASTONISHING RESULTS, SCIENTIFICALLY PROVEN!

Listen carefully to this:

A recent medical test was conducted with 478 people who had been unable to lose weight, regardless of what techniques they tried.

These 478 people were each given a pair of Slimming Soles, with these 2 recommendations:

1. Don't walk more than usual
2. Don't make any changes in your eating habits.

After 6 weeks of tests, 58% of these people had lost 15 lbs. or more, 27% had lost between 11 and 15 lbs., and 15% had lost 11 lbs. These people made no changes in their eating habits and didn't do any strenuous exercise or workout regimen. All they did was slip a pair of Dr. Metz' Slimming Soles into their regular shoes!

**READ WHAT THOSE WHO LOST WEIGHT
WITH THESE SOLES HAVE TO SAY...**

"I've never felt as good as I feel now..."

"...At first, I was skeptical, because, when it comes to losing weight, I have found that I was often dealing with charlatans. But after several weeks of use, I was completely convinced that Dr. Metz' Slimming Soles actually work. I've lost weight without having to use chemical products, whose ingredients and side effects are unknown. I've never felt as good as I feel now..."

Mrs. Erna U., Lucerne, Switzerland

"What you are writing is true!"

"...A co-worker told me that he was losing weight easily thanks to a massage of the reflexive zones. At first, I made fun of him. However, as the weeks went by, I was won over. I then ordered a pair of Slimming Soles myself...I must admit that I am quite impressed. I carefully followed the instructions, which are quite clear. I lost 9 pounds in 6 weeks. You are telling the truth when you write...that you can have the body you've always dreamed of the natural way!"

Mr. Peter M., Wintherthur

"The points you make have changed my life!"

"...The points you make have changed my life. It's quite true that your Slimming Sole have a positive influence on my entire system. The pills, powders, and other products which I had taken in the past often made me nauseous and dizzy...If this amazing natural weight-loss method had been available 10 years earlier, I would have been able to avoid a number of painful and sometimes risky treatments..."

Mrs. Sabrina S., Baden, Switzerland

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"I can heartily recommend this wonderful invention!"

"...I've tried several diets. But I gained back the weight as quickly as I lost it. Since I have been using your slimming soles, I have lost weight... I find these soles perfect, and I can only recommend this ingenious invention!"

Mrs. Nicole W., St. Gall

"Not only did I lose weight, but they help my feet!"

"...I have had your insoles now for 7 days. I have lost 5 lbs. I also have spurs of the heels, these insoles help my feet also. I don't have to take T-----l for my feet. Would you please send me Two more pairs of your insoles."

BFB, Norristown, PA

**AND NOW PUT YOUR BODY IN A CONSTANT WEIGHT LOSS MODE,
WITHOUT EFFORT, AND WITHOUT DIETING!**

Now you too can lose weight - quickly, easily, without a special diet and without any extra exercise. All you have to do is slip a pair of Dr. Metz' Slimming Soles inside your regular shoes, and go on about your normal life.

And whenever you walk, whether at home, doing your errands, or on your way to work, you will lose weight.

You do not have to change any of your eating habits, or your lifestyle - all you have to do is walk normally (without excess).

With each step, the slimming reflexology points in the soles of your feet will be stimulated, and your body will naturally free itself of its excess fat.

Say goodbye to austere diets, say goodbye to strenuous and often ineffective workout sessions. With your "Erina Solur" Slimming Soles, all you have to do is walk - just walk normally.

6 WEEKS TO LOSE 15 POUNDS

After 6 weeks, you should already have lost between 13 and 15 pounds (The tests prove it!). You should find a new zest for life and a new energy. You can once again slip into your favorite slinky dress. You can astound your friends with your new figure! You can become another person, someone who will be noticed! And, since you didn't diet, no one will guess your secret!

RESULTS ARE GUARANTEED!

In slipping these new Slimming Soles into your shoes, you should quickly lose between 13 and 15 pounds. If, for whatever reason that does not happen, even if you lose only 7 or 8 pounds instead of 15, all you have to do is return your Slimming Soles, with their original packaging, and we will refund your money immediately, no questions asked. Your experiment will not have cost you a penny. But believe me, with the Dr. Metz' Slimming Soles you will be thrilled about the weight you have lost.

*Go to the other side for
an extraordinary offer —*

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Complaint

EXHIBIT B

PAGE 4

Page 4

**HERE'S HOW TO GET A PAIR OF SLIMMING SOLES
RISK FREE TRIAL:**

In order to receive a pair of Dr. Metz's Slimming Soles with no obligation on your part, all you have to do is fill out the enclosed Special Order Form, including your shoe size, and send it, along with your payment to:

**Body Well USA
175 Fifth Ave. Suite 2151
New York, NY 10010**

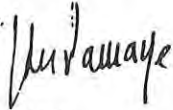
Act now, in order to be sure that you don't miss this remarkable opportunity to experience the delight that will be yours when you lose weight easily and naturally.

And one last thing...

Your Slimming Soles will fit all kinds of shoes. You can wear them in your finest dress shoes or in your most casual loafers. As soon as you get them, slip them into your regular shoes, and walk. You'll find yourself losing weight in just a few days!

I look forward to hearing from you.

Sincerely,



Gerard du Passage
President

P.S. Beware: Watch out for cheap imitations. Only the Slimming Soles carrying Dr. Metz's name give you the guarantee of a healthy and lasting weight loss.

Our Guarantee for a 90 Day Risk Free-Trial

In asking to try out the Dr. Metz' Slimming Soles, you risk nothing except seeing your body being transformed daily, each day becoming more gracious and healthier (Excess weight is dangerous to your health). However, if after 90 days, for whatever reason, you are not 100% delighted with the results, all you have to do is return your pair of Slimming Soles in its original packaging, and you will be immediately given a full refund, no questions asked.

This is our written pledge.

US81001C
Printed in Canada

Complaint

123 F.T.C.

EXHIBIT C

COUPON TO LOSE 15 LBS. WITH NO EFFORT!

to return very quickly to:

BODY WELL INC. 175 Fifth Ave., Suite 2151 New York, NY 10010

Yes, I want to lose 13 to 15 lbs. with no effort, just by slipping Dr. Metz' Slimming Soles into my shoes. I understand that I don't have to do anything else - no diet, no workout. If, at the end of my 90 day trial period, I haven't lost at least 15 lbs, all I have to do is return the soles to you, with no explanation necessary, in order to be immediately and fully refunded. In this way, this trial won't cost me a single penny.

Under these conditions, please send me:

- ☐ 1 Pair of Dr. Metz' Slimming Soles at the special price of only \$19.95 + \$3.95 Shipping & Handling. For a total of \$23.90
SPECIAL OFFER: Save \$4
☐ 2 Pairs of Dr. Metz' Slimming Soles at the special price of only \$35.90 + \$4.95 Shipping & Handling. For a total of \$40.85

Dr. Metz' Slimming Soles are made of a special material that is designed to massage your feet and stimulate your metabolism. They are the only soles that can be worn in any shoe.

ELISABETH FROST
 27 W. 20TH ST. STE#1001
 NEW YORK, NY 10011

SEMM1

I am paying by:

☐ Check or money order (payable to Body Well, Inc.)☐ I prefer to pay by credit card:

Visa _____ Mastercard _____ Amex _____

Card Number Exp. Date Daytime Phone Signature **PLEASE SEND THE FOLLOWING SIZES:**

Quantity _____ Quantity _____
 _____ Small (fits sizes 3-4) _____ Large (fits sizes 7 1/2 - 9 1/2)
 _____ Medium (fits sizes 5-7) _____ X-Large (fits sizes 10-12 1/2)

Total amount of purchase* \$

Mail to: **Body Well, Inc.**
175 Fifth Avenue, Suite 2151
New York, NY 10010

1-800-382-9090
 800-382-9090

US81001A0485T
 Printed in Canada
 Allow 3-4 weeks for delivery

Featured in one of the more famous women's magazines published in an article on the subject of Dr. Metz' Super Acupressure Slimming Soles

Lose weight as you walk with the super slimming soles

Your daily diet will give you a better result if you bring your metabolism to heel. Simply slip the super slimming insoles down into your shoes. Through each step the reflex zones on the soles of your feet will receive massage and help to stimulate your digestion.

You will experience a pleasant feeling while walking as well as when you are sitting.

You will feel as though the circulation in your feet has increased. This is due to Dr. Metz' amazing insoles, to be more exact - the inlaid small green rubber knobs, that correspond precisely to the reflex zones on the bottom of your feet. These specific areas represent different organs of your digestive system.

This is the secret of the super slimming soles by Dr. Robert Metz. For each step you take the zone area will receive gentle massage and at the same time stimulate your metabolism.

Dr. Metz, a family practitioner from



You walk all the time...when you go shopping, around the house, in the office...Now with every step you take the result will be better with the super slimming insoles.

Merzalb in Germany, is the inventor of the Erinasolum insoles. He helps many people to beat their weight problems.

The efficiency of the insoles is based on the principle of massage on the soles of your feet. Each of the organs in your body - whether it is the liver or the stomach - has a reflex zone on the sole of the foot. On massaging this specific area you will stimulate the corresponding organ.

Dr. Metz discovered that the same effect could be obtained through walking. The knobs are positioned so that they give massage to areas corresponding to the liver, stomach, kidneys, bladder and intestines. Certain zones are to be found on the right foot, others on the left. This is why two insoles are necessary.

The slimming insoles show the best result when used for firm walking in the morning and evening, each time for about two hours. It is possible to lose several pounds in a few weeks through sheer stimulation of your metabolism.

You can wear the insoles all day if your work requires you to remain in a constant sitting position.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent BodyWell, Inc., also doing business as BodyWell U.S.A., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 27 West 20th Street, Suite 1001, New York, New York.

Respondent Gerard du Passage is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his office and principal place of business is located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

2. Unless otherwise specified, "*respondents*" shall mean BodyWell, Inc., a corporation, its successors and assigns and its officers; Gerard du Passage, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, 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, shall not make any representation, in any manner, expressly or by implication, that:

A. Such product causes significant weight loss, with or without changes in diet or exercise;

B. Such product causes weight loss at any particular rate or speed, or within any time period; or

C. Such product provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit,

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, 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, shall not use the name "Slimming Soles" or any other name in a manner that represents, expressly or by implication, that the product causes weight loss, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, 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, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

A. At the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or

B. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

1. What the generally expected results would be for users of the product, or

2. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondents, 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, dietary supplement, drug, device, or weight loss product or program, as "food," "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

V.

It is further ordered, That respondents, 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, shall not violate any provision of the Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 Fed. Reg. 49095.

VI.

It is further ordered, That respondents shall pay to the Commission as consumer redress the sum of one hundred thousand dollars (\$ 100,000.00) no later than the date this order becomes final. Such payment shall be deposited into an escrow account, to be established by the Commission for the purpose of receiving payment due under this order.

The funds paid by respondents shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of Slimming Soles in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the 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. Respondents 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.

At any time after this order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account to

the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VII.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

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

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

VIII.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage shall deliver a copy of this order to all current and future principals, officers, directors and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to

future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order.

IX.

It is further ordered, That respondent BodyWell, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Gerard du Passage, for a period of four (4) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment whose activities relate to the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any dietary supplement, drug, device, or weight loss product or program, as "drug" and "device" are defined in Section 15 of the Federal Trade Commission Act, for which any health or weight loss claim is made. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XI.

It is further ordered, That respondent BodyWell, Inc., and its successors and assigns, and respondent Gerard du Passage shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

XII.

This order will terminate on June 16, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not effect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

DEAN DISTRIBUTORS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3755. Complaint, June 16, 1997--Decision, June 16, 1997*

This consent order requires, among other things, the California-based company to substantiate any weight-loss and weight-loss maintenance claims, sets out the standards for the type of evidence required to support various weight-loss maintenance claims, requires a specified statement for advertisements with maintenance claims, and a disclosure statement regarding the need for physician monitoring to minimize potential health risks.

Appearances

For the Commission: *Walter Gross and James Dolan.*

For the respondent: *Ted J. Hannig, Miller, Starr & Regalia,*
Redwood City, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Dean Distributors, Inc., a corporation, through Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has 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 Dean Distributors, Inc. (hereinafter "respondent"), is incorporated in California, with its offices and principal place of business located at 1350 Bayshore Hwy., Suite 400, Burlingame, California. Advanced Health Care Systems, an operating division of Dean Distributors, Inc., has its offices and principal place of business located at 2801 Salinas Hwy., Building F, Monterey, California. Advanced Health Care Systems also does business as Cambridge Direct Sales and as MediBase.

PAR. 2. Respondent advertises, offers for sale and sells, and otherwise promotes throughout the United States, weight loss and weight-loss maintenance services and products, including the "Food for Life Weight Management System" and "MediBase," and makes them available to the public through a multilevel distribution system and through direct sales to physicians and medical clinics.

PAR. 3. The Food for Life Weight Management System diet programs include the "Cambridge Diet Plan," the "Food for Life" programs, the "Maintain for Life" program, and related nutritional products. Certain Food for Life Weight Management System diet programs provide 420 calories per day, obtained by drinking three formula drinks per day, and are referred to as very-low-calorie diet ("VLCD") programs. VLCDs are rapid weight loss, modified fasting diets of 800 calories or less per day requiring medical supervision. Other Food for Life Weight Management System diet programs allow an additional 400 calories per day in conventional food products. These programs, consisting of 820 calories per day, are referred to as low-calorie diets ("LCDs"). In addition, the Food for Life Weight Management System diet programs consist of behavior modification, motivational counseling, exercise, and weight-loss maintenance. The Food for Life Weight Management System diet programs consist of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52, 55.

PAR. 4. The MediBase diet program is a medically-supervised three step program. The first step is a VLCD program providing 420 calories per day, obtained by drinking three formula drinks per day. The second step is an LCD program combining 420 calories per day, obtained by drinking three formula drinks per day, and an additional 400 calories per day, in conventional food products. The third step is a weight-loss maintenance program. In addition, the MediBase diet program consists of behavior modification, motivational counseling, and exercise. The MediBase diet program consists of products which are "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52, 55.

PAR. 5. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 6. Respondent has disseminated or has caused to be disseminated advertisements for weight reduction and weight control products and programs. Respondent has created and provided camera-ready advertising copy to its participating distributors, referred to as "counselors," for placement in various periodicals that are in general circulation to the public, to promote the Food for Life Weight Management System diet programs to prospective customers. Respondent has further advertised its weight loss programs and

products through the use of promotional materials, including pamphlets and brochures, given to customers and prospective customers by individual distributors referred to as "counselors."

PAR. 7. Respondent's advertisements include but are not necessarily limited to the advertisements and promotional materials entitled "Program Guide" ©1992 (attached hereto as Exhibit A); "Program Guide" ©November 1992 (attached hereto as Exhibit B); "Physician Monitoring Guidelines" (attached hereto as Exhibit C); "A taste for success!" (attached hereto as Exhibit D); "Treat Your Body With Ultimate Respect" (attached hereto as Exhibit E); two issues of "Breakthrough" (attached hereto as Exhibits F and G); and "If You Have Weight-Related Health Problems and Must Lose Weight . . ." (attached hereto as Exhibit H).

SAFETY CLAIMS

PAR. 8. Respondent's advertisements referred to in paragraphs six and seven, including but not necessarily limited to attached Exhibits A-H, include the following statements:

- (a) "The Food for Life Weight Loss Programs deliver their promise. You can lose weight safely. ... as much as 7 pounds in just one week." (Exhibit A, page 2)
- (b) "Nothing is as Simple ... Safe ... Effective ..." (Exhibit B, page 3)
- (c) "Fast, effective, safe weight reduction!" (Exhibit E)
- (d) "If You Have Weight-Related Health Problems And Must Lose Weight...
...There Is A Medically Directed Program For You ... Nutritionally complete, excellent tasting MediBase® meal replacement ... Proven safe and effective in University testing" (Exhibit H) (emphasis in original)

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph eight, including but not necessarily limited to the statements in the advertisements attached as Exhibits A, B, E, and H, respondent has represented, directly or by implication, that the Food for Life Weight Management System and MediBase VLCD diet programs are unqualifiedly free of serious health risks.

PAR. 10. Respondent has failed to disclose adequately that physician supervision is required to minimize the potential risk of the development of health complications to consumers on very-low-calorie diet programs. In view of the representation that the Food for Life Weight Management System and MediBase VLCD diet programs are free of serious health risks, the disclosure as to the requirement for medical supervision is necessary. The failure to

adequately disclose this fact, in light of the representation as set forth in paragraph nine, was, and is, false and misleading.

PAR. 11. Respondent has provided purchasers and prospective purchasers who elect to follow a very-low calorie diet protocol with a pamphlet, entitled "Physician Monitoring Guidelines" (Exhibit C), which contains the following statement:

"Occasional side effects have been reported in association with the use of a VLCD. In general, these symptoms are mild and transient.

Fatigue

Cold intolerance

Headache

Orthostatic hypotension

and, with less frequency, halitosis, dry mouth, constipation, diarrhea, epigastric discomfort, flatulence, muscle cramps, amenorrhea, temporary hair loss, and decreased libido.

Most symptoms subside after the initial phase of dieting, or upon resumption of a normal eating pattern. Many of the side effects can be avoided by maintaining adequate fluid intake (i.e. two liters of water or non-caloric, low-sodium, decaffeinated liquid)."

Purchasers were instructed to give the pamphlet to the physician that they asked to monitor their progress through the very-low- calorie diet protocol that they chose to follow.

PAR. 12. Through the use of the statements contained in the advertisement referred to in paragraph eleven, including but not necessarily limited to the statements in the advertisement attached as Exhibit C, respondent has represented, directly or by implication, that the Food for Life Weight Management System diet programs have a risk of only mild side effects.

PAR. 13. In truth and in fact, VLCD diet programs such as the Food for Life Weight Management System diet programs do not have only mild side effects, and entail the risk of developing serious adverse side effects. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

SUCCESS CLAIMS

PAR. 14. Respondent's advertisements referred to in paragraphs six and seven, including but not necessarily limited to attached Exhibits A-H, include the following statements:

(a) "No matter what your goal... just a few pounds or more weight than you care to think about... you'll find a Food For Life weight loss program that exactly suits your needs." (Exhibit A, page 2)

(b) "Most people fail... because they can't maintain their weight loss for long periods of time. ... [y]ou [as a Food For Life dieter] will be in 'Control for Life.'" (Exhibit A, page 2)

(c) "The Cambridge Food For Life Nutrition and Weight Management System is remarkably effective in providing long-term weight management." (Exhibit B, page 11)

(d) "Andrea Ileo has good reason to show off... she is a product of the product! Ten years ago Andrea went from 170+ lbs. ['before' photo] to ... WOW! ['after' photo]" (Exhibit F, page 7)

(e) "... Marie Carner, an inspiration to many, who lost 40 pounds and has kept it off for 2 years. Recently Marie sole sourced, losing an additional 12 pounds. She's fit, feels tremendous, and looks fantastic!" (Exhibit G, page 1)

PAR. 15. Through the use of the statements contained in the advertisements or promotional materials referred to in paragraph fourteen, subparagraphs (a)-(c), including but not necessarily limited to the statements in the advertisements attached as Exhibit A and B, respondent has represented, directly or by implication, that most Food for Life Weight Management System customers reach and maintain their weight loss goals either long-term or permanently.

PAR. 16. Through the use of the statements contained in the advertisements referred to in paragraph fourteen, subparagraphs (a)-(c), including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time respondent made the representation set forth in paragraph fifteen, respondent possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 18. Through the use of the statements referred to in paragraph fourteen, subparagraphs (d) and (e), including but not necessarily limited to the advertisements attached as Exhibits F and G, respondent has represented, directly or by implication, that testimonials from consumers appearing in the advertisements and promotional materials for Food for Life Weight Management System reflect the typical or ordinary experience of members of the public who have used the program.

PAR. 19. Through the use of the statements referred to in paragraph fourteen, subparagraphs (d) and (e), including but not necessarily limited to the advertisements attached as Exhibits F and

G, respondent has represented, directly or by implication, that at the time they made the representation set forth in paragraph eighteen, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 20. In truth and in fact, at the time respondent made the representation set forth in paragraph eighteen, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph nineteen was, and is, false and misleading.

PAR. 21. Respondent's advertisements referred to in paragraphs six and seven, including but not necessarily limited to attached Exhibits A-H, include the following statement:

"A study conducted by Opinion Research Corporation of 600 users who had lost 60 pounds or more showed that of the 400 who could be contacted after two years, more than 80% of the weight loss had been maintained." (Exhibit C, page 2)

PAR. 22. Through the use of the statement referred to in paragraph twenty-one, including but not necessarily limited to the advertisement attached as Exhibit C, respondent has represented, directly or by implication, that the study results referred to were based on a valid statistical sample of all Food for Life Weight Management System customers who had lost 60 pounds or more.

PAR. 23. In truth and in fact, the study results referred to in paragraph twenty-one were not based upon a valid statistical sample of all Food for Life Weight Management System customers who had lost 60 pounds or more. Therefore, the representation set forth in paragraph twenty-two was, and is, false and misleading.

RATE OF WEIGHT LOSS CLAIMS

PAR. 24. The advertisements referred to in paragraphs six and seven, including but not necessarily limited to attached Exhibits A-H, include the following statements:

(a) "You can lose 2 to 5 pounds per week on the Regular Program." (Exhibit A, page 3; Exhibit B, page 10)

(b) "You can lose weight safely, quickly, and easily. ... as much as 7 pounds in just one week." (Exhibit A, page 2)

PAR. 25. Through the use of the statement contained in the advertisements referred to in paragraph twenty-four, subparagraph (a), including but not necessarily limited to the advertisements

attached as Exhibits A and B, respondent has represented, directly or by implication, that consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of two to five pounds per week.

PAR. 26. Through the use of the statement contained in the advertisement referred to in paragraph twenty-four, subparagraph (b), including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that an appreciable number of consumers following the Food for Life Weight Management System LCD weight loss program lose weight at a rate of seven pounds per week.

PAR. 27. Through the use of the statements referred to in paragraph twenty-four, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that at the time respondent made the representations set forth in paragraphs twenty-five and twenty-six, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 28. In truth and in fact, at the time respondent made the representations set forth in paragraphs twenty-five and twenty-six, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twenty-seven was, and is, false and misleading.

PAR. 29. In providing advertisements and promotional materials such as those referred to in paragraphs six and seven to its individual distributors, referred to as "counselors," and to physicians, respondent has furnished the means and instrumentalities to those individual distributors to engage in the acts and practices alleged in paragraphs eight through twenty-eight.

PAR. 30. The acts and practices of respondent alleged in this complaint constitute deceptive acts or practices in or affecting commerce and "false advertisements" in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. 45(a) and 52.

1596

Complaint

EXHIBIT A

EXHIBIT A

Cambridge

PROGRAM GUIDE

AN INTEGRAL PART OF
THE FOOD FOR LIFE WEIGHT MANAGEMENT SYSTEM

DISTRIBUTED BY CAMBRIDGE DIRECT SALES
A DIVISION OF DEAN DISTRIBUTORS, INC.
140 STREET, CA 94040-0040

10/00/00/00/00

A WORD ABOUT DINING OUT

pan sprays, such as Pam, allow you to fry with little or no oil, and vegetable cornmeal coatings, such as the Swiss Air Crustlet let you fry your vegetables, chicken, etc. with only a few drops of oil. Look for the wide variety of sauces and toppings that are carbohydrate-free, oil-based, rather than butter, milk, or cream-based. Another benefit of preparing foods with a substitute for fat is that fried foods and heavy sauces so overwhelm your taste buds that they become desensitized, so now you'll enjoy your food even more.

QUESTIONS & ANSWERS

Q: Can everyone lose weight? Can everyone follow a Weight Management System? Everyone has the capacity and the tools to lose weight. The food for Life Weight Management System often weighs weight loss programs to ensure they are produced to provide an individualized, personalized, and customized program to control weight or to control weight loss. No matter which products and plans you select, members that successfully weight control must be committed to stick to and stay with the program you choose.

A WORD ABOUT COOKING

There are a wide variety of coating methods that are compatible with your goal of lifetime weight control: baking, broiling, sautéing, roasting, barbecuing, microwaving and, yes, even frying! If you are staying within our Winning Foods Ltd choices, your only two rules in preparing meats are avoid anything more than a small amount of cooking oil, and avoid sauces rich in fat.

Q: Can children use Food For Life products for nutritional value?

A: Children can use food for:
• Life products as supplements to regular eating patterns with no labors consumed – a trend in decreased consumption of empty-calorie snacks and movement toward better eating and nutritional habits.
• To ensure sufficient calories to energy and adequate protein for growth and development.
• Any weight-reduction program for children should be under the advice and supervision of a physician.

Q: Can I have an unlimited amount of diet soft drinks while on the Food for Life diet?

A: Diet soft drinks are different, but many soft drinks contain sodium which, if consumed in excess, may cause the body to retain water and slow the weight-loss process. Some diet soft drinks also contain caffeine which may have a stimulant or diuretic effect on the body.

Q: Is it all right to drink coffee while on the Food For Life Weight Management System for weight loss?

A: Coffee is permitted, however, consumption of large quantities is not recommended. Caffeine acts as a stimulant to body systems and sometimes provides an irritant effect. It also may destroy certain B vitamins. Some herbal teas may offer a pleasant beverage alternative if you feel you must drink coffee. Decaffeinated is available.

Q. Why is it important to consult a physician?

A: Anyone starting a weight-loss diet should consult a physician. A physician should advise you as to the appropriateness of a weight-loss program and help select the food for you. A dietitian who is well-versed in your condition may be a better option if you are currently under a physician's care or taking medication. It is particularly important that your doctor may want to adjust medication levels or closely monitor your progress to prevent unnecessary complications.

Q: Can people with high blood pressure use the Food For Life Weight Management?

A: Many people with high blood pressure have experienced extremely positive results using the Food For Life Weight Management System for weight loss with monitoring and supervision by their physician.

It is very important that these people take their physician's advice when selecting the program best suited to their needs, especially if they are taking medication.

Q: Why is it sometimes so difficult during the first few days of fasting?

A: During the first few days of dieting, your body makes metabolic adjustments, which

metabolic adjustments which occasionally can cause transfer side effects such as headache, diarrhea, frequent urination, or dizziness. As you consume less bulk and fewer calories than you body requires for energy it must adjust to using your stored fat as a source of energy. These symptoms usually pass within a few days, however, if they persist, consult your physician.

Q: What may cause temporary diarrhea for some people beginning the diets?

A: Diarrhea may initially be caused from the concentration of nutrients provided in Food for Life products as well as the mild diarrhea (loss of body fluids) which accompanies low-calorie, low-carbohydrate diets. Most bodies regulate themselves within a few days. Be sure to consume plenty of fluids. However, if diarrhea persists, consult your physician.

Q: What is recommended for those who experience some constipation while dieting?

A: Some changes in bowel habits may be expected as your body adjusts to different dietary patterns. Bowel movements may not necessarily be as often.

Fiber is contained in food. For life products to aid in digestion and elimination. Adequate fluid intake is important. Mild exercise sometimes assists bowel movements. Mild laxatives used temporarily, such as those containing psyllium, may be helpful. If constipation persists, check with your physician.

Q: I've heard that a small percentage of nutrients in Food For Life products are not

A: The Food For Life Weight Management System has

These standards are upheld in the selection of vitamins, minerals, and other nutrients contained in all Food For Life products. While some nutrients in Food For Life products are from synthetic sources, when the body absorbs nutrients it does not discriminate between those from

natural sources and those synthetic. It is most important to have the correct combination

Q: Is there any similarity between Food For Life products and liquid protein diets?

A: No. The liquid protein diets are composed of a by-product of boiled cornstarch with no trace of valuable nutrients, while Food For Life's products are introduced to the American public with virtually no prior testing.

In contrast, food for life products are based on over 10 years of research and clinical

testing food for its protein quality. High-quality protein in the diet, along with carbohydrates and fat plus vitamins, minerals and trace elements necessary for proper body functions. They provide a sound nutritional foundation when used with conventional foods.

The only comparison between Food For Life products and their liquid protein diet is that they are both consumed as a liquid and are low in calories - very little to compare.

A: Food for Life products should be stored in a manner that will preserve their

nutritional quality. The following storage conditions are recommended:

Food For Life formulas –
75 F (24 C) max
Diet and Nutrition bars –

Note: The nutrients in the Diet and Nutrilion bars are very heat sensitive. Do not allow the bins to be exposed to heat (for example, in the trunk of the car in the sun) for even a few hours. Refills being shipped Diet and Nutrilion bars are stored under controlled temperature conditions.

EXHIBIT A

WINNING FOODS LIST

FROZEN PREPACKAGED ENTREES			
PRODUCTS	SERVING SIZE	CALORIES	
ASIAN			
1 Beef and Shrimp in Sweetened Cream Sauce	10 1/2 oz	280	
2 Beef Pepper Steak	10 1/2 oz	240	
3 Chicken Burgundy	11 1/2 oz	230	
4 Chicken Chow Mein	10 1/2 oz	220	
5 Chicken and Beef	10 1/2 oz	220	
6 Medallions of Chicken	10 1/2 oz	250	
7 Roast Beef of Chicken	11 1/2 oz	270	
8 Salisbury Steak	12 1/2 oz	290	
9 Sautéed Shrimp	11 1/2 oz	280	
10 Steak Diane with Potatoes	10 1/2 oz	280	
11 Stuffed Cabbage	10 1/2 oz	250	
12 Sweet and Sour Chicken	11 1/2 oz	280	
13 Szechuan Beef	10 1/2 oz	280	
14 Szechuan Beef and Shrimp	11 1/2 oz	290	
15 Teriyaki Pork	11 1/2 oz	240	
BANQUET			
16 Barbecue Sauce and Sliced Beef	4 1/2 oz	90	
17 Breaded Veal Parmigiana	5 1/2 oz	230	
18 Meat Loaf	5 1/2 oz	240	
19 Salisbury Steak	5 1/2 oz	230	
FAMILY FINEST			
20 Beef and Potatoes	8 1/2 oz	240	
21 Beef and Potatoes with Gravy	8 1/2 oz	240	
22 Beef and Potatoes with Gravy	8 1/2 oz	240	
23 Gravy and Sliced Turkey	5 1/2 oz	210	
24 Lasagna with Meat Sauce	8 1/2 oz	230	
25 Macaroni and Cheese	8 1/2 oz	230	
26 Macaroni and Cheese	8 1/2 oz	230	
27 Mushroom Gravy and Noodles	8 1/2 oz	240	
28 Cheddar Beef Patties	5 1/2 oz	210	
29 Veal Parmigiana	8 1/2 oz	280	
GOULDER FINEST			
30 Chicken Cacciatore	10 1/2 oz	260	
31 Chicken Cacciatore	10 1/2 oz	260	
32 Green Pepper Steak	10 1/2 oz	260	
33 Pasta Shells and Sauce	10 1/2 oz	260	
34 Ragout with Ham and Potatoes	10 1/2 oz	260	
35 Sliced Beef and Vegetables	10 1/2 oz	300	
GREEN GEM			
36 Chicken a la King	9 1/2 oz	370	
37 Chicken and Potatoes	9 1/2 oz	340	
38 Chicken and Potatoes	9 1/2 oz	370	
39 Chicken and Potatoes	9 1/2 oz	370	
40 Chicken and Potatoes	9 1/2 oz	370	
41 Chicken and Potatoes	9 1/2 oz	370	
42 Chicken and Potatoes	9 1/2 oz	370	
43 Chicken and Potatoes	9 1/2 oz	370	
44 Chicken and Potatoes	9 1/2 oz	370	
45 Chicken and Potatoes	9 1/2 oz	370	
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96 Chicken and Potatoes	9 1/2 oz	370	
97 Chicken and Potatoes	9 1/2 oz	370	
98 Chicken and Potatoes	9 1/2 oz	370	
99 Chicken and Potatoes	9 1/2 oz	370	
100 Chicken and Potatoes	9 1/2 oz	370	

FROZEN PREPACKAGED ENTREES			
PRODUCTS	SERVING SIZE	CALORIES	
HEALTHY CHOICE DINNER			
1 Chicken a la King	8 1/2 oz	280	
2 Chicken a la King	8 1/2 oz	280	
3 Chicken a la King	8 1/2 oz	280	
4 Chicken a la King	8 1/2 oz	280	
5 Chicken a la King	8 1/2 oz	280	
6 Chicken a la King	8 1/2 oz	280	
7 Chicken a la King	8 1/2 oz	280	
8 Chicken a la King	8 1/2 oz	280	
9 Chicken a la King	8 1/2 oz	280	
10 Chicken a la King	8 1/2 oz	280	
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97 Chicken a la King	8 1/2 oz	280	
98 Chicken a la King	8 1/2 oz	280	
99 Chicken a la King	8 1/2 oz	280	
100 Chicken a la King	8 1/2 oz	280	

EASY-TO-PREPARE MEAL RECIPES

200 TO 400 CALORIE ENTREES

80 Baked Veal Chop—250 cal

1 cup low-fat cottage cheese

1/2 cup any fresh fruit

80 Chicken Chow Mein Salad

1 cup plus 1/2 cup lemon

1/2 cup reduced-sodium

1/2 cup soy sauce

2 large cabbage leaves

1 cup torn fresh spinach

1/2 cup sliced water chestnuts

1 cup sliced bamboo shoots

1 cup shredded carrot

1 cup sliced whole wheat bread

1 cup thinly sliced turkey

1 cup sliced lettuce

1 cup sliced tomato

1 cup sliced onion

1 cup sliced cucumber

1 cup sliced bell pepper

1 cup sliced carrot

1 cup sliced celery

1 cup sliced zucchini

1 cup sliced eggplant

1 cup sliced mushroom

1 cup sliced portobello

1 cup sliced shiitake

1 cup sliced oyster

1 cup sliced scallop

1 cup sliced lobster

84 Turkey Breast on Bun—280 cal

1/2 cup plus 1/2 cup turkey

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EXHIBIT A

10

Complaint

123 F.T.C.

EXHIBIT A

CALORIC CONTENT OF BASIC ENTREES OR STAPLES	
MEAT GROUP	FRUIT GROUP
Each of the following has approximately 55 calories	Each of the following has approximately 55 calories
101 Beef, lean beef such as flank steak or tenderloin	106 Apple (raw) (2 in. across)
102 All cuts are lean except for veal cutlets (ground) and loasts	107 Apricot (medium, raw)
103 Chicken, turkey, Cornish hen (without skin)	108 Apricot (cooked)
104 Crab, bottled, scallop, shrimp	109 Banana (9 in. long)
105 Oysters (fresh or canned in water)	110 Blackberries (raw)
106 Tuna (canned in water)	111 Blackberries (cooked)
107 Sardines (canned)	112 Cantaloupe (8 in. across)
108 Game (without skin)	113 Cherries (large, raw)
109 Pork, rabbit, quail, goose (without skin)	114 Cherries (cooked)
110 Chicken, turkey, Cornish hen (without skin)	115 Fruit cocktail (canned)
111 Pork, rabbit, quail, goose (without skin)	116 Grapefruit (medium)
112 Any cottage cheese	117 Grapefruit (segments)
113 Graft Parmesan	118 Grapes (small)
114 Deli cheese (with less than 55 calories per oz.)	119 Grapes (medium)
115 95% fat-free luncheon meat	120 Kiwifruit (medium)
116 Egg substitutes with less than 55 calories per 1/4 cup	121 Kiwifruit (small)
117 400 mg or more of sodium per exchange	122 Kiwifruit (large)
	123 Kiwifruit (medium)
	124 Kiwifruit (small)
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EXHIBIT A

CALORIC CONTENT OF BASIC ENTREES OR STAPLES

SWEETS, TOPPINGS, CONDIMENTS, SEASONINGS AND FREE FOODS					
SPREADS AND OILS:					
227 Margarine, imitation, 1 lb.	15 calories				
228 Butter, reduced-calorie, 1 lb.	35 calories				
229 Vegetable oil, corn, half-gallon (these toppings should be used in moderation)	120 calories				
(These toppings should be used in moderation)					
(These toppings should be used in moderation)					
(These toppings should be used in moderation)					
TOPPING:					
230 Mock sour cream (1 oz.)	50 calories				
231 Yogurt, plain, low-fat (8 oz.)	145 calories				
232 Cream cheese, 1 lb.	145 calories				
233 Parsley, fresh, large bunch (2 lbs.)	25 calories				
234 Solid dressing, low-calorie (1 tbsp.)	15 calories				
Each of the following has approximately 15 calories					
235 Bouillon					
236 Beef or chicken broth (without fat)					
237 10% milk fat soft cheese					
238 Non-fat or skim milk (8 oz.)	90 calories				
SWEET SUBSTITUTES:					
Candy hard sugar-free	Gelatin sugar-free				
Gum sugar-free					
Lemon juice					
Lime juice					
Onion powder					
Parsley flakes					
Pepper					
Hot sauce, low-sodium					
Vinegar					
BEVERAGE GROUP:					
The following beverages are virtually calorie free					
Carbonated water (pepsi, etc.)					
Coke cola					
Diet drinks					
Decaffeinated coffee					
Diet mixes, sugarcane (Crystal Light, etc.)					

CALORIC CONTENT OF BASIC ENTREES OR STAPLES

VEGETABLE GROUP		DRIED BEANS/PEAS/LENTILS	
Each of the following has approximately 75 calories per one cup or 1/2 cup (cooked)		194 Kidney beans (cooked) such as kidney, white, pink, black-eyed	1/2 cup
151 Artichokes (1/2 medium)		195 Baked beans	1/2 cup
152 Asparagus			
153 Beans (any variety was Italian)			
155 Bean sprouts			
156 Beets			
157 Broccoli		196 Corn	1/2 cup
158 Brussels sprouts		197 Corn, can, 6 in long	1/2 cup
159 Cauliflower, cooked		198 Peas, green (canned or frozen)	1/2 cup
160 Carrots		200 Potatoes	1/2 cup
161 Cauliflower		201 Potato, baked	1 small
162 Eggplant		202 Potato, fried	1 small
163 Greens (collard, mustard, turnip)		203 Squash winter (acorn, butternut)	1/2 cup
164 Kale		204 Yam, sweet potato, plain	1/2 cup
165 Lentils			
166 Mushrooms, cooked			
167 Onions			
168 Onions		205 Baked	1/2 (1 oz)
169 Peas, green		206 Bean sticks, chio.	2 (1/2 oz)
170 Peas, green		207 Cauliflower, low-fat	1 cup
171 Rutabaga		208 English turnip	1/2
172 Sauerkraut		209 Hamburger or hamburger bun	1/2 (1 oz)
173 Spinach, cooked		210 Pinto, 6 in across	1 (1 oz)
174 Summer squash (crookneck)		211 Pumpkin, raw	1 (1 oz)
175 Tomatoes, cooked		212 Beans, dried	1 (1 oz)
176 Tomato/vegetable juice		213 Lima beans	1 (1 oz)
177 Turnips		214 Lima, 6 in across	1 (1 oz)
178 White chestnuts		215 White (including French, Italian)	1 (1 oz)
179 Zucchini, cooked		216 White whole	1 (1 oz)
50 Beans, peas, lentils, and other pulses and pulses are found on the Bread/Starch list.			
BREAD/STARCH GROUP		CHICKENS/SMOKES	
Each of the following has approximately 80 calories		217 Chicken, broiler	3 oz
CEREALS/GRAINS/PASTA		218 Graham cracker	3
180 Bran Cereals (such as Bran buds, All Bran) concentrated		219 In toasters	2 1/2 in toasters
181 Bran cereal, flaked		219 Matzo	3 oz
182 Bran cereal, rolled		220 Matzo toast	3 oz
183 Bran cereal, toasted		221 Matzo, cracker	5 slices
184 Cooked cereal		222 Macaroni, cooked, no fat added	2 1/2
185 Cornmeal (dry)		223 Macaroni, cooked, no fat added	3 cups
186 Couscous		223 Matzo	3 cups
187 Couscous		224 Rice, crisp, 2 x 3 1/2 in	4 oz
188 Grits (cooked)		225 Whole wheat crackers, no fat	6
189 Grits, uncooked		226 Whole wheat crackers, no fat	6
188 Pasta (cooked)		227 Whole wheat bread, such as firm, Kraft, Wonder	2 1/2 slices (1 1/2 oz)
189 Ruffed Grouse			
190 Rice, white or brown (cooked)			
191 Rice, white or brown (uncooked)			
192 Wheat germ			

EXHIBIT A

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EXHIBIT A

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EXHIBIT B

EXHIBIT B



**FOOD FOR LIFE.
PROGRAM GUIDE**

Cambridge

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EXHIBIT B

“You are about to begin one of the most gratifying experiences of your life!

Regardless of your goals — achieving an ongoing plan for lifetime nutrition, maintaining your ideal weight, or reducing your weight — we have a plan for you. Whatever your lifestyle, our fully integrated system of nutrition, peer support, behavior modification, and physical activity can address your needs and help you move toward a healthier, happier future.



Cambridge was founded on a spectacular breakthrough product and a philosophy of caring and sharing — at Cambridge we care about you and we are here to help you begin your own program for success.

Yours in Health and Well-Being!”

A handwritten signature in cursive script that reads "Linda Hevern".

Linda Hevern
Executive Vice President

WELCOME

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EXHIBIT B

CONGRATULATIONS!

You've made the right choice in joining over 8 million others who have used the Cambridge products and programs for weight management and lifetime nutrition.

This Program Guide presents flexible program options that can be easily adapted to nearly any goal or lifestyle. Your Cambridge Consultant can help you choose the option that is right for you. Every program provides all of the elements for success and the nutrition you need to feel your best and be your best.

Products and Programs — an ongoing program for every body — for life!

- Fast Start Program
- Physician Monitored Program
- Regular Program
- Maintenance Program
- Lifetime Nutrition Program

Peer Support — friendly support from your Cambridge Consultant, and through meetings and Retreats

Behavior Modification — get Control For Life® and Cambridge Cares™

Physical Activity — get Set For Life® to become fit for life!

**...TO THE CAMBRIDGE
FOOD FOR LIFE NUTRITION AND
WEIGHT MANAGEMENT SYSTEM!**

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EXHIBIT B

DR. ALAN N. HOWARD



DR. ROBERT O. NESHEIM



DR. NAN E. BRENZEL



In 1970, Alan Howard, Ph.D., an acknowledged authority on obesity and coronary heart disease from a nutritional point of view, and a team of scientists at Cambridge University in England developed a weight control formula that started a revolution in the treatment of obesity. This pioneering effort resulted in a 330-calorie concentrated nutritional formula, so unique it has been patented world-wide. In 1979 it became known as The Cambridge Diet.

During the 1980's Robert O. Nesheim, Ph.D., one of the most widely respected authorities on nutrition in the United States, further advanced this formula based on additional research, growing scientific knowledge and new technological developments. Under his direction, a totally integrated system of nutrition and weight management products and programs was created that successfully addressed lifestyle issues.

He worked with Nan E. Brenzel, Ed.D., trained as a clinical behaviorist with a professional concentration in weight management and motivation, who created a behavior modification component and peer support programs for those engaging in long-term lifestyle changes. Dr. Nesheim continued to refine the Cambridge Food For Life Products and Programs until his retirement in 1991.

CAMBRIDGE RESEARCH AND DEVELOPMENT: A SCIENTIFIC PROGRESSION

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EXHIBIT C

Physician Monitoring Guidelines

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The Food For Life® Weight Management System is a comprehensive and responsible weight management system offering programs designed for safe and effective long-term weight loss.

Your patient _____ would like to begin one of our weight-loss programs.

We believe and strongly recommend that any person embarking on a weight-loss program should consult with their physician before doing so. Specifically, we have requested that he or she consult with a physician because

☐ their medical history indicates that they are under a physician's care or currently taking medication.

☐ they have selected a modified fasting program which requires medical monitoring.

We would appreciate your reviewing the program your patient has selected and would like you to make any recommendations that you feel are necessary.

Program Selected:

☐ Regular Program.

☐ Physician Monitored Program.

This pamphlet contains a description of these programs as well as suggestions for medical monitoring. To clarify any points provided within, or for additional information, we invite you to contact us directly using our toll free number.

Robert O. Neshiem, PhD.
Department of Science and Technology.

Avadyne, Incorporated
2801 Salinas Highway
Monterey, CA 93940
1-800-443-2584

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For your convenience, we offer the following:

Cambridge Products:

Drinks:

Food For Life Vanilla
Food For Life Chocolate
Food For Life Strawberry

Original Cambridge Diet Vanilla
Original Cambridge Diet Chocolate
Original Cambridge Diet Strawberry
Original Cambridge Rich Vanilla Shake
Original Cambridge Wild Strawberry Shake

Maintain For Life Vanilla

Soup:

Food For Life Chicken
Food For Life Tomato
Food For Life Potato

Cereal:

Food For Life Super Oats

Dessert:

Food For Life Super Chocolate

Nutrition Bar:

Plantation Peanut
Bavarian Chocolate
Tropical Coconut
Alpine Raisin Oat

Behavior Modification

Control For Life Learning Program
Cambridge Care

Physical Activity

Set For Life Body Shaper
Set For Life Walking Program
Paragon Fast Recovery

For more information, call your Cambridge Consultant

or call 1-800-4-HEALTH

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EXHIBIT C

CAMBRIDGE FOOD FOR LIFE NUTRITION PRODUCTS AND PROGRAMS

Whether your goal is to lose weight, maintain your ideal weight, or provide yourself with optimal nutrition, Cambridge Food For Life Nutrition products and programs give you the ability to control your calories while giving you the benefits of complete nutritional assurance.

Nothing is as simple... Low calories plus balanced nutrition — with Cambridge Food For Life Nutrition and Weight Management products and programs there are no complicated menus to follow or weighing of food. There are just delicious, quick-to-mix formulas plus some flexible meal choices.

Safe... All Cambridge Food For Life Nutrition products are manufactured under the highest standards of quality control and purity; none contain drugs, exotic chemicals or preservatives.

Effective... Quick and safe weight loss, plus the assurance of getting everything your body needs for vitality, well-being, and optimal health.

The Formula. The Foundation. Cambridge Food For Life Nutrition products are manufactured using the latest technology and quality assurance guidelines.

The Cambridge Food For Life Nutrition formula is a nutritious, wholesome food with the advantage of special features: low lactose, added fiber, and remarkable taste. Most diets of less than 1200 calories from conventional foods alone do not provide recommended amounts of many essential nutrients. But Cambridge Food For Life Nutrition does — so you can use it as a delicious foundation for weight loss and lifetime nutrition.

3 servings a day of Cambridge Food For Life Nutrition cereal, soups, pudding and drinks provide:

- 420 calories
- 45 grams high-quality protein
- 54 grams carbohydrate
- 3 grams fat
- 4-21 grams dietary fiber
- 100% USRDA for vitamins, minerals, and protein
- Trace elements and electrolytes at levels recommended by the National Academy of Sciences.

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EXHIBIT C

IMPORTANT NUTRITIONAL INFORMATION ABOUT CAMBRIDGE FOOD FOR LIFE NUTRITION PRODUCTS

NUTRITION INFORMATION (3 SERVINGS)		
ingredient	amount	% usda*
Calories	420	—
Protein	45 grams	100
Carbohydrates	54 grams	—
Fat	3 grams	—
Sodium	1500 mg (1.5)**	—
Dietary Fiber	4 grams†	—
Vitamin A	5000 IU	100
Vitamin C	60 mg	100
Thiamine	1.5 mg	100
Riboflavin	1.7 mg	100
Niacin	20 mg	100
Calcium	1000 mg	100
Iron	18 mg	100
Vitamin D	400 IU	100
Vitamin E	30 IU	100
Vitamin B6	2.0 mg	100
Folic Acid	400 mcg	100
Vitamin B12	6.0 mcg	100
Phosphorus	1000 mg	100
Iodine	150 mcg	100
Magnesium	400 mg	100
Zinc	15 mg	100
Copper	20 mcg	100
Biotin	300 mcg	100
Pantothenic Acid	10 mg	100
Vitamin K*	67 mcg**	—
Potassium*	2000 mg**	—
Manganese*	4.0 mg	—
Chloride*	1800 mg	—
Chromium*	60 mcg	—
Selenium*	60 mcg	—
Molybdenum*	150 mcg	—

*Super Oats cereal contains 21 grams.
 **U.S.RDA has not been established.
 †The Food and Nutrition Board of the National Research Council recommends these quantities of these essential trace elements and electrolytes as being within the range required in the diet of an adult.

Water: Water is an essential element in sustaining human life. Not only are our bodies comprised of large amounts of water, but vital bodily functions are dependent on adequate supplies of water. Water transports nutrients, removes waste from the body, regulates body temperatures, and is an important catalyst to losing weight. When on a weight loss program, it is absolutely essential to drink 6 to 8 glasses of water daily. There are many benefits to drinking plenty of water. Water can: 1) help suppress your appetite; 2) relieve diet-related headaches; 3) prevent dehydration; 4) prevent or relieve constipation; 5) relieve fluid retention; and 6) help promote fat mobilization, so you can lose weight even faster!

Fat and Cholesterol: The Cambridge Food For Life Nutrition products can help you reduce your fat and cholesterol levels. The Food For Life Nutrition formula is very low in fat — only 3 grams of fat per day (3 servings/420 calories). Cholesterol is found only in trace amounts from the nonfat milk or whey protein concentrate ingredients used in the formulation. By selecting low-fat and low-cholesterol foods to use with the Food For Life Nutrition products, a healthy diet is easy!

Sodium: Although sodium is a necessary mineral in your diet, most people eat too much of it. The Cambridge Food For Life Nutrition formula provides 1500 milligrams of sodium in 3 servings per day. This amount falls within the range recommended by the National Academy of Sciences (500 to 2400 milligrams/day). You should check the amount of sodium in your additional conventional food choices.

Calcium: Calcium is a very important mineral to maintain strong bones, especially for women. The Cambridge Food For Life Nutrition formula gives you 100% of the USRDA for calcium (1000 milligrams) in 3 servings, so you can be sure you are getting enough while losing weight and eating for lifetime nutrition.

Fiber: A variety of fiber sources are important for a healthy diet. Cambridge Food For Life Nutritional cereal, soups, pudding and drinks provide 4 grams of dietary fiber in 3 servings per day — with bran from oats, corn, and soy. And, Cambridge Food For Life Super Oats cereal provides 7 full grams of dietary fiber in each serving — 21 grams per day! Additional dietary fiber can easily be added to your diet with healthy fruit, vegetable and whole grain choices.

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EXHIBIT C

THE CAMBRIDGE FOOD FOR
LIFE NUTRITION AND WEIGHT
MANAGEMENT PRODUCTS &
PROGRAMS DELIVER THEIR
PROMISE — THEY WORK!

You can improve your health by reducing weight safely, quickly, and easily. And you can maintain your new weight and achieve optimal health through lifetime nutrition. In fact, it's easier than you ever thought possible. No matter what your goal, a Cambridge Food For Life Nutrition program has been designed to meet your needs.

Choose the program that's right for you...

Let's get started!

The Food For Life Nutrition and Weight Management System is not rigid and structured. It is comprised of flexible program options that can be easily adapted to nearly any goal or lifestyle. It's up to you!

- Fast Start Program
- Physician Monitored Program
- Regular Program
- Maintenance Program
- Lifetime Nutrition Program

Choose the one that's right for you today. And, if your lifestyle changes tomorrow or next week, the Cambridge Food For Life Nutrition programs are flexible with you! There is no need to abandon the program...simply review the programs again and decide which is the best for you.

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... A Program for Every Goal and Lifestyle

To be effective, a program has to match your goals and lifestyle. The more closely a weight loss program fits your individual needs, the more successful you will be in meeting your goals. The Cambridge Food For Life Nutrition and Weight Management System gives you flexibility, yet guidance. Answering the following questions on the Personal Success Profile will help you select the best weight loss program option for you.

PERSONAL SUCCESS PROFILE

Weight Loss Goal:

1. Approximately how much weight do you want to lose?

☐ 15 lbs. or less ☐ 16 to 30 lbs. ☐ more than 30 lbs.

Medical History:

2. Are you currently under a physician's care for any of the following conditions?

☐ heart disease ☐ hypoglycemia ☐ kidney disease
☐ stroke ☐ pregnancy ☐ gout
☐ diabetes ☐ cardiovascular disease ☐ chronic infection
☐ nursing mother other: _____

3. Are you currently taking diuretics or other medications?

☐ yes ☐ no

If you answered "yes" to question #2 or #3, you must consult your physician before starting this or any other weight loss program. Your physician can help you decide if the Physician Monitored Program is the right one for you.

Personal History:

4. My motivation and commitment are high right now and I would like to lose weight as quickly and safely as possible.

☐ yes ☐ no

If yes, how long do you feel you can go without conventional foods?

☐ few days ☐ 1 week ☐ 2 weeks ☐ 3+ weeks

5. My motivation and commitment are stable but I would rather have more food choices and lose weight more gradually.

☐ yes ☐ no

EXHIBIT C

Support Needs Assessment:

Use the values below to rank your personal tendency in response to the following statements:

1. Never 2. Sometimes
3. Frequently 4. Always

6. Behavior Modification

- ____ a. I feel totally in control around food
____ b. I find it easy to keep commitments
____ c. I cope well in stressful situations
____ d. I can resist pressure from others
____ Total

7. Physical Activity and Metabolism

- ____ a. I follow a regular exercise program
____ b. I go out of my way to walk or climb stairs
____ c. My daily routine requires a high level of activity
____ d. I am active in my leisure time
____ Total

8. Peer Support

- ____ a. I tell friends when I start a diet
____ b. My loved ones support my weight loss goal
____ c. I share my feelings with others
____ d. Group support is helpful to me
____ Total

Interpretation Guide: to help you choose the program that's right for you.

The Fast Start Program

The Fast Start Program is your best choice if you:

1. Have 15 pounds or less to lose (Question #1)
2. Are willing to go without conventional food for up to 2 weeks (Question #4)

The Fast Start Program can be combined with the Regular Program for any number of days (up to two weeks) in the following ways:

1. For initial rapid weight loss at the beginning of the Regular Program
2. To help overcome weight loss plateaus
3. To help bring weight loss back in line if you have "overeaten" for a few days

The Fast Start Success Plan kit provides basic items you need to help you get started on your Fast Start Program.

The Physician-Monitored Program

If, for medical reasons, you need to be supervised by a physician while you are losing weight the Physician Monitored Program is designed for you. It should be your choice if you:

1. Answered "yes" to questions #2 or #3
2. Have more than 30 pounds to lose (Question #1)
3. Want to go without conventional food for more than 2 weeks (Question #4)

The Regular Program

If you answered "yes" to question #5 the Regular Program is the program of choice for you. The Regular Program includes healthy conventional foods throughout the entire program.

The Regular Success Plan kit contains basic items you need to help you get started on your Regular Weight Loss Program.

Scoring

Questions #6, #7, and #8 help to evaluate your personal need for support from your Cambridge Consultant and the "Control For Life" and "Set For Life" Body Shaper/Exerciser and Walking programs which have been developed to help you

succeed with your weight loss goals.

Total your score for each section:

- 4 - 8 Support required for success
9 - 12 Support strongly recommended
13 - 16 Support can be helpful

To help you be successful in your weight loss program, please turn to page 21 and review and complete *Setting My Goal*, a tool to help you get started in making a commitment to your program and to identify those people who will support you in your program.

EXHIBIT C

Fast Start Program

The Cambridge Food For Life Fast Start Program is a unique program for people who wish to lose weight as rapidly, yet safely, as possible. The Fast Start Program is a sole source of nutrition and allows you to lose weight quickly because all you need is 3 servings of Cambridge Food For Life Nutrition daily during this program. Through the balanced nutrition of the Cambridge Food For Life Nutrition formulas, your body will get the critical nutrients it needs to maintain good health in only 420 calories a day.

Features:



- Maximum weight loss in the shortest possible time
- Recommended for people with 10 - 15 pounds or less to lose
- Lose 10 pounds in two weeks (may be partly from loss of excess fluids)
- May be used as a "fast start" to the Regular Program for greater initial weight loss
- May be used periodically along with the Regular Program to accelerate your weight loss during plateaus or to compensate for periods of overeating



This program is followed for a maximum of two consecutive weeks. If you have more weight to lose, follow the Regular Program, using the Fast Start Program whenever you feel the need to give your weight loss progress a little "boost." The Fast Start Program should not be used for more than two consecutive weeks unless under the supervision of a physician (see Physician Monitored Program).



How to follow the program:

- 1 Simply enjoy 3 servings of the the Cambridge Food For Life Nutrition formula (cereal, soups, pudding, or drinks) each day at or near your normal mealtimes. Do not skip any servings.
- 2 Drink a minimum of eight 8-ounce glasses or two Cambridge chug mugs of water each day (tea or decaf coffee or other non-caloric beverages are allowed in addition to, but not substituting for, the water).

How your body loses weight on a very-low-calorie diet

While on the Fast Start Program, your body will be going through some adjustments to a very-low-calorie diet. After a few days, it will convert to using stored fat as its primary source of fuel usually creating a state of mild ketosis in the body. This can actually benefit you by creating a mild feeling of euphoria, extra energy, and some suppression of hunger.

If, at any time on the Fast Start Program, you experience prolonged headache, nausea, vomiting, or any other symptoms, return to the Regular Program and contact your physician.

Complaint

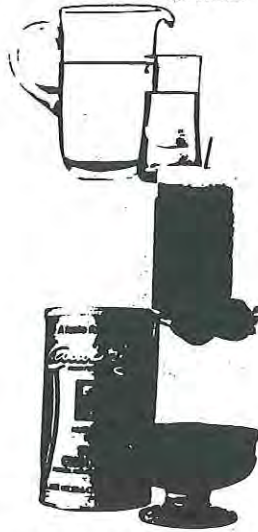
123 F.T.C.

EXHIBIT C

Physician Monitored Program

This is the responsible approach to weight loss for those who have large amounts of weight to lose (30 pounds or more) or for those under a physician's care for other medical conditions. In clinical trials, the average weight loss was 16 to 20 pounds per month. Because the program uses the Cambridge Food For Life Nutrition formula as the sole source of nutrition (420 calories/day) for a longer period of time, physician supervision is required.

Features:



- Maximum weight loss in the shortest possible time
- Recommended for people who have large amounts of weight to lose (30 pounds or more)
- Physician supervision ("Physician Monitoring Guidelines" available)
- Less expensive and less regimented than hospital programs using very-low-calorie diets

How to follow the program:

- 1 Consult your physician. A copy of the "Physician Monitoring Guidelines" is available from a Cambridge Consultant if your physician would like one.
- 2 Enjoy 3 servings of the Cambridge Food For Life Nutrition formula (cereal, soups, pudding, or drinks) each day, or as directed by your physician at or near your normal mealtimes. Do not skip any servings.
- 3 Drink a minimum of eight 8-ounce glasses or two Cambridge chug mugs of water each day (tea, decaf coffee or other non-caloric beverages are allowed in addition to, but not substituting for, the water).
- 4 When you are 10 to 15 pounds from your goal weight, we recommend you switch to the Regular Program until you reach your goal weight.

The Physician Monitored Program is a very-low-calorie diet and results in rapid weight loss. Because a low caloric level and large amounts of rapid weight reduction can place unusual strain on the body, monitoring by your physician is essential.



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EXHIBIT C

The Regular Program is the most flexible plan. It's suitable for any weight loss goal and can be adapted to any lifestyle. You can lose 2 to 5 pounds per week on the Regular Program.

On this program, you will combine 3 servings of the Cambridge Food For Life Nutrition formula (cereal, soups, pudding, or drinks) with 400 calories of conventional food (one calorie controlled, nutritionally balanced meal).

Features:

- Flexible program to fit any goal or lifestyle
- Combines the Cambridge Food For Life Nutrition formula as a nutritional foundation with healthy conventional food selections
- 820 calories a day for effective weight loss

How to follow the program:

- 1 Enjoy 3 servings (420 calories) of the Cambridge Food For Life Nutrition formula (cereal, soups, pudding, or drinks) each day at or near your normal mealtimes. Do not skip any servings. Add 400 calories from a variety of healthy conventional foods in the form of snacks or meals for a daily total of 820 calories.
- 2 Drink a minimum of eight 8-ounce glasses or two Cambridge chug mugs of water each day (tea, coffee, and other non-caloric beverages are allowed in addition to, but not substituting for, the water).
- 3 Continue on your program until you reach your weight loss goal.

There is no right or wrong time to take your Cambridge Food For Life Nutrition servings as long as you have three each day. Most commonly, Cambridge servings are taken at regular mealtimes. Those who are on the Regular Program and consume their conventional meal at dinnertime may have their last Cambridge serving during the evening, to overcome late night snacking.

Regular Program



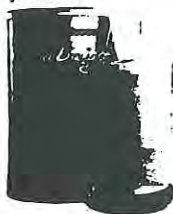
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EXHIBIT C

Weight Maintenance Program

It is important to monitor your weight gain at two or three pounds so you can take action quickly. Remember, our programs are designed to put you in control — and keep you there!



The Cambridge Food For Life Nutrition and Weight Management System is remarkably effective in providing long-term weight management. This success is mostly due to the ease and simplicity of the Cambridge Weight Maintenance Program. It consists of simply continuing to use the Cambridge Food For Life Nutrition formula as a nutritional foundation while you determine what caloric level you need to maintain your individual body weight. In this way, you can easily control your total calories without jeopardizing good nutrition.

Begin by gradually adding conventional foods to your Cambridge Food For Life Nutrition and Weight Management Program until you reach the number of calories that support your desired body weight and activity level. That's your maintenance point.

Weigh yourself weekly at the same time each morning with the same amount of clothing (preferably before you have had anything to eat or drink). If you find a pound or two creeping back, you have 3 options. You can:

- 1 Lower the calories in your maintenance program.
- 2 Increase your exercise.
- 3 Switch back to one of the weight loss programs.



EXHIBIT C

Lifetime Nutrition Program

Good health and well-being are built on a foundation of complete and balanced nutrition. The Cambridge Food For Life Nutrition products offer you a lifetime of nutritional assurance — simply continue to take them every day as your nutritional foundation.

Planning healthy meals for life the Cambridge way

There are any number of ways to fit these nutritious and satisfying products into your own unique lifestyle and meal patterns — as a meal replacement, instant breakfast, healthy snack, or alternative lunch or dinner. Regardless of how hectic your schedule is or how little time you have to dedicate to meal planning, shopping and dining — your nutritional requirements are insured with Cambridge.

Cambridge Maintain For Life®

Cambridge Maintain For Life is a simple, efficient, affordable supplement to assure you are getting good nutrition every day — for life! This convenient once-a-day formula provides

- 100% of the USRDA for all vitamins and minerals
- 12 grams (25% USRDA) high quality protein
- 24 grams carbohydrates
- only 2 grams of fat
- 3 grams dietary fiber
- only 160 calories

Cambridge Maintain For Life provides a sound nutritional base for all your other food choices. It's easy to combine Cambridge Maintain For Life with select portions of traditional foods to create quick, delicious, and healthy meals for lifetime nutrition.

Some people prefer the range of choices available through the Cambridge Food For Life products and use it up to three times a day as a nutritional foundation, or as a meal replacement for one or two meals, or as a healthy snack. For example, use the cereal for a hot breakfast, or eat a bar with or for lunch, or enjoy a shake or pudding with your evening meal for dessert — or do all three!

Making healthy food choices

In addition to your once-a-day Cambridge Maintain For Life serving selecting simple, basic foods unadorned by sauces and gravies are your best and easiest choices for healthy eating. What could be easier than small portions of meat, seafood, or poultry enhanced only by light seasonings and broiled or baked to tenderness? Add to that some steamed or microwaved vegetables with fragrant herbs and you have quickly arrived in a healthy gourmet heaven. You can even add a little pasta, rice, potato, or bread if you like. Or, you can select portion-controlled prepared entrees and add your own fresh salad, vegetable, or fruit for an easy, balanced meal.

With our advanced technology, low-fat, low calorie, and low sodium meals require a minimum of decision-making and culinary effort. With our busy lifestyles and the trend toward eating-on-the-go as opposed to the traditional family meal, using the Cambridge Maintain For Life and the Cambridge Food For Life products in conjunction with healthy food choices assures you healthy eating — for life!

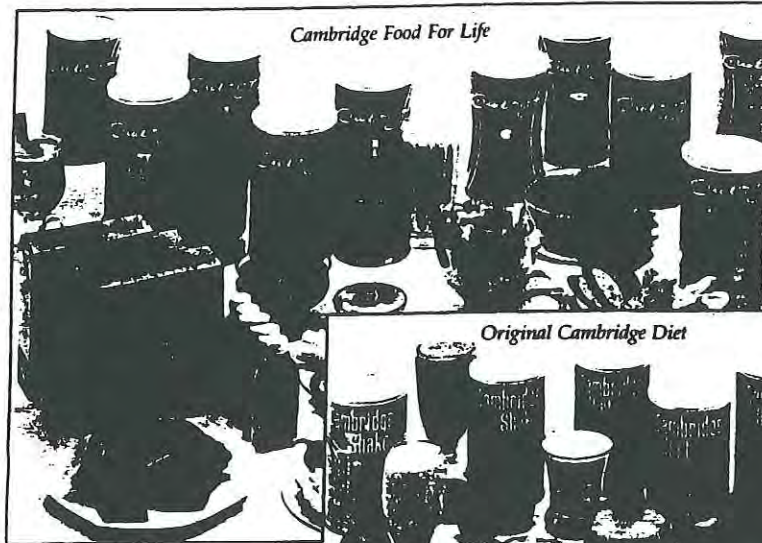
Note: Cambridge Maintain For Life is designed specifically as a once-a-day supplement for lifetime nutrition. It must not be used as an exclusive source of nutrition.

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EXHIBIT C

Products and Programs

*Cambridge Food For Life**Original Cambridge Diet**Original Cambridge Diet*

3 servings daily provide

- 100% of the USRDA for all vitamins and minerals
- 33 grams (75% USRDA) high quality protein
- 42 grams carbohydrate
- 3 grams fat
- 3-4 grams dietary fiber
- Trace elements and electrolytes
- 330 calories

The Original Cambridge Diet, taken one to three times per day, continues to be the product of choice for many who use it as a supplement while on the Regular Weight Loss Program, Weight Maintenance Program, or as a foundation for lifetime nutrition. It may be used as the exclusive source of nutrition while on a weight loss program only when taken four times a day. Taken four times daily, The Original Cambridge Diet provides the required protein (100% USRDA) in 440 calories.

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EXHIBIT C

THE CAMBRIDGE INTEGRATED SYSTEM A FOUNDATION FOR GOOD HEALTH AND WELL-BEING



EXHIBIT C



PEER SUPPORT

Peer support is integral to your being successful in your commitment to a lifetime of health and well-being. Surrounding yourself with positive people and sharing your goals with them provides the reinforcement and encouragement that will help you reach your goals.

The Cambridge Food For Life Nutrition and Weight Management System is built on a foundation of positive peer support. Your Cambridge Consultant has personally experienced the products and programs and is eager to share them with you.

Weight Loss

Peer support is important for everyone but critical for those on a weight loss program. Your Consultant can provide support for your success by

- helping you set your personal goals
- assisting you in setting up your personal support group (refer to the "My Friendship List" on page 21 of this Program Guide)
- maintaining records of your progress, and
- providing helpful information and support during your initial use of the products and programs.

Also, ask your Cambridge Consultant about support group meetings.

Retreats

Unique to the Cambridge Food For Life Nutrition and Weight Management System are retreats. Held periodically throughout the country, these weekend retreats provide an opportunity for you to experience personal success in a supportive environment. Through friendship and encouragement, they can help you regain your commitment to lifetime health and well-being whether through a program of weight loss, weight management, or a program of lifetime nutrition.

FRIENDLY SUPPORT FROM
YOUR CAMBRIDGE
FOOD FOR LIFE CONSULTANT

EXHIBIT C



SUCCEEDING WITH PLANNED CHANGE

"All change requires a modification of current behavior even if it is as simple as setting up a new routine and following through."

— Linda Hevern

The Cambridge Food For Life Nutrition and Weight Management System includes the vital component of behavior modification to help you achieve a healthier lifestyle.

Everyone who embarks on a Cambridge program is dealing with change — even people who have healthy support systems and habits in place may need help in designing and implementing a plan to make sure their lifetime nutritional needs are assured on an ongoing basis. Your Cambridge Consultant can help you with this.

Because we recognize that it is never easy to make changes, and because the changes needed to be made to succeed in a weight loss program can be particularly difficult, we designed the Control For Life Program to help you identify and change specific undesirable behavior patterns and replace them with positive behaviors.

This unique, self-instruction program is a tool that can be used by yourself or with others to create self-awareness, behavior change, and self-control — all essential elements in helping you stay on track as you build commitment toward long term behavior changes. The step-by-step guide helps you overcome obstacles to your success such as poor food choices, destructive eating behaviors, and inactive lifestyle.

Ask your Consultant for more information about The Control For Life Learning Program, as well as Cambridge Group Support Modules and a Cambridge Care line of bath and body products available exclusively to our Cambridge customers.

BEHAVIOR MODIFICATION



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EXHIBIT C



PHYSICAL ACTIVITY

Physical activity is important to be fit for life, yet in our modern world, it is no longer an automatic part of everyday work life. To achieve and maintain a healthy lifestyle, it is important to include a program of physical activity. The most sensible physical activity program is an integrated system of aerobics, stretching, muscle building, and moving to build endurance, flexibility, and strength. Other benefits of physical activity are health promoting benefits such as conditioning of the heart and lungs as well as the psychological benefits of stress reduction, and a sense of well-being. Some physical activities accomplish more of this than others, but the best activity is the one you like doing, because you'll do it!

For individuals who have not been exercising regularly, or for those who are overweight, walking is one of the best ways to get started in a physical activity program. It does not require special facilities or equipment other than good, comfortable shoes. Walking briskly for 30-45 minutes, three times a week, will provide the same benefits as other aerobic activities. For more information about beginning a walking and exercise program, please ask your Consultant about our Set For Life Walking Guide and the Set For Life Body Shaper Program.

To maximize the benefits of your physical activity program, the Set For Life Body Shaper was designed to provide you with an integrated physical activity system which will shape, tone and firm while you increase flexibility and build strength in both the upper and lower body. When used properly and regularly, working with the exerciser will bring immeasurable rewards in terms of improved looks, health, and confidence — all with minimum effort.

Regular physical activity can offset the diet-related decrease in metabolism. Activity raises our metabolism which, in turn, increases weight loss up to 10% over dieting alone. Not only do you burn more calories while exercising but you continue to burn calories at the accelerated rate even while resting following the exercise.

Note: Because your body undergoes some physiological adjustments during the first few days while on a low-calorie weight loss program, you should not overexert yourself. It is advisable to consult your physician when beginning an exercise program.



**GET FIT FOR LIFE
WITH EXERCISE**

EXHIBIT C

DELICIOUS CEREAL, SOUPS, DESSERT, AND DRINKS

Easy Mixing Instructions

Unless otherwise noted in individual recipes, for best results use an electric blender (an electric blender will give you the smoothest, creamiest drink), pour into a glass or dish, and serve.

Electric blender:

For cold drinks

1. Pour 8 oz. of cold water into blender. Add ice to make 10 oz.*
2. Add 2 level scoops Cambridge Food For Life Nutrition formula.
3. Blend 15 - 20 seconds.

*For a thicker, shake-like consistency, place 1/3 cup of crushed ice or 4 average-size ice cubes in blender; then, add water to the 8-ounce level. Add Cambridge Food For Life Nutrition formula and blend 30 to 60 seconds.

For hot drinks and soups

1. Pour 8 oz. hot water into blender.
2. Add 2 level scoops Cambridge Food For Life Nutrition formula.
3. Blend 15 - 20 seconds. (Note: When making hot drinks, blenders should have a pressure release valve or hold the lid slightly ajar to allow steam to escape.)

Added variety:

There are many palate-pleasing variations to these basic instructions. Experiment to come up with your own favorites!

- If you prefer a sweeter taste, add a non-caloric sweetener.
- For greater flavor variety, add 1/2 teaspoon of any Cambridge Food For Life Nutrition Flavorings to your formula prior to mixing.
- Your favorite seasonings and spices will add aroma and flavor to the Cambridge Food For Life Nutrition soup formulas.

Your Cambridge Consultant can teach you various additional recipes and if, for any reason, you cannot produce the same great drinks you tasted with your Cambridge Consultant, call and ask your Consultant for help.

Shaker:

If an electric blender is not available

1. Pour 8 oz. of cold water into a shaker. (Cambridge chug mug or any hand shaker)
2. Add 2 level scoops of Cambridge Food For Life Nutrition formula.
3. Shake vigorously for 30 seconds or until completely mixed. Hold lid securely. Do not use this method for hot drinks.

Microwave (Cereal/Oats):

1. Place 2 rounded scoops Cambridge Food For Life Nutrition Super Oats formula into a cereal bowl or other container suitable for your microwave oven.
2. Add 2/3 cup water (unless otherwise specified in recipe) and stir.
3. Microwave on medium power, 4-5 minutes, stirring at least once during cooking, and once again before serving.

Stove Top (Cereal/Oats):

1. Place 2 rounded scoops Cambridge Food For Life Nutrition Super Oats formula into a cooking utensil.
2. Add 2/3 cup boiling water (unless otherwise specified in recipe) and stir until mixed.
3. Cook for 2 minutes, remove from heat, and let stand until desired consistency.

Complaint

123 F.T.C.

EXHIBIT C

Over the years, many taste-tempting recipes have been developed for the Cambridge Food For Life Nutrition cereal, soups, dessert, and drinks. Here are a few to get you started. Enjoy!

FAVORITE RECIPES

Follow the mixing instructions on the opposite page using the ingredients listed below. These recipes may be used with The Original Cambridge Diet (330 calorie formula). When mixing the 330 formula, use only one instead of two level scoops.

CHOCOLATE DRINK

Heath Bar
1 serving Cambridge Food
For Life Chocolate Drink
1/4 tsp. butter flavoring
1/4 tsp. rum flavoring
1/4 tsp. almond flavoring
1 tsp. instant decaf coffee

Orange Chocolate
1 serving Cambridge Food
For Life Chocolate Drink
8 oz. diet orange soda
(instead of water)

Viennese Coffee
1 serving Cambridge Food
For Life Chocolate Drink
8 oz. hot decaf coffee
(instead of water)
1/4 tsp. cinnamon

VANILLA DRINK

Fina Colada
1 serving Cambridge Food
For Life Vanilla Drink
1/4 tsp. coconut flavoring
1/4 tsp. pineapple flavoring
1/4 tsp. rum flavoring
1/2 pkt. Equal

Amaretto Cream Coffee
1 serving Cambridge Food
For Life Vanilla Drink
1 tsp. instant decaf coffee
1/4 tsp. almond flavoring

STRAWBERRY DRINK

Strawberry Shortcake
1 serving Cambridge Food
For Life Strawberry Drink
1/2 tsp. vanilla flavoring

Strawberry Daiquiri
1 serving Cambridge Food
For Life Strawberry Drink
1 cup fresh or frozen
strawberries (40 calories)
1/2 tsp. rum flavoring

EGG NOG DRINK

1 serving Cambridge Food
For Life Egg Nog
1/2 cap vanilla custard flavoring
1/2 pkt. Equal

CHICKEN SOUP

Chicken 'n Mushrooms
1 serving Cambridge Food
For Life Chicken Soup
1/2 cup sliced fresh
mushrooms (10 calories)
1/8 tsp. onion powder
Pinch of black pepper

For additional taste tempting recipes including Cambridge pies, muffins, cookies, quiches, and casseroles, refer to our Cambridge Recipe Book available from your Cambridge Food For Life Consultant.

TOMATO SOUP

Tomato Zinger Soup
1 serving Cambridge Food
For Life Tomato Soup
Dash each of onion powder, garlic powder, dried parsley, Tabasco, and Worcestershire

SUPER OATS

Super Oats Stuffing
1/2 serving Cambridge Food
For Life Super Oats
1/2 serving Cambridge Food
For Life Chicken Soup
1/3 cup water
Follow microwave instructions on the opposite page.

SUPER CHOCOLATE

Coconut Tingalings
1/2 serving Cambridge Food
For Life Super Chocolate
1/2 serving Cambridge Food
For Life Super Oats
6 oz. hot water
1 cap coconut flavoring
1 pkt. Equal
Mix ingredients until smooth, pour into 2-oz. cups. Freeze and eat like candy. Instructions for easy instant pudding and other types of Chocolate desserts are on the Super Chocolate label.

When on the Fast Start or Physician Monitored programs, do not use the recipes that contain added foods.

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EXHIBIT C

Don't forget to drink a minimum of eight 8-ounce glasses (2 Cambridge chug mugs) of water every day in addition to your Cambridge Food For Life Nutrition products. Coffee, tea, or diet soda are permitted, although not as a substitute for water. As you decrease the quantity of food in your diet, you also reduce the fluid intake from those foods. Since the body composition is approximately 60% water, it is very important to replenish those fluids. So, drink up!

Three servings of the Cambridge Food For Life Nutrition products each day assure you that you are getting the vital nutrition needed for good health. Do not skip any servings while on your weight loss program. You will not lose weight any faster, but you will sacrifice essential nutrition.

The Cambridge Food For Life Nutrition drinks, soups, cereal, and pudding are especially formulated for great taste! If your tap water has a strong taste, we suggest that you try filtered or bottled water so as not to distort the flavor.

Use Cambridge Care, "nutrients for the skin," to overcome dry skin, a common side effect of dieting.

Weigh weekly. For a long-term commitment, weighing daily can be detrimental to your program. The weight of the liquids you consume daily can add two or more pounds to your weight.

The first few days of your weight loss program will probably be the most challenging, so plan to keep busy. If you feel hungry, chew sugar-free gum, have a drink of water, or get involved in some other activity to distract your attention away from food.

Become very conscious of any and all food that goes into your mouth. "Nibbles" and in-between-meal snacks that are not part of your meal pattern are easily forgotten, but the calories they add are not! If you must snack, choose a small portion of a low-fat, low calorie food and include these calories in your daily total. A half-serving of a Cambridge Food For Life Nutrition drink, soup, Super Oats, or bar is a good selection. Awareness of what you eat is the key to good weight control.

Get to know yourself — learn your eating habits, strengths and weaknesses. There are ways to control them. Be honest — no one else has to know! Ask your Cambridge Consultant about the "Control for Life" learning program for help. You can learn to say "no" to food and learn when to say "yes" without feeling guilty.

Think of new rewards for yourself. There is life beyond food! Enjoy a new dress, a good book, a movie. Or, nurture yourself with Cambridge Care bath and body products.

Commitment is key. Follow your program with sincerity and regularity, and you will succeed!

HELPFUL HINTS FOR NOW AND LATER

Complaint

123 F.T.C.

EXHIBIT C

SETTING MY GOAL

MY GOAL

My goal is to weigh _____ pounds and/or be size _____.

MY PROGRAM

I have selected the following program which I will follow to my goal.

- ☐ Fast Start Program
- ☐ Physician Monitored Program
- ☐ Regular Program
- ☐ Combination

MY COMMITMENT

I understand that to reach and maintain my goal I am making a determined commitment to adhere faithfully to my program. I know that with my program and my determined commitment I will overcome any obstacle. I am starting now.

Signature _____ Date _____

MY FRIENDSHIP LIST

I understand that peer support is an important part of the weight management programs. I know that to reach my goal I will need to surround myself with positive people. The following are those that I want on my support team. I will share my goal with them and ask them to follow these rules.

1. Don't feed me
2. Do not be critical if I have a "bad day"
3. Provide positive feedback when progress is noticeable

1 _____	5 _____
2 _____	6 _____
3 _____	7 _____
4 _____	8 _____

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EXHIBIT C

For best success, it's important to have a goal or target weight for your weight loss program. It helps you keep moving in the right direction and lets you know when you've made it.

PERSONAL PROGRESS CHART

This is your Personal Progress Chart to help you watch your weight loss progress. The first week you may want to weigh yourself daily to see how you are doing. Then, weigh yourself once a week and record the date, your new weight, and the number of pounds that you lost (or gained). It's best to weigh in the morning, before you eat or dress.

Date _____ Starting Weight _____ Target Weight _____ Date Achieved _____

Date	Weight	Pounds (-) (+)	# Cambridge Meals	# Regular Meals	Substitute Non-Food Activities
Day 1					
Day 2					
Day 3					
Day 4					
Day 5					
Day 6					
Day 7					
Day 8					
Day 9					
Day 10					
Day 11					
Day 12					
Day 13					
Day 14					
Day 15					
Day 16					
Day 17					
Day 18					
Day 19					
Day 20					
Day 21					

Keeping a record of your Cambridge meals and other foods you eat during the first week and especially the first three days of your weight loss is critical — it will help keep you aware of the amount of food and calories you are consuming. Keeping track of your activities will help you develop substitution skills that can be effective in helping you attain your goals.

Complaint

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EXHIBIT C

Sometimes your progress will be more significant in your body measurements or dress size — waistlines become smaller, hips and thighs become trimmer and abdomens flatten. If you are complying with your program, you will succeed!

MEASUREMENT CHART

Clothing Size Goal _____

Date Achieved _____

	Month	Month	Month	Month	Month	Month	Month
Date							
Waist							
Abdomen							
Hips							
Thighs							
Arms							
	Month	Month	Month	Month	Month	Month	Month
Date							
Waist							
Abdomen							
Hips							
Thighs							
Arms							
	Month	Month	Month	Month	Month	Month	Month
Date							
Waist							
Abdomen							
Hips							
Thighs							
Arms							

Here are some non-food activities that many people find are pleasurable and effective substitutions that take you away from an environment that encourages eating.

Calorie Burning Activities

Brisk walking or jogging
Exercising*
Bicycling
Swimming
Dancing
Gardening

Nurturing Activities

Mineral Bath**
Jacuzzi
Sauna
Facial
Massage
Manicure

Creative Activities

Sewing
Knitting
Crafts
Painting
Pottery
Woodworking

*The Cambridge Set For Life Body Shaper and Exerciser and Set For Life Walking program are convenient and ideal exercise tools.

**The Cambridge Care line includes Mineral Bath with Dead Sea salts, known for their nurturing and relaxing properties, as well as other products for bath, body and facial care.

EXHIBIT C

QUESTIONS AND ANSWERS

Q Can the Cambridge Nutrition products be used as a nutritional supplement?

A Absolutely! The Cambridge Nutrition formulas are an excellent nutritional addition to the everyday diet. Because many of us have full days with busy schedules, there is often little time left for adequate meal planning. Skipping meals or "eating on the run" has become a way of life. The Cambridge Nutrition cereal, soups, pudding, drinks, or bars provide the nutritional assurance to every day and a healthy alternative to missing meals.

Q Is there a role for Cambridge products with athletics?

A Cambridge products have been used in both individual and team sports including the U.S. Olympic Swim Team and Mt. Everest climbers. It provides a strong nutritional foundation for athletes whose performance is largely dependent upon their bodies receiving the precise balance of nutrients which Cambridge provides.

Cambridge offers great versatility to the athlete — as a high energy food source, nutritional weight reduction program, when necessary; and as a comprehensive balance of macronutrients and micronutrients to supplement and enhance the body's utilization of conventional foods to maintain or add weight.

Q Can children use Cambridge Food For Life Nutrition products for nutritional value?

A Children can use the Food For Life Nutrition products as supplements to regular eating patterns with notable results — a trend in decreased consumption of "empty-calorie" snacks and movement toward better eating and nutritional habits.

To ensure sufficient calories for energy

and adequate protein for growth and development, any weight-reduction program for children should be under the advice and supervision of a physician.

Q Can everyone lose weight with the Cambridge Food For Life Nutrition and Weight Management System?

A Everyone has the opportunity and the tools to make it happen. The Cambridge Food For Life Nutrition and Weight Management System offers weight control products and programs for everyone.

Some products are designed to be used as a nutritional base with conventional food, others as a total meal replacement, or in a mix-and-match system with other Cambridge Nutrition products. All can be used in personalized programs to control your present weight, or to assure safe, effective, sensible weight loss.

No matter which products and plans you select, remember that successful weight control depends upon an honest commitment to stay with the program you choose.

Q Is there a reason for "plateauing" while on the program?

A Some people experience a plateau effect with their weight reduction progress at various points during dieting.

One reason this may occur is due to temporary periods of water retention by the body.

The body's metabolic rate also varies periodically which may alter the rate of weight reduction.

Some people have also noticed a period during which there was no noticeable weight reduction, however, there was an apparent reduction in inches. Check your measurements!

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Q Can I have an unlimited amount of diet soft drinks while on the Cambridge Food For Life Nutrition and Weight Management System for weight loss?

A Diet soft drinks are permitted, but many soft drinks contain sodium which, if consumed in excess, may cause the body to retain water and slow the weight loss process.
Some diet soft drinks also contain caffeine which may have a stimulant or irritant effect on the body.

Q Is it all right to drink coffee while on the Cambridge Food For Life Nutrition and Weight Management System for weight loss?

A Coffee is permitted; however, consumption of large quantities is not recommended. Caffeine acts as a stimulant to body systems and sometimes provides an irritant effect. Some herbal teas may offer a pleasant beverage alternative. If you feel you must drink coffee, decaffeinated is preferred.

Q Is it allowable to drink alcohol while taking Cambridge Food For Life products as a sole source of nutrition?

A People who take Cambridge Food For Life as a sole source of nutrition should not drink alcoholic beverages. Alcohol contains seven calories per gram and provides no other significant nutritional value.
Alcohol can impair the body's ability to utilize other nutrients.

Q Why is it sometimes so difficult during the first few days of dieting?

A During the first few days of dieting your body makes metabolic adjustments which occasionally can cause transient side effects such as headache, diarrhea, frequent urination, or dizziness. As you consume less bulk and fewer calories than your body requires for energy, it must adjust to using your stored fat as a source of energy. These symptoms usually pass within a few days; however, if they persist, consult your physician.

Q What causes temporary diarrhea for some people when beginning the diet?

A Diarrhea may initially be caused from the concentration of nutrients provided in Food For Life Nutrition products as well as the mild diuresis (loss of body fluids) which accompanies low-calorie, low-carbohydrate diets. Most bodies regulate themselves within a few days. Be sure to consume plenty of fluids. However, if diarrhea persists, consult your physician.

Q What is recommended for those who experience some constipation while dieting?

A Some changes in bowel habits may be expected as your body adjusts to different dietary patterns. Bowel movements may not necessarily be as often.

There are seven grams of fiber in each serving of Cambridge Food For Life Super Oats to aid in digestion and elimination. Adequate fluid intake is important. Mild exercise sometimes assists bowel movements. Mild laxatives used temporarily, such as those containing psyllium, may be helpful. If constipation persists, check with your physician.

Q Can people with high blood pressure use the Food For Life Nutrition and Weight Management System for weight loss?

A Many people with high blood pressure have experienced extremely positive results using the Food For Life Nutrition and Weight Management System for weight loss with monitoring and supervision by their physician.

It is very important that these people take their physician's advice when selecting the program best suited to their needs, especially if they are taking medication.

Q Can people with diabetes use the Cambridge Food For Life Nutrition products?

A Many diabetics who have taken Cambridge have had remarkable weight reduction with

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no adverse effects. As a result of weight reduction and positive nutrition with Cambridge, many diabetics have been able to reduce their medication and minimize many of the other health risks associated with diabetes.

Medical supervision is mandatory because a reduction in medication is often warranted as the body achieves weight reduction and better health.

What are electrolytes and what is their function in the body?

Electrolytes are elements carried in the fluids in our bodies which carry positive (cations) and negative (anions) impulses. They include sodium, calcium, potassium, magnesium, chloride, bicarbonate, phosphate, and sulfate. Cambridge provides scientifically calibrated amounts of all these essential nutrients.

Is there any similarity between Cambridge and the liquid protein diets?

The liquid protein diet is quite dissimilar to the Cambridge formula.

The liquid protein diet was recommended to the American public with virtually no prior testing. Cambridge experienced 8-1/2 years of research and clinical testing before being introduced to our customers. We support continual ongoing research.

The sources of protein are quite different. The liquid protein product is composed of a by-product of boiled cowhide. Cambridge uses high quality protein from casein, nonfat dry milk and soy products as the primary sources of protein.

The liquid protein diet provided no balance of other valuable nutrients. Cambridge offers a very specific balance of protein, carbohydrates and fat, along with the other vitamins, minerals, electrolytes and trace elements necessary for proper body functions.

Cambridge is a scientifically engineered complete food.

I've heard that a small percentage of nutrients in Cambridge products are not "natural." Why?

The Cambridge products have been developed under the most rigid standards of quality to provide the very best products. These standards are upheld in the selection of vitamins, minerals, and other nutrients contained in all Cambridge products.

While some nutrients in Food For Life Nutrition products are from synthetic sources, when the body absorbs nutrients it does not discriminate between those from natural sources and those synthetic. It is most important to have the proper combination of nutrients in proper quantities.

How should Cambridge Nutrition products be stored?

Cambridge Nutrition products should be stored in a manner that will preserve their nutritional quality. The following storage conditions are recommended:

Food For Life formulas —
75°F (24°C) maximum

Diet and Nutrition bars —
65°F (17°C) maximum

Note: The nutrients in the Diet and Nutrition bars are very heat sensitive. Do not allow the bars to be exposed to heat (for example in the trunk of the car in the sun) for even a few hours. Before being shipped, Diet and Nutrition bars are stored under controlled temperature conditions.

Does a customer stop taking Cambridge when she/he reaches her/his goal weight?

Cambridge is a complete nutritional foundation that works for weight loss as well as lifetime nutrition. The Cambridge Nutrition and Weight Management System is designed to offer continued nutritional benefits with three meals a day supplemented by a balanced diet of conventional foods to supply adequate energy (calories) to maintain desired weight.

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National Institute of Health Consensus Development Panel on the Health Implications of Obesity, *Annals of Internal Medicine*, Vol 103, pgs 1073-77, 1985

"A Comprehensive Approach to Outpatient Obesity Management," R.L. Atkinson, *Journal of American Dietetic Association*, Vol 84, pgs 439-446, 1984

"Very Low Calorie Diets: Their Efficacy, Safety and Future," T.A. Wadden, A.J. Stunkard, K.D. Brownell, *Annals of Internal Medicine*, Vol 99, pgs 675-684, 1983

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REFERENCES

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**CAMBRIDGE:
AN HISTORICAL EVOLUTION**

THE CAMBRIDGE DIET

In 1970, Alan Howard, Ph.D. and a distinguished team of research nutritionists and medical doctors at Cambridge University in England, wrestled with the problem of obesity. Dr. Howard had an idea that it would be possible to discover the exact combination of nutritional building blocks that were needed by the body and that it would be possible to develop a formula which supplied all of these nutrients in a minimal number of calories.

What they developed after nearly a decade of research was an amazing nutritional "breakthrough," a meal replacement that supplied all the known nutrients the body needed in a very-low-calorie formula.

Dr. Dennis Jones, a nutritionist and specialist in food chemistry, began collaboration with the team in 1973. He converted the research concept into a commercially viable formulation. He designed and implemented a development plan including formal clinical studies to full drug-testing standards. His goal was to turn Dr. Howard's original breakthrough research into an actual product that would be accessible to the public and not just remain in medical research.

The result of this work was a concentrated yet balanced nutritional formula so unique it was patented worldwide. The commercial rights to the formula were acquired by Cambridge Plan International in the United States, and here the flavor of the formula was dramatically improved for palatability and in 1979, it emerged as The Cambridge Diet.

THE FOOD FOR LIFE SYSTEM

The second "breakthrough" occurred during the 1980's. A totally integrated system for nutrition and weight management was created under the direction of Robert O. Nesheim, Ph.D., one of the most widely respected authorities in the field of nutrition.

As Director of Research and Development at Cambridge Plan International, Dr. Nesheim built on the extensive research behind the Original Cambridge Diet formula and drew on additional scientific information and new technological developments to greatly enhance and broaden the base of the Cambridge products. The new expanded line of products were developed with added fiber, added protein to supply 100% of the U.S. RDA, additional calories, and improved taste and variety.

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The second breakthrough was achieved by successfully addressing the wider range of lifestyle influences that come to bear on making nutrition and weight management programs successful. Dr. Nesheim's team created a powerful synergy through the integration of nutrition and weight management products and programs with the added elements of peer support, activity, and behavior modification for a totally integrated nutrition and weight management system.

He worked with Dr. Nan E. Brenzel, who has a personal commitment to nutrition and weight management. Drawing on her professional experience in the clinical and research field of weight management and motivation, she designed the Behavioral Modification components of the system: the Cambridge Retreats and Control For Life, a self-study program to replace undesirable eating behaviors with good effective behaviors for long-term weight management. Dr. Nesheim continued to improve and refine the elements of the Cambridge Food For Life System until his retirement in 1991.

THE 1990'S AND BEYOND

Today, we at Cambridge are building on and carrying forward our significant heritage. We continue the tradition of caring and sharing with emphasis on the value of good nutrition through the development and expansion of Cambridge products and programs. We are dedicated to the continuing development of significant and beneficial breakthrough products and programs that support our corporate mission to promote optimal health and well-being — for life!

As a part of the Cambridge "Good Corporate Citizen Plan," a portion of the company's revenues are contributed to solving the problems of world hunger and disease through good nutrition.

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The Food For Life Weight Management System

The Food For Life Weight Management System is an integrated multi-dimensional system built around the Food For Life Meal Replacement Formula. It includes a variety of programs for caloric reduction, a self-study behavior modification program, a program to gradually increase activity levels and a comprehensive peer support program. The system has been shown to be remarkably effective in both initial reduction of weight and in the long-term retention of that weight loss. A study conducted by Opinion Research Corporation of 600 users who had lost 60 pounds or more showed that of the 400 who could be contacted after two years, more than 80% of the weight loss had been maintained.

The Food For Life Meal Replacement Formula

The Food For Life Meal Replacement Formula was developed in 1984 under the direction of Dr. Robert O. Nesheim. He began with an existing very-low-calorie diet formula developed by a team of scientists at Cambridge University and used for 8 1/2 years in clinical research. Dr. Nesheim improved the formula by insuring that it met the recognized standards for adequate levels of all the essential nutrients and, realizing the importance of palatability, he drew on his vast expertise in food technology to produce a formula that was as good tasting as it was nutritionally complete. The resulting Food For Life Formula comes in a wide variety of delicious drinks, soups, and desserts and supplies 100 percent of the U.S. RDA for protein, vitamins, and minerals, plus the required amounts of all other minerals and trace elements as recommended by the National Academy of Sciences in only three servings. The formula contains 140 calories per serving for a total of just 420 calories. It is made from the highest

quality food ingredients, contains no drugs or preservatives, and is manufactured under a quality assurance program based on the infant formula guidelines.

NUTRITION INFORMATION:		
SERVING SIZE	2 LEVEL SPOONS 40g	
SERVINGS PER CONTAINER	1 SERVING	2 SERVINGS
CALORIES	140	280
PROTEIN*	15 GRAMS	30 GRAMS
CARBOHYDRATES	18 GRAMS	36 GRAMS
FAT	1 GRAM	2 GRAMS
SODIUM*	570 mg (12.5%)	1140 mg (25%)
DIETARY FIBER	13 GRAMS	26 GRAMS

PERCENTAGE OF U.S. RECOMMENDED DAILY ALLOWANCES (U.S. RDA)

	PER SERVING	2 SERVINGS
PROTEIN	30	60
VITAMIN A	35	70
VITAMIN C	35	70
THIAMINE	35	70
RIBOFLAVIN	35	70
NIACIN	35	70
CALCIUM*	35	70
IRON	35	70
VITAMIN D	35	70
VITAMIN E	35	70
VITAMIN B ₆	35	70
FOLIC ACID	35	70
VITAMIN B ₁₂	35	70
PHOSPHORUS	35	70
IODINE	35	70
MAGNESIUM	35	70
ZINC	35	70
COPPER	35	70
BIOTIN	35	70
PANTOTHENIC ACID	35	70
VITAMIN K*	22.3 mcg	44.6 mcg
POTASSIUM*	670 mg	1340 mg
MANGANESE*	1.3 mg	2.6 mg
CHLORIDE*	600 mg	1200 mg
CHROMIUM**	20 mcg	40 mcg
SELENIUM*	20 mcg	40 mcg
MOLYBDENUM*	50 mcg	100 mcg

*U.S. RDA HAS NOT BEEN ESTABLISHED

**THE FOOD AND NUTRITION BOARD OF THE NATIONAL RESEARCH COUNCIL RECOMMENDS THESE DAILY INTAKES OF THESE ESSENTIAL TRACE ELEMENTS AND ELECTROLYTES AS BEING WITHIN THE RANGE REQUIRED IN THE DIET OF AN ADULT

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Components of the Food For Life Weight Management System

Calorie Reduction Programs

Users of the Food For Life Weight Management System may choose from two easy-to-follow programs: The Regular Program and The Physician Monitored Program.

The Regular Program is an 800-calorie program. It is based on three servings per day of the Food For Life Meal Replacement Formula plus a selection of approximately 400 calories of food from a Winning Foods List. This list contains prepared frozen entrees, easy-to-fix recipes and a "free" food listing of low-calorie snacks. This is our most widely used program and users will experience an average weight loss of 2 to 5 pounds per week.

The Physician Monitored Program is a 420-calorie modified fasting program. It is based on three servings per day of the Food For Life Meal Replacement Formula as the exclusive source of nutrition while being monitored by a physician. Users of this program may also choose a limited amount of snacks (80 calories) from the "free" foods on the Winning Foods List. The program is recommended only for those who have large amounts of weight to lose (30 pounds or more) and wish to lose the maximum amount of weight in the shortest possible time. In clinical trials patients following this program have an average weight loss of 16 to 20 pounds per month. As users of this program near their weight-loss goal they are required to convert to the Regular Program so that a period of adjusted food-related behavior is included.

Behavior Modification Program

Changing eating habits that result in surplus caloric intake is one of the most important factors linked to long-term, successful weight management. The Food For Life Weight Management System provides this component through the Control for Life™ Learning Program. It is a unique, self-study system designed to help build commitment, replace unwanted food-related behavior, and develop a new, higher

level of self-control. Control For Life is not complicated, requires no special counseling or support, and best of all, it's very effective. The program includes everything required for positive change, including self-evaluation and skill-building techniques...plus audiocassettes to help, even while engaged in other activities.

Including Increased Activity

Many people feel they have no control over their metabolism. The truth is that the metabolic rate can be raised simply by increasing the level of activity. When the rate of energy expenditure is increased, the rate of weight loss can be increased and a more solid foundation for maintaining weight loss is established.

The activity components of the Food For Life Weight Management System are the Set For Life™ Activity Programs. Users can choose from a simple walking program or the more advanced Set For Life Body Shaping Program.

This program is built around a unique device specifically designed to be used with the Food For Life Weight Management System. Regardless of the current level of activity, Set For Life Activity Programs are both easy and effective.

Built on a Foundation of Personal Support

The Peer Support Program

We believe that losing weight should not be a lonely experience. Studies have shown time and again the importance of peer support to aid in reaching weight-loss goals. Food For Life Counselors are available to work directly and personally with their customers throughout the weight-loss program and beyond. The Counselor has been trained to provide helpful information, to help establish a supportive circle of friends and loved ones, and if your patient chooses, can include him or her in support groups made up of others who share common problems and goals.

NOTE: For additional information on Food For Life Programs see the Food For Life Program Guide.

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Recommendations and Monitoring Guidelines

The Validity of Very-Low-Calorie Diets

For people with significant amounts of weight to lose (25-25% over ideal weight), very-low-calorie diets are now recognized as a valid and often preferred method of treatment.

The well-formulated, nutritionally complete, very-low-calorie diets of today have been extensively clinically tested and used successfully in physician and hospital-directed programs for over ten years.

Very-low-calorie diets have proven to be extremely flexible in that they can be combined with regular food or used as the exclusive source of nutrition. When used as the exclusive source of nutrition, the initial rapid weight loss is very motivational and helps to maintain a high level of commitment.

Only You Know What is Best for Your Patient

As a physician, you are the person best qualified to determine the program most appropriate for your patient and the degree of monitoring required. Although your patient may have already selected a program, we are requesting your help. If your patient has selected a modified fast and you feel it is not appropriate for them, the 800-calorie program may represent a suitable alternative. Regardless of the program selected, we strongly recommend three servings per day of the nutritional formula to insure that 100 percent of all required nutrients are provided.

Recommended Tests

We recommend the following laboratory test be administered prior to any patient embarking on a very-low-calorie diet (VLCD):

Blood

Complete Blood Count (CBC)
Blood Lipid Profile

Serum Sodium
Serum Potassium
Creatinine
Uric Acid
SGOT
Serum T4

(ONLY if clinical hypothyroidism is suspected)
Urinalysis for proteinuria
Pregnancy Tests

Electrocardiogram

A standard 12-lead ECG should be obtained as part of the pre-diet physical examination. Some physicians recommend an additional ECG weekly or after a 30-pound weight loss.

In the obese patient without complicating disease or medication, additional testing during the course of weight loss need be obtained only if suggestive signs or symptoms warrant.

Side Effects

Occasional side effects have been reported in association with the use of a VLCD. In general, these symptoms are mild and transient.

Fatigue
Cold intolerance
Headache
Orthostatic hypotension
and, with less frequency, halitosis, dry mouth, mouth ulcers, dry skin, nausea, vomiting, constipation, diarrhea, epigastric discomfort, flatulence, muscle cramps, amenorrhea, temporary hair loss, and decreased libido.

Most symptoms subside after the initial phase of dieting or upon resumption of a normal eating pattern. Many of the side effects can be avoided by maintaining adequate fluid intake (i.e. two liters of water or non-caloric low-sodium, decaffeinated liquid).



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Medication

A significant reduction in the degree of obesity can have beneficial effects on patients with some chronic diseases, including non-insulin dependent diabetes and hypertension. Therefore, a major reduction or elimination of medication may be required, particularly during the period of active weight loss. Medication levels and associated signs and symptoms must be closely monitored in these patients.

Insulin

Type I diabetics should NOT be treated with a VLCD. Type II diabetics may have oral hypoglycemia medication discontinued at the onset of the VLCD program. Frequently insulin may be discontinued at the onset or within three days of VLCD use; thus, it may be advisable to hospitalize such patients during the initial treatment to allow monitoring of glucose levels and insulin requirements. Keep in mind that outpatient control is less certain, since unreported noncompliance by the patient (i.e. failure to adhere to the VLCD program) may require a return to insulin therapy.

Laxatives

Your patient should be informed that frequency and content of stools will be reduced. If the patient has a history of constipation or requests laxatives, it may be desirable to prescribe a non-caloric bulk laxative periodically.

Refeeding

A reasonable program of refeeding should be implemented after being on any weight-loss diet and in particular after a low-bulk VLCD program. The addition of conventional foods and foods with a high fat content should be modest and gradual. Overeating after a period of using low-bulk, low-calorie products is to be avoided.

The Food For Life Program Guide includes a Winning Foods List to aid in refeeding and long-term weight maintenance.

General References

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NUTRITION INFORMATION			
SERVING SIZE	2 LEVEL SCOOPS (42.5 g)		
SERVINGS PER CONTAINER	16		
1 SERVING			
CALORIES	420		420
PROTEIN	15 GRAMS		48 GRAMS
CARBOHYDRATE	10 GRAMS		34 GRAMS
FAT	1 GRAM		3 GRAMS
IRON	600 mg (13 g)		1800 mg (19 g)
DIETARY FIBER	1.3 GRAMS		4 GRAMS
PERCENTAGE OF U.S. RECOMMENDED DAILY ALLOWANCES (R.D.A.)			
	PER SERVING		PER DAY (2 SERVINGS)
PROTEIN	30		100
VEAMIN A	35		100
VEAMIN C	35		100
VEAMIN E	35		100
VEAMIN B ₆	35		100
VEAMIN D	35		100
VEAMIN K	35		100
VEAMIN B ₁₂	35		100
FOLIC ACID	35		100
VEAMIN D ₂	35		100
PHOSPHORUS	35		100
DIETARY FIBER	35		100
MAGNESIUM	35		100
ZINC	35		100
COPPER	35		100
IRON	35		100
PANOTIC ACID	35		100
VEAMIN K	22.3 mcg		67 mcg
VEAMIN B ₁₂	670 mcg		2010 mcg
VEAMIN B ₆	1.3 mg		4 mg
CHLORIDE	600 mg		1800 mg
CHROMIUM	30 mcg		60 mcg
VEAMIN B ₁₂	30 mcg		60 mcg
VEAMIN B ₁₂	30 mcg		60 mcg
VEAMIN B ₁₂	30 mcg		60 mcg

The nutritional information for Cambridge Food For Life Super Oats and Cambridge Food For Life bars varies slightly. Ask your Consultant for complete information.

IMPORTANT NOTICE—PLEASE READ

Consult your doctor before starting these diets in particular, individuals who have heart and cardiovascular conditions, stroke, kidney disease, gall bladder disease, diabetes, gout, hypoglycemia, chronic infections, the very elderly, growing children, diabetic diets, or anyone under medical care for any other condition should diet only under direct medical supervision. Your doctor can advise you whether you have any of the above conditions or for any reason should not be on these diets or any other diet. We will be happy to work along with you and your doctor to see that you achieve the exact results desired. Pregnant women and nursing mothers should not be on any weight loss program.

Cambridge Food For Life products are designed for use as a sole source of nutrition for periods of not to exceed two consecutive weeks at any one time.

YOUR CAMBRIDGE FOOD FOR LIFE® CONSULTANT IS:

A taste for success!

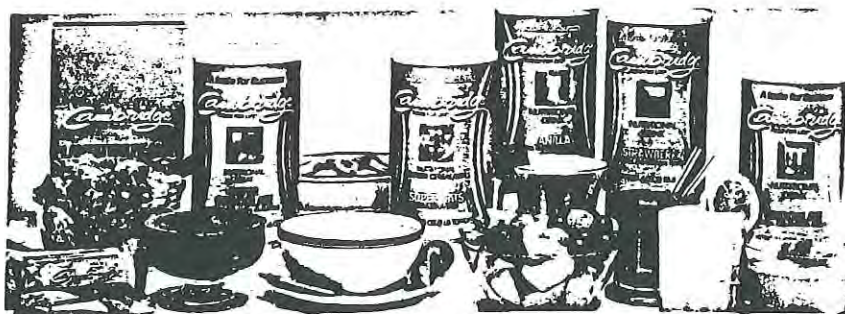
Cambridge
FOOD FOR LIFE

SCIENTIFICALLY
ENGINEERED FOOD FOR
OPTIMAL HEALTH, NUTRITION,
AND WEIGHT REDUCTION

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**...not just a liquid!**

The Cambridge Food For Life Nutrition formula, so unique it has been patented worldwide, is the cornerstone of the Food For Life Weight Management System, and is available in a variety of products:

- Delicious drinks
- Hearty, high-fiber cereal
- Satisfying soups
- Rich, chocolaty pudding
- Nutritious bars

The Food For Life Weight Management System offers four program options to put you in control and keep you in control.

PROGRAMS

FAST START PROGRAM — With the Fast Start Program you can reduce up to 15 pounds in just two weeks. You use the Cambridge Food For Life formula as your exclusive source of nutrition. If you have no pre-existing medical conditions, you may use the product without medical monitoring for a period of up to two weeks.

PHYSICIAN MONITORED PROGRAM — Recommended for those who have large amounts (30 pounds or more) of weight to reduce, this program will result in a maximum amount of weight reduction in the shortest possible time. In clinical trials the average weight reduction for those on the Physician Monitored Program was 16-20 pounds per month. In this program the Cambridge Food For Life formula is the exclusive source of nutrition, and medical monitoring is required.

Both the Fast Start and Physician Monitored Programs can be used as a way to "get off to a fast start" before embarking on the Regular

Program. The initial rapid weight reduction has been found to be the most effective way to gain control over your eating habits and reduce weight.

REGULAR PROGRAM — This program is ideal for low, moderate, or high weight-reduction goals, and can be adapted to any lifestyle. You can reduce 2 to 5 pounds per week on the Regular Program. These delicious formula drinks, soups, or bars combine with 400 calories of regular food for a total of 800 calories per day. Your regular food choices will consist of entrees or snacks selected from a specially prepared list called *Winning With Foods*.

WEIGHT MAINTENANCE PROGRAM — Designed for people who are satisfied with their current weight but are concerned about getting all the nutrition their body needs or those who have recently reduced their weight and wish to avoid regaining that weight. These Cambridge Food For Life meals a day, in conjunction with regular low-fat meals similar to those on the *Winning With Foods* list, will provide you with a full day's supply of required vitamins and minerals.

PEER SUPPORT

Peer Support is an integral part of any weight management program. The Cambridge Food For Life System is built on a foundation of personal support. Your Cambridge Consultant has personally experienced the products and programs, and is eager to share them with you.

Peer support includes:

- Helping you set your personal goal
- Providing encouragement and support
- Assisting you in setting up personal support groups

EXHIBIT D

- Teaching you various recipes for drinks, soups and desserts
- Maintaining records of your progress
- Introduction to your Partner in Progress (PIP)
- Helpful information and support during your initial use of the products and programs

CAMBRIDGE RETREATS

Unique to the Cambridge Food For Life Weight Management System are retreats. Held periodically throughout the country, these weekend retreats provide an opportunity for you to regain your commitment to weight reduction, weight management, or lifetime nutrition.

The ideal way to begin your Fast Start Program, retreats offer:

- Fun, low-cost get-away weekend in a resort environment
- Education and information on nutrition
- Behavior modification techniques
- Opportunity to begin a walking program
- Time to relax, with the support to begin your weight reduction program
- Hundreds of helpful hints to help you reach your goal

**BEHAVIOR MODIFICATION**

... without the mystery

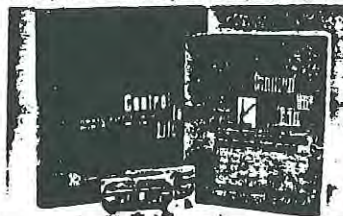
It's one thing to take weight off -- it is something else to keep it off. Unlike most weight reduction plans, the Cambridge Food For Life System includes the vital element of behavior modification designed to change your eating habits for life.

The Control For Life® Learning Program for behavior modification and self-control provides:

- Step-by-step, easy-to-follow guidelines to behavior change
- Tools for changing your undesirable eating behaviors

- Self-study system designed to help you build commitment
- Audiocassettes for repeated listening

With Control For Life, developing new behaviors is easy, even fun. And, you'll be in control for life.

**ACTIVITY PROGRAM**

Physical activity is very important in any weight reduction or weight management program. Research shows that an aerobic program of at least 20 minutes for a minimum of 3 times each week is one of the most effective and beneficial activity programs you can embark on.

When you increase your activity level and begin to exercise, you'll find you will:

- Have better control over your appetite
- Stay more easily committed to your long-term weight management program
- Improve your lean body mass
- Improve your cholesterol level
- Improve your self-esteem
- Reduce your anxiety and stress levels

Walking has proved to be an excellent form of aerobic activity... It's easy, it requires no special equipment, it's not hard on your body. Cambridge provides Walking Program guidelines to start you on your way.



EXHIBIT D

... treat your body with ultimate respect...

Think of your body like a nutritional puzzle—each nutrient has its own shape and plays a specific role in your total nutrition.

NUTRITIONAL BALANCE

There is a link between balanced nutrition and being overweight. If your plan does not provide all the nutrients you need, it will trigger hunger. Hunger leads to overeating . . . and overweight.

- Excess weight is linked to nutritional imbalance
- Hunger, leading to eating an excessive amount of calories, may be triggered by imbalanced nutrition
- The average person must consume 1800-2800 calories per day in conventional foods to obtain 100% of all vital nutrients
- Simply reducing calories to use up stored body fat is not enough; your body needs to be nutritionally balanced



Each nutrient fits a specific body need



Imbalanced nutrition can cause constant hunger

safe... simple to use, easy to enjoy... sensible

Based on nutritionally balanced products that take the guesswork out of nutrition, the Cambridge Food For Life Weight Management System enables you to maintain your target weight safely for life.

NEGATIVE CALORIC INTAKE

It's simple. If you consume more calories than you burn, you store the extra calories as fat, and you gain weight. Take in less than you need, and you burn fat.

- Depending on exertion, you burn 1500-2800 calories per day
- Consume more calories than you burn and you gain weight
- Burn more calories than you consume and you reduce weight
- Your goal is to consume fewer calories than your body uses

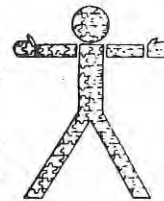


One pound of body fat = 3500 calories

THE ANSWER IS ...

Cambridge Food For Life nutritional products are formulated to meet 100% of your body's nutritional needs in the fewest calories possible.

- One of the most successful plans of all time
- More than 8,000,000 people have successfully used the program
- Contains a precise balance of protein, carbohydrate, and fat together with 100% of U.S. RDA for all vitamins, minerals, and trace elements, all in only 420 calories per day
- No plan is simpler, safer, or more effective
- Pioneer program in the VLCD (Very-Low-Calorie Diet) field



**NOWHERE ELSE CAN YOU GET SO MUCH NUTRITION
IN SO FEW CALORIES!**

EXHIBIT E

**TREAT YOUR BODY
WITH ULTIMATE RESPECT**
for a fraction of the cost of
clinic-consultant based programs

EXHIBIT E

Cambridge Food For Life® Weight Management System *gives you the answer to your dreams!*

- 100% of the U.S. RDA for protein, vitamins, and minerals plus trace elements and electrolytes: all essential vitamins and minerals you need every day for health and vitality. It's all there—everything but the calories!
- Fast, effective, safe weight reduction!
- A perfect foundation for life-long nutrition and weight management.
- A formula that satisfies—fights hunger—so easy to stay on—so easy to use.
- Contains no drugs or stimulants.
- 11-1/2 years of research and clinical testing by physicians and scientists.
- Personalized service and individual support to assure your success ... *and affordable.*

Would you like to know more?

• As a Weight Reducing Program:

This unique nutritional formula was created after 8-1/2 years of research and clinical testing. Its nutritional balance causes the body to burn up the maximum amount of its own excess fatty tissue in the shortest possible time.

• As a Lifetime Nutrition Plan:

Studies have shown that balanced nutrition, coupled with low-fat eating and exercise provides long-term medical benefits, such as

- ... *improved blood pressure*
- ... *improved heart and respiratory function*
- ... *improved energy*
- ... *lowered stress*



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EXHIBIT E

A summary of the Cambridge Food For Life Weight Management System

PRODUCTS

- High-Fiber Oat Cereal
- Creamy Tomato and Hearty Chicken Soup
- Rich, Chocolate Pudding
- Vanilla, Chocolate, Strawberry Drinks
- Great tasting nutrition/snack bars

PROGRAMS

Fast Start

reduce up to 15 pounds in two weeks

Physician Monitored

medically responsible approach for those with great amounts of weight to reduce

Regular

moderate weight reduction of 2 to 5 pounds per week
plus

a lifetime nutrition plan for those who want to achieve and maintain better health.

Including...

step-by-step, easy to follow tools for changing your eating behavior and adding activity to your life.

SUPPORT

Built on a foundation of personal support designed to suit your lifestyle.

Why Weight?

Call Your Cambridge Consultant Now!

EXHIBIT F



\$36 BILLION WILL BE SPENT ON DIET PRODUCTS & PROGRAMS THIS YEAR!

HOW CAN YOU TAKE ADVANTAGE OF THIS OPPORTUNITY? (SEE WHEN BAD NEWS IS GOOD NEWS FOR BUSINESS, PAGE 11)

53 MILLION ADULT AMERICANS WILL GO ON A DIET THIS YEAR

consume diet
foods 67%



DIET FACTS

Two-thirds or 53 million adult Americans will go on a diet this year. Half of American women go on a diet each year. This year, Americans will spend \$36 billion on diet products and programs. The opportunity has never been greater, the diet market has never been larger!

Cambridge has been on the leading edge of the diet industry over the past decade and has touched over seven million people who achieved a better quality of life through the use of our products and programs. As we reposition our company to target health, nutrition, and weight management, Cambridge will have a more substantial niche in this lucrative industry.

As we rebuild this company for the 90's you have an excellent opportunity to get in on the ground floor of this explosive industry. There is no limit to what we can achieve. Guided by our vision of continual improvement and committed to achieving good health and prosperity, we can make this a fabulous new decade for Cambridge.

We at Cambridge headquarters pledge our support to you, our customer and our sales force. Your success is our #1 priority.

RESTATEMENT OF MARKETING TOOLS

For your review we have summarized some of the marketing tools available.

Prospecting Tools:

- Cambridge Prospecting Flyer
- Cambridge Prospecting Brochure
- Cambridge Point of Sale Poster (available 3/25/92)
- Breakthrough Newsletter (3 issues, 1992)
- Homebased Scripts (available upon request) We have increased daily sales as much as 20% with them!

packages for your local use. For information we require to give to your local news media, see Media Message, page 11.

- Media Packages for Retreats
- Videotape. Andrea Ileo and Lynne Murphy on Cable TV is available as an example of the coverage you can obtain at no cost to you. It is also a good example of how to present the benefits of Cambridge. Other examples: Donna Dugan's business cards (see Models of Excellence) and ad slick (see Tributes). Also see Janice Jones' Classic Marketing Techniques (page 11 in this issue).

Continued on page 10

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EXHIBIT F



THE ART OF STRATEGIC VISION®

FOOD FOR THOUGHT

We hope that you found our new creation, "Food for Thought", useful. We have been hearing requests for more communications for all Leaders and Consultants—more tips, news, and practical sales "how-to's". Food for Thought was our attempt to answer many diverse questions quickly and simultaneously. In addition, it was a way to provide you with some quick marketing ammunition, such as the comparison charts and "10 Ways to Increase Sales Volume—Now!"

Our intention is to use Food for Thought as a vehicle to give you quick responses to issues that concern you. Food for Thought provides a vital link between the home office and the field because our BREAKTHROUGH newsletter has been elevated to function as a more comprehensive marketing tool and organizational development vehicle.

COMMUNICATION IS CRITICAL

Breakthrough has always been important in communicating with you. In more re-

cent years, Breakthrough was used to provide recognition for successes and to announce new products, promotions, and policies.

BREAKTHROUGH AS A STRATEGIC DOCUMENT

Since joining the Cambridge family, we have expanded the scope of Breakthrough to include in-depth reporting on all aspects of our business. As such, the new Breakthrough newsletter has become a critical and cost effective vehicle to forge our future together.

It is deliberately designed to set the tone for unifying our entire organization and to help us focus on the direction we wish to take in actualizing the dreams of our entrepreneurial spirits.

Through our expanded scope and in-depth reporting, Breakthrough delivers essential training and marketing concepts (see BACK TO BASICS, Nov-Dec issue, and Models of Excellence, Sept-Oct, Nov-Dec, and this issue; specific marketing how-to's, see MEDIA MESSAGE in Consultant's Corner, page 11, this issue). Breakthrough makes visible and concrete the training and development taking place in the field through extensive use of photos, drawings, and other illustrations.

All the articles are designed to be informative, inspirational, and to help you improve your business. For example, this issue includes a working card system to help you manage many customers more easily. (See Models of Excellence, this issue).

Breakthrough is signifi-

cant as a recruiting device—it communicates to potential new customers and Consultants that we have substance and purpose.

Breakthrough is a testing ground where we create primary materials for our training programs. In each issue of Breakthrough, we address the current issues in the field. We also include program position papers and share some of our best Retreat handout materials.

Keep your issues of Breakthrough and order back issues to use as handouts. Use them as a reference tool, as a sales tool, as a recruiting tool, and as a working manual to design your personal business plan. Read them at your leisure, and read them in-depth. Breakthrough is designed as a strategic document to help you leverage your time and energy and to help you break through to success.

BREAK THROUGH WITH STRATEGIC PLANNING

If you're failing to plan, you're planning to fail.

I strongly believe that the growth of Cambridge is based on each of you being connected to your own central concerns and desires and out of those, creating your unique goals and objectives and committing to specific step-by-step actions to plan your work, and work your plan. Successful people and successful organizations create strategic visions and develop strategic plans based on these principles.

Don't settle for what is. Take control of your life and make the commitment to be-

come an active participant. All of your dreams and aspirations can be realized if you are willing to make the commitment. So, let us help you move forward. Set your goals and make sure you are getting the support you need to succeed.

Linda

Linda Hevern
Vice President

Ask us about Visionary Leadership training in your area.

Most people plan their vacations better than they plan their lives—Mary Kay Ash

As a member of the Board and Vice President of Professional Development for the American Society of Training and Development, Linda has created many training programs for people in business and brings to you some of the most powerful breakthrough insights that came from working with some of the best in the business over the last decade. Her Visionary Leadership series received national acclaim and is based on powerful planning models that leverage organization creativity and mobilize people to move forward toward inspired performance and high achievement.

The Art of Strategic Vision



©October 1987 Linda Pedrazzini

Complaint

EXHIBIT F

Models of Excellence

A SIMPLE SYSTEM FOR SUCCESS

Following a successful 21-year career with McDonnell Douglas, Donna Dugan joined Cambridge over 10 years ago, and has been a successful member of our Circle of Champions since 1985. Through trial and error and much hard work, Donna has developed a tracking system for new and ongoing customers that works. She manages many and keeps it short and simple (KISS) with a system she designed to work smart, not hard!

Consistency: Donna works her Cambridge business on an 8-10:00 a.m. schedule, Mondays, Wednesdays, and Fridays. This time is set aside for telephone calls.

Support: Donna provides continued support to her customers not only during their weight loss program but during their weight maintenance program as well.

Product Knowledge: Donna continually studies the weight loss industry, including nutrition and behavior modification.

Persistence: "Ninety-nine out of 100 people don't call me for help so I call them every Monday, Wednesday, and Friday," says Donna. "Throughout the first two weeks on the program, I am there for them. People don't like to diet. I know that. We definitely work in the hospital, and it's not the maternity ward," she states dryly. Recognizing that, once Donna starts a customer on the program, she works with them, providing support wherever possible to help them reach their goal.

Tools: The backbone of her business, Donna has created some valuable tools which allow her to handle a large number of retail customers in a minimal number of hours each day she works the business.

Donna uses a 3-card system for tracking new and ongoing customers, and shares her simple, straightforward system here:

Three Card System

New Customer—Hot Pink Card

For new customers, Donna makes a hot pink "New Customer" card. Customers are asked to call 8:00-10:00 a.m. on Mondays, Wednesdays and Fridays. When they don't call Donna, she calls them.

Ongoing Product Needs—Green Card

If customers call her when they have a challenge or a question, Donna makes a green card, letting them know she will call them when she sees they are getting low in product to remind them to reorder.

Continued Support—Yellow Card

If a customer wants continuing support 1, 2 or 3 times each week, or wishes to join her support group, Donna makes a yellow card.

The tool that makes it work is basic — a cardfile box with two sets of dividers

SET 1

Tabbed 1-31
(for each day
of the month)



Continued on page 4

EXHIBIT F

A Simple System For Success (Continued from page 3)

SET 2

Tabbed
Jan-Dec



This "tickler" file means no more forgotten customers, letting one slip by without a call or reminder from you. It's the simplest, most effective system you can use. These 5" x 8" dividers can be purchased in any office supply store. Why 5 x 8? It allows adequate room to make notes and write legibly so you are able to decipher your notes at a later date.

DONNA'S SUPPORT SYSTEM



Two weeks into their program, once a new customer is ready to purchase additional product, Donna presents them with 4 pages of detailed information about her support system:

The Telephone—Lets her customers know she's just a phone call away.

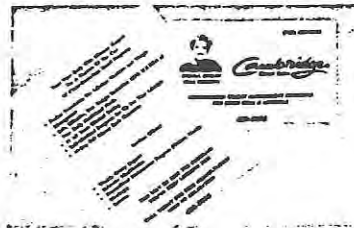
Support Group—Gives her customers information about her weekly support group which may mean the difference between success and failure to a customer.

Behavior Mod—Additional support on a weekly basis featuring modules created around the Control For Life program.

A copy of these informative pieces may be obtained by calling the Cambridge Order Desk, 1-800-4-HEALTH.

To elicit commitment from her customers, Donna now charges for these support programs—a 6-week program costs \$30. If they complete the program, staying with their commitment, she rebates their money plus they receive one free can of product.

BUSINESS CARDS



Key to Donna's success is positioning. She positions herself in Houston as a leader, an expert in the field of health and nutrition. One way she positions herself is through her business card. Donna is a pro, and wants recognition as a pro, which led her to now use a business card featuring her photo and she runs a local ad using this same photo. Over time, this type of card, coupled with similar advertising, builds recognition.

Her fold-over card provides more space to deliver her message. Think of your card as a billboard—and blast your message. Long after you're gone, when your potential customers come across your card, is it leaving the message you want? Do they know who you are, what you do, and more importantly, what you can do for them?...Donna's card says it all!

Last, but not least, Donna uses a small clear mylar sticker with this simple message on each can lid:

Have Questions?
Need Support?
Need Product?
Call Donna...480-9095



Donna's tools are basic, and they work. She handles a large retail business, yet still has time to devote to her organization.

EXHIBIT F

NATURAL/TARGET MARKETING

Let's talk target marketing. Target marketing is where it's at in the 90's. This column will feature specific target marketing ideas to help you build your business over the next year.

What is target marketing? Target marketing is pinpointing special groups of people that share commonalities.

Who is my target market—and what are the needs of this market? Seeking out a particular market segment (e.g., new mothers, beauty consultants, professional women, etc.), you begin to specialize in this particular group of people, learn to understand their specific needs, and talk their language. And in doing so, you learn how to get the best return for your effort.

Target markets come in all shapes and sizes and are typified by a wide variety of characteristics and may be classified by business, profession, age, special interest, etc.

In targeting a market, a group should be:

1. Identifiable and accessible
2. Identifiable by common characteristics (age, income, sex, hobbies, etc.)
3. Identifiable by needs, e.g., new mothers/health and nutrition; professional women's groups/nutrition-fitness-health-weight management; retired/health; etc.
4. Connected through a system of communications or network that will foster referrals from one group member to another (meet monthly, share the same newsletters, belong to the same association or group)

To help you approach your markets systematically, here are some pointers:

- | | |
|-----------------------|--|
| Identify your market | —Look for common needs |
| Research your market | —Use the library to obtain information on your selected group (see Encyclopedia of Associations) |
| Penetrate your market | —Attend network meetings |
| | —Join their associations, clubs, or chapters |
| | —Subscribe or obtain copies of their newsletters |
| | —Find out their company affiliation |
| | —Check out their trade journals |
| | —Work their trade shows |

Once you do your homework and spend the time to work this

market, the benefits begin to come back tenfold. Your phone begins to work both ways—they will call you, seeking you out.

Your target market should grow out of your natural market, that is, it should naturally flow from your interests, concerns, profession, or affinity. For many of us, professional women are our natural market, and therefore, an excellent market to target.



THE PROFESSIONAL WOMAN/ YOUR NATURAL MARKET

An excellent natural market to target for the Cambridge Consultant is the professional woman. Demographically, Cambridge will be targeting this entire group, but locally Consultants should pinpoint a specific group within this larger group. Examples of specific groups that organize on a local basis are: real estate saleswomen, teachers, nurses, nutritionists, small business owners, financial women, secretaries, retail managers, association executives, all women who have more money than time.

By narrowing down a broad category to a specific group or groups, you can more effectively focus on their needs, and can target your message to those needs. Attending their meetings, joining their networking groups, or attending their association meetings, you will be perceived as a peer who understands their needs.

The first step to finding and targeting a specific group is research. Check your local newspaper or the library to find out what groups meet locally. An excellent resource for information about associations is the Encyclopedia of Associations, which lists the state associations and where they meet. A few phone calls will give you the information you need.

Local groups you might look into are:

- 1) Local Chamber of Commerce
- 2) NAPS (National Association of Professional Saleswomen)
- 3) NAWBO (National Association of Women Business Owners)
- 4) Association of University Women
- 5) American Association of Nurses

Call for their meeting schedules. Let them know you are considering joining (perhaps as an associate member) and ask to attend a meeting as a guest.

Continued on page 12

Complaint

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EXHIBIT F

TRIBUTES

Recognition based on combined volume for October, November & December 1991.

TOP CIRCLE OF CHAMPIONS



- | | Name | Location |
|----|---------------------|---------------------|
| 1. | Betty & Paul Parker | La Mesa, California |
| 2. | Donna & Bob Dugan | Houston, Texas |

TOP CONSULTANTS



- | | Name | Location |
|----|------------------------|-----------------|
| 1. | Stephen & Arlene Reiss | Bronx, New York |
| 2. | Vickie & Trina Ngo Vu | Houston, Texas |

TOP AREA DIRECTORS



- | | Name | Location |
|----|----------------------|--------------------------|
| 1. | Kay & Dan Marovich | Rancho Palos Verdes, Ca. |
| 2. | Millie & Billy Chron | Burton, Michigan |

TOP PERFORMING ORGANIZATIONS

- | Rank | Name | State |
|------|-----------------------|-------|
| 1. | Betty & Paul Parker | CA |
| 2. | Donna & Bob Dugan | TX |
| 3. | Janice & Mel Jones | MA |
| 4. | Barbara & Gary Lazar | FL |
| 5. | Kay & Dan Marovich | CA |
| 6. | Millie & Billy Chron | MI |
| 7. | Alex & Ray Boswell | FL |
| 8. | Bill & Betty Gray | CO |
| 9. | Heidi & Mike Kirkland | CA |
| 10. | Anne McAlister | AL |

TOP DIVISION MANAGERS

Photo
Not
Available

- | | Name | Location |
|----|----------------------|-------------------------|
| 1. | Gerry Davis | Cleveland, Ohio |
| 2. | Ruthann & Bob Morris | Chula Vista, California |

Special thanks go to these top Consultants (combined volume, Aug. thru Dec. 1991) who are building their businesses while we build ours!

TOP UNIT LEADERS

Photo
Not
Available

- | | Name | Location |
|----|---------------------|------------------|
| 1. | Ramona & Leon Steel | Tigard, Oregon |
| 2. | Patricia Foreman | Orlando, Florida |

- | Rank | Name | State |
|------|--------------------------|-------|
| 1. | Stephen & Arlene Reiss | NY |
| 2. | Marie Coyle | PA |
| 3. | Vickie & Trina Ngo Vu | TX |
| 4. | Martin Chang | CA |
| 5. | Clorinda Leon | FL |
| 6. | Ruby McBrayer | MS |
| 7. | Patricia & John Hutchens | LA |
| 8. | Gloria & Todd Archbald | TX |
| 9. | Anna Reilly | NJ |
| 10. | Ruth Saulnier | WA |

1596

Complaint

EXHIBIT F

& TRIUMPHS



Cambridge® Food For Life Programs

Just One Day With Ultimate Choice
To a Woman At The Cost of One Another's Best Program

- Proven Foundation For Lifetime Nutrition and Weight Management
- Safe, Effective, Fast Weight Reduction - 2000 CALORIES of Your Daily
- Recommended Needs
- 12-18 Year Clinical Testing
- Individualized Program Set Up For Your Lifestyle
- Money Back Money Back Guarantee

SERVICES OFFERED

- Weekly Group Support
- Personalized Nutrition Program
- Individualized Coaching
- Seminar Motivation
- Success

THIS MAY BE JUST THE PROGRAM YOU'VE BEEN LOOKING FOR
CALL TODAY FOR YOUR CONSULTATION WITH NO OBLIGATION

480-9095

Donna Dugan - #1 in 1991

According to Donna Dugan, Some people make it happen! Some people watch it happen! Some people wonder "what's happening!" The choice is up to you.

Donna wants to know who wants to build a business. She tells people who are going to "make it happen" to please call and let her know.

Local Visibility Through Local Efforts—Cambridge Is Back!

Many of our Leaders have been creating marketing experiments to expand their business. Here is some of what is being developed and achieved.

Local Radio: Janice Jones has been broadcasting nutritional information and talking about her Cambridge business on a local radio show beginning in January. Two disc jockeys at the radio station are on the program, losing weight, and talking it up on the air!

Trade Shows: Joy Schlender of Orlando, Florida, called us full of excitement about a trade show she participated in for the health industry people. She provided samples of the product and handed out Cambridge literature. She reported a great turnout that produced a lot of interest in Cambridge products and programs.

Cable TV: "In the ten years I've been in this business, the

best response I've received from any advertising or promotional has been from a local cable show called "Farbustlers", says Andrea Ileo after she and Lynne Murphy appeared on Cable TV in Richmond, Virginia, to talk about Cambridge. Not only was the visibility free of cost, but they now have a professionally prepared videotape of their presentation. (A copy of this videotape is available on request by calling 1-800-4-HEALTH).

Two of Andrea's successful new customers, April Hargrove and Kim Pell, discovered Cambridge through the show and are so thrilled with their results that they are already sending her referrals. This is what they have to say:

"You were right about the energy level. I've been coming home from work and cleaning my house!", says Kim. Said April, "I don't see how anyone could have a problem with this diet. It's so easy!"

Andrea Ileo has good reason to show off...she is a product of the product!



Ten years ago Andrea went from 170+ lbs. to...



WOW!

Complaint

123 F.T.C.

EXHIBIT F

CAMBRIDGE CUISINE

PLANTATION PEANUT BLIZZARD

Dana Marshall, Los Angeles, first introduced Cambridge pies at the Los Angeles Cambridge Direct Sales Academy. Susan Weinstein, Orlando, took the recipes and introduced them to the Florida contingent where they have become a mainstay of their programs.

Tip: Make the pie crust ahead of time and give it time to cool before filling. This allows for less setting time.

Crust: Spray pie plate very lightly with Pam Butter spray*. Sprinkle with 1 scoop Super Oats and tap lightly to spread the Super Oats up the sides. Bake at 400 degrees for 4-5 minutes or till golden brown. Remove crust from oven and spray with water, using a mister.

Filling: 11-12 oz. cold water
1/2 cup hot water
2 packages Knox unflavored gelatin
3 scoops Super Chocolate
3 packages Equal
Peppermint or Peanut Butter flavoring
*1 spray = 2 calories

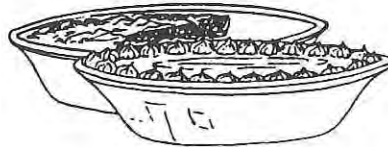
Step 1: Mix 4 oz. cold water with 2 pkgs. Knox unflavored gelatin. Set aside.
Step 2: Pour 7-8 oz. cold water in blender, add 3 scoops Super Chocolate and blend until mixture is super thick.
Step 3: Add 1/2 cup hot water to gelatin mixture; add gelatin mixture to Super Chocolate mixture in blender. Blend.
Step 4: Add 3 packages Equal and one of the following flavorings to taste (1/4 tsp-1/2 tsp).

For Chocolate Mint Pie:
Add Peppermint Patti Flavoring

For Peanut Butter Pie:
Add Peanut Butter Flavoring
(adds 7 calories)

Step 5: Pour mixture into crust, and refrigerate for at least one hour.

1 full pie = 2 Cambridge servings



A new taste sensation, courtesy of Elaine Newbill and Laurelle Pittman, this thick, rich and creamy shake is not only delicious but leaves a surprise of crunchy nuggets at the bottom of your glass.

7-8 oz. cold water
Ice
1 scoop Rich Vanilla Shake (OCD formula)
1 Plantation Peanut Bar

Add water and enough ice to blender to equal 12-14 oz.; blend. Add Rich Vanilla Shake; blend. Break up 1 Plantation Peanut Bar and add to mixture; blend again. Pour into frosty glass and enjoy this delicious treat!

HOT CHOCOLATE

Perfect for cold nights...kids love it for breakfast, too! Hot and nutritious, it's great for the entire family—company, too!

8-9 oz. hot water
1 pkg. Equal
2 scoops FFL Chocolate Drink
Cinnamon

Mix all ingredients in blender (be sure to vent lid on top of blender to allow pressure to escape while blending hot beverage). Pour into cup, and enjoy.

Even if you are not a chocoholic, this hot drink hits the spot!



CAMBRIDGE CAPUCCINO

So simple, but oh, so nice!

Prepare:
6 oz. hot coffee in an 8-10 oz. mug

Add:
1 pkg Equal

Top with OCD Vanilla Topping (recipe follows)

Topping:
8 oz. cold water
1 scoop OCD Vanilla Shake

Mix in blender. Spoon on top of coffee. Makes enough for 4 servings.

EXHIBIT F

CAMBRIDGE PRODUCTS

BUSINESS BUILDER



New!
101 Hot Tips: For Success With Your Cambridge Weight Management Program

101 Tips to help your customers STAY on their program! (audiocassette & text)

- Motivational, fast-paced
- Helpful tips to keep you committed
- Dozens of quick recipe ideas
- Ideal for new customers
- Perfect for anyone recommitting to their nutrition program

Build your business:

- Having a meeting? Use as an invitation
- Handout during your support meetings
- Mail to your active customers
- Offer to customers as an incentive to restart their program
- Ideal follow-up for Retreat attendees

101 Hot Tips Code# 630511 \$5.00
FREE with your product order while supply lasts!

FIRST TIME AVAILABLE!

Assorted Flavoring Packs

Variety 6-packs of flavorings are now available in the following assortments at a new low price:

Assorted Pack #1	Almond Coconut Peanut Butter Pistachio Vanilla Vanilla Custard
Assorted Pack #2	Irish Cream Peanut Butter Peppermint Pistachio Vanilla Vanilla Custard

Mix FFL Vanilla with Pistachio or FFL Chocolate with Peanut Butter. Or, for peppermint stick flavor, mix FFL Vanilla with hot water and Peppermint Patti. And, for a different twist, add Irish Cream to your coffee for Cappuccino (see Cambridge Cuisine, page 8, this issue).

Assorted Pack #1	Code# 756100	\$6.00
Assorted Pack #2	Code# 756101	\$6.00

APPETITE SATISFIER

Aloe Fresh Gum

Calories: 2 calories per square
Caloric Source: Carbohydrates
Derived From: Jerusalem artichoke, Inulin

What Makes It Work? Is It All In My Mind?

No, it's not all in your mind. Physiologically, your body receives a small supply of fat free fuel to temporarily satisfy your hunger. Psychologically, it works when you realize that the point at which you want food may not really be hunger related, but it is your mind telling you you want food because you smelled, saw, or started thinking about food.

When To Use Aloe Fresh Gum

1. When you find yourself reaching for conventional



food...STOP! Take 2 squares Aloe Fresh Gum and substitute another activity or listen to the relaxation side of your Control For Life audiocassette. Because each Aloe Fresh square contains a small amount of calories, when you are sole sourcing, the added carbohydrate may increase your appetite. We recommend you use Aloe Fresh Gum only if you have experimented with gum in the past and it did not make you feel hungry.

2. When you transition from the Fast Start (Sole Source) Program to the Regular Program, chew 2 squares of Aloe Fresh

about every 2 hours. It can help satisfy you between meals.

3. When you are on the Regular Program or Maintenance Program, chew Aloe Fresh Gum when you feel hungry. For most people, this occurs about four hours after eating a small meal of conventional food or Cambridge product. Some people use Aloe Fresh Gum to satisfy a sweet tooth or have a desire for chewing. 60 squares per bottle.

Regularly \$10.50/bottle

Code# 785502

Complaint

123 F.T.C.

EXHIBIT F

NEW CONSULTANTS

- IFSOs (Initial Fast Start Orders). A one-time-only opportunity to set up inventory at a discounted wholesale cost. Order must accompany Consultant Agreement.

IFSO C: for the full-time Consultant. Package costs the Consultant \$1004.60 (\$1856.00 value) and yields a \$848.30 profit.

IFSO B: for the part-time Consultant. Package costs \$509.89 (\$900.00 value) and yields \$389.90 profit.

IFSO A: for the wholesale user. Package costs \$206.30 (\$368 value) and yields \$164.65 profit.

- Academy 101, Vol 1: Personalizing your Cambridge Business. A how-to-build-your-own Cambridge business successfully.

NEW CUSTOMERS

- Fast Start Success Plan (3 cans FFL, 4 flavorings and 32-oz chug mug)
- Regular Success Plan (2 cans FFL, 4 flavorings, 32-oz chug mug, plus one box of bars)
- 101 Hot Tips—audiotape for program success
- Control For Life tapes and self-study workbook to help you gain awareness and modify behavior, complete with guided relaxation and music audiocassettes.

CONSULTANTS & LEADERS

- Leadership Retreats and Trainings—available by special arrangement. A Cambridge program designed to meet your special needs for success and to motivate others to achieve their own inspired performance.

UPDATE: JANICE JONES...DIRECT SALES AT ITS BEST! (see Models of Excellence, Nov-Dec issue)

Using a variety of classic marketing techniques, Janice Jones has been highly successful repositioning herself and focusing on a more lucrative market, as well as using high powered media for the 90's. Here's what she did:

- Selected the type of market she was aiming for—Janice targeted those interested in nutrition, mainly professional women.
- Was flexible with her knowledge of the product and the use of the product. (This meant adapting her presentation to fit the needs of the person she was talking to.)
- Focused on using the product with conventional food.

Janice also uses a variety of ways to reach people:

- Yellow Pages

- Bridal Shows (mostly young people)
- Interviews on Cable TV about nutrition and fat-free foods
- Radio show—Broadcasts weekly about nutrition and her Cambridge business
- Women's network—Attends luncheons hosted through a local college once a month. At these functions, Janice distributes brochures and her business cards.
- Communication—Talks to people about what she does.
- Keeps in touch—Stays in contact with the customers she starts on the product (even if they are not currently using it). As Janice says "you never know what will trigger them to call." She stays in touch by:
 - Telephone
 - Monthly mailings

Janice emphasizes that not only must these things occur all the time, they must be used in conjunction with one another if you're going to make your business prosperous.

TASK FORCE REPORT

These suggestions provided by our task force on advertising and visibility for making yourself and your business visible are simple—and they work!

- | | |
|---------------------------|---------------------------|
| Business cards with photo | Fairs, Malls, Trade Shows |
| Flyers | Brochures |
| Pins/Buttons | Newsletters |
| Newspapers | Yellow Pages |

Ruth Ann Morris, Chairperson of our task force, designed a flyer which she distributes to beauty salons, banks, bridal shops, and baby shops. She requests permission to leave several flyers letting the manager know she will pay \$10 for each referral from the shop. Attached to each flyer are several of her business cards. And Ruthann says, "Business is great."

EXHIBIT F

BAD NEWS IS GOOD NEWS FOR BUSINESS!

The Professional Woman
(Cont'd from page 5)

Most of you know, more than most folks, that in our business "less is more". The fundamental truth in our business is when the economy is down, business goes up.

This issue is dedicated to helping you look at the reality of our business environment and what you can do to take advantage of the current opportunity. In our cover story, we supplied you some statistics that show you facts about our industry, and in this article, we are giving you the rationale for being optimistic as well as the wisdom of direct sales in the current economy.

BEING OPTIMISTIC

Some of us may feel discouraged by the downturn in the economy and the changing market place.

The Economy

A downturned economy is an ideal opportunity to make our Cambridge businesses flourish. Think about it. With the downturn in the economy, more people are looking for real value. At only \$1.33 per meal, our product is economical and gets results.

Time Means Money

With people working harder and longer hours, they have less time. Cambridge products mean quick and easy meal preparation and clean-up, and fewer trips to the grocery store. One quick phone call and your products are shipped the following day.

The Health Connection

What better way to take care of your nutritional needs than with Cambridge Food For Life products which provide 100% of your nutritional needs. Pressured with more work, people are becoming fatigued and burned out. Those who use Cambridge report high energy and even euphoria! The benefits of our high-quality products are real and substantial.

Health Insurance

As health care costs rise, it becomes increasingly necessary for everyone to take responsibility for their own well-being. Illness is no longer affordable. What better way to assure that people are obtaining all the vital nutrition for good health than the Cambridge products?

Image Counts

With more people looking for work, competition is keen. Looking and feeling your best is important and we know Cambridge products and programs help people look and feel their best.

THE WISDOM OF DIRECT SALES

Direct Sales flourish when we cannot depend on traditional institutions for support which forces people to become entrepreneurial and support themselves.

Employment

With unemployment num-

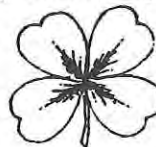
bers rising, what better time to invite more customers into the ranks of Consultants? People need work to earn money. As Donna Dugan so readily points out, it is possible to have a rewarding part-time job by simply working as a Consultant selling retail.

With only 13 active customers, you earn over \$500 per month; with 25 active customers, you earn over \$1000 per month; with 50 active customers, you earn over \$2000 per month. You can earn a minimum of \$40 for each active retail customer.

Mission: Share the Opportunity and Make Money With Your Good Works

The truly wonderful thing about working your Cambridge business and bringing others into the business is that it is possible to simultaneously earn your living and follow "a path with a heart," a truly humanistic mission.

We offer people a genuine means to make a positive difference in their own and other people's lives. Donna Dugan calls the money she earns from Cambridge the "Paycheck of the Heart"! Cambridge is truly a gift of love and caring.



Key to this type of marketing is visibility. You need to attend their meetings and get involved. Talk about your business as well as the products and programs. Key to visibility is positioning yourself within that market. If your particular group has a newsletter or magazine they publish, ask if you might write an article on nutrition or health (if you need help with your article, call 1-800-4-HEALTH). Be sure to tell them the one thing you request is that they include your photo and phone number.

Prospecting Tip: Sampling is an extremely effective form of advertising. At the next meeting you attend, bring a small basket filled with Plantation Peanut Bars. Tape your business cards to each bar. Explain to the meeting organizer that you would like to provide the sample bars, and ask to leave the basket at the registration table. The cost of one or two boxes of bars is considerably less than the average advertisement, and 10 times as effective. You might leave a package of brochures near the bars for additional information. It's a great ice breaker, and you get to deliver your message.

Give me a lever long enough...and single-handed, I can move the world.

EXHIBIT F

Consultant's Corner

MEDIA MESSAGE



Publicity photo—Janice Jones

Public Relations. It's publicity, it's believable, and it gives you and Cambridge credibility and stature. And, we will help you. It's a multi-step process, so let's start at the beginning.

Cambridge will help you get your name in print every month in your local media. Here's how:

- 1) Have a 5 x 7 photo taken professionally. Call photographers in your area and ask for a

business publicity shot. Have it done in black and white, and get several copies.

- 2) Decide on 5 local media where you would like to have your name mentioned regularly. Check the papers, determining where they list promotions, job changes, new hires, etc. Find out, by calling your local paper (start with business editor), to whose attention this message should be sent. We need

Editor's Name Name of paper	City, State, Zip Address	Telephone number Fax number

- 3) Next, send us your bio. Write 3 or 4 paragraphs about yourself. Include information such as how long you have been with Cambridge, something about your business, any special groups you work with (position, awards, etc.). We will edit and finalize.

- 4) We will computerize this information, and send your bio and photo with a press release regarding your business on a monthly basis to the media on your list. When this has been published, send us a copy.

Will your paper always publish a press release? Not always. But, this type of release has a high chance of being used. It's not about Cambridge, it's about you, and that's news!

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NEWS & NOTES

• **Increase Sales Without Leaving Your Telephone...** We have been calling customers we have not heard from for a while using telephone scripts tested by Lynne Murphy and Carlene Firpo (our telemarketing voice since December). Our daily sales improved by as much as 20%.

• **Customers Are Coming Back...** Former Cambridge customers have been calling in to ask, "Where have you been? We thought you were gone. We have been looking for you." Kay Marovich in Orange County, Ca. tells stories of being blitzed by callers "in search of Cambridge." Andrea Ileo went public with cable TV in Virginia and people call to ask, "Where have you been?" In Boston, Janice Jones' radio broadcasts have brought people back to Cambridge.

• **Order Processing Team Member Returns...** Member of the Cambridge Order Processing team in 1982 and 1983, Terry Wells is the newest voice on our phones, taking your orders, providing

service, and reaching out to you with "outcalls".

• **Director Of Nutrition Is Back...** Director of Nutritional Services from 1982 to 1988, Karen Peterkin, M.A., R.D., returns as our primary nutritional consultant.

• **Minimum Orders...** In our last issue of Breakthrough we announced a change in our minimum order policy. Effective April 1, we are accepting minimum orders of half case lots for the convenience of our customers. Thank you, Donna Dugan, for pointing out the need for this expanded service!

However, due to additional costs involved in processing half case orders, a premium for half case orders will be charged at the following retail prices:

3 cans FFL	\$59.85
3 cans OCD	\$70.50
3 boxes bars	\$62.85

• **In The Next Issue...**
Barbara Lazar's Retreat
Andrea Ileo's Academy
Ann Wetzler's Academy

Please Note:

• **Change of Address**
...Please notify our Customer Service Department if you have a change of address or telephone number. Leaders, call us if there are any changes in your downline! We want to make sure that everyone is getting our correspondence.

• **Shipping Charges**
...Due to increases in shipping costs, we have found it necessary to increase our shipping charge from \$4.00 to \$6.00 per shipment. This increase becomes effective May 1.

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Complaint

EXHIBIT G

EXHIBIT G



Volume 7, Number 8

Best Wishes for a Joyous Holiday Season!

November/December, 1991

CAMBRIDGE ON THE MOVE!

WORKSHOPS AND RETREATS: THEY CAME FROM BOSTON TO TAIWAN

CAMBRIDGE HIGHLIGHTED ON NBC BOSTON AFFILIATE WBZ-TV! (see page 9)



Houston - 1-Day Workshop! Los Angeles - Lady Cambridge presents to Food For All! San Diego - Retreat! New Jersey - Retreat! Boston - Retreat!

On The Move

October and November—exciting months for Cambridge! Linda Hevern, Dr. Nan Brenzel, Lady Cambridge Barbara Lazar, Lynne Murphy, and special Consultant Cecelia Chen, participated in meetings throughout the country. First stop: Houston, where a 1-day workshop designed to unify personal development with business acumen. Nan, Lynne and Linda worked with a group of 25 brought together by Donna Dugan, Circle of Champions. Although success with the product brought them into Cambridge, it is their personal strength that contributes to their success.



This full-day workshop covered "how-to's" on harnessing these same strengths to give their Cambridge business renewed energy. At the same time, the workshop pointed out areas that can be stumbling blocks to both your business and personal program. Simple steps on how to deal with and overcome these blocks were discussed.

Natural Markets

A highlight of this exciting day was Cecelia Chen, a special new Consultant from Taiwan and a sterling example of "natural markets", sharing news about her Taiwan Cambridge business. Cecelia, who markets Cambridge products through beauticians and spas, spoke enthusiastically about how well accepted Cambridge products and programs have been in her country.



The Houston group also included Marie Carner, an inspiration to many, who lost 40 pounds and has kept it off for 2 years. Recently Marie sole sourced, losing an additional 12 pounds. She's fit, feels tremendous, and looks fantastic! One of her secrets is Super Oats—three times a day. Plus, says

Continued on page 5

EXHIBIT G



THE ART OF STRATEGIC VISION™

Season's Greetings!

The year-end holidays are always a time for reflection and renewal. I have been reviewing the last 6 months of events since my very first conversations in July with Cambridge Leaders.

My initial talks were with the Circle of Champions and at that time I wanted to know from them the problems needing to be addressed, and what would make their businesses better.

It has been gratifying for me to realize how much has been accomplished since I first spoke with the Circle of Champions.

In July Paul Parker told me we needed some positive media. In these last two months Cambridge has been featured on radio, and television and a press release about our participation in Food For All has gone out. Additionally, Lynne Murphy will be on cable television in Virginia to show her "before" and "after" Cambridge. We are moving in proactive media.

In July Barbara Lazar told me she could "not do the business with out a prospecting piece"...we have just given you two outstanding pieces, both

designed by the field.

In July Janice Jones told me she was losing her "zip"...she has it back—after the Boston Retreat, she is flying!

In July Ann Wetzler asked that Questions and Answers be made readily available, and they have been designed into our upcoming Program Guide.

In July Donna Dugan stated that she was looking for dramatic results in her business. What has happened? Since our October workshop, she has dramatically risen to a whole new professional level, giving nutritional lectures at the University and charging a fee for her support groups.

Since July, Nan, Lynne and I have collaborated in the development of training programs and materials that address the needs you have described. Our curriculum is designed to help you in managing your weight and your business.

And, after my three Retreats and 20-day sole source odyssey, I feel I am a true part of the "Cambridge Experience." I have caught the missionary zeal, and know I was truly fortunate to have Nan and Lynne as my Partners In Progress during my 20-day sole source odyssey.

What we have in store for you in 1992 is a whole new vista of possibilities to help you in your personal and business development, such as:

- A beautiful new Cambridge poster.
- A new Program Guide and companion cook book.
- Scripts to show you how to make presentations to corporations, community groups, and others interested in nutrition and weight management.
- A Retreat presentation handbook and Retreat kit to help you lead your own Retreats.

• Support Meeting Manual.

A whole year's worth of training modules, including everything you need to know about weight management, taking customers from starting the program to maintaining their weight.

• An expanded Advanced Career Training program.

Our vision is a continual striving to be better. Our Mission is to become the leader in the industry of health, nutrition, weight management and optimal health. Our goal is to contribute to a growing and prospering enterprise, our objective is to give you the training, opportunity and materials you need to attain success, our action plan has been to evaluate needs, create and develop the programs and

materials you need to succeed.

In addition we are reviewing the marketing plan and exploring how we can set up your best opportunity to grow your business, and flourish in our collective future.

We're excited about our progress and the materials in production and know they will give you the support you have needed for a long time.

I look forward to working with you in 1992 and turning our "grand" dreams into a significant reality.

Wishing you Health & Prosperity for this exciting New Year!


Linda Hevern
Executive Vice President

Developing The Art of Strategic Vision for Strategic Planning



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EXHIBIT G

Turning Your Dreams Into Reality-

BACK TO BASICS—BEHAVIOR MODIFICATION AND WEIGHT REDUCTION

FOR OPTIMAL HEALTH AND VITALITY

I THINK...I CAN...I AM!

MISSION

Reducing your weight and maintaining your new weight means staying motivated. How do you stay motivated? Motivation means to move. It comes from a desire that is intense enough to cause us to act, or give us a reason to act or behave differently. As human beings we strive to keep our lives in order, or "together". When a part of our life is in disorder, only then do we work up the energy to act or change.

Dissatisfaction with our image is what creates the desire to change our image. The desire to change begins with a belief in ourselves—a belief that we can become what we envision. And that belief causes us to decide to reduce our weight. As long as we are satisfied with our image, we are not motivated to change.

VISION

Clearly define your personal vision. If you think only to a goal, you'll plan only to a goal. Thinking beyond "when I get to that size 12, or reduce those 80 pounds, then I can live again" can be a trap. The trap is when you reach your goal...old habits, stress, or a bad day will tug at you and pull you off track. And you spiral backwards until...we know the end of this story. Let's write a new end to this story today. How? By beginning to think lifetime health and nutrition. By envisioning lifetime health you will be motivated to reduce your weight, and maintain that weight for life.

Millions of thoughts pass through our minds each day, and only one of those thoughts might be about reducing weight. So, how do you convert that one thought into the energy required to reach your

GOALS

You can expect to achieve these three goals as a result of your activities:

1. To reduce your weight.
2. To maintain your weight for life.
3. To enjoy optimal health

2. If you go off track, do not beat yourself up. Immediately begin to notice who, what, or where contributed to your backslide. You may choose only to notice, or keep moving to Goal #3—to enjoy optimal health and vitality for life. Listen to Tape 1 in the Control For Life Program.

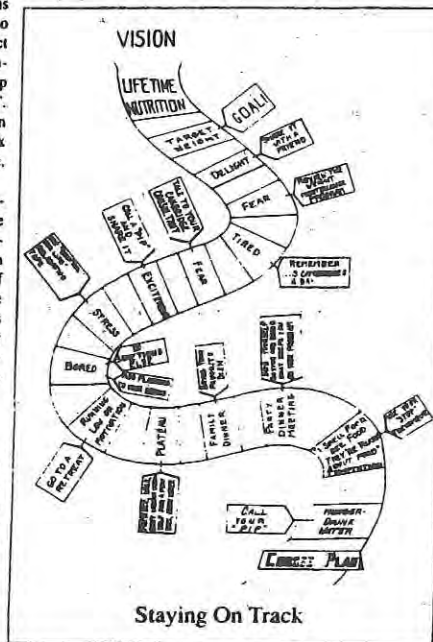
3. Select one small action today to get you back into motion. The action may be as simple as repeating to yourself hourly "I can!", or call a friend.

4. Stay 100% committed. Allow absolutely nothing to come between you and your good health. Listen to Tape 2 of the Control For Life program.

ACTION PLANS

Action is anything we say, do, imagine, or think that moves us forward or spurs us into motion. Remember, you want to move toward continually improving the quality of your health and life. There is no "end", there is no "I reached my goal weight, I can live again". Action that is consistent with reducing your weight, maintaining your weight and enjoying optimal health for life means practice.

Practicing actions consistent with your personal vision will keep you on track. By making every day a practice day, instead of an "all-or-nothing" day, you will develop behavior consistent with good health and nutrition. By clarifying your vision, finding your mission, setting your goals, developing objectives, and generating an action plan, you will reach your goal of optimal health and vitality for life.



goal to reduce weight?

By having a mission. Having a mission creates a purpose which can motivate you to reduce your weight. And, when you have adopted a personal vision for optimal health, you remain focused on your mission for life.

for a lifetime.

OBJECTIVES

Objectives are stepping stones to goals. Reducing weight and maintaining your new weight for life requires only four objectives:

1. Stay on the Cambridge plan for life.

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EXHIBIT G

Models of Excellence

JANICE JONES . . . DIRECT SALES AT ITS BEST!

One of our top Leaders, Janice Jones, exemplifies what direct sales can be — an extremely profitable, solid home-based business to which she devotes 3 days a week. Since reaching her target weight and joining Cambridge as a Consultant in 1981, Janice has found this business has changed her life. At 53, looking 15 years younger, Janice is an example of what Cambridge can do for you. A true New-Englander, she is a self-proclaimed no-nonsense person. Strong, yet soft, this is reflected in her successful business.

It was Mel Jones, Janice's husband, who encouraged Janice to join Cambridge after reducing her weight and he fully supports her efforts. "He's wonderfully supportive, but I did the work!" quips Janice at the Boston Retreat, as she noted her ongoing PIP is her husband. When she goes off track, as she did this summer, it's Mel who will remind her to just get back to basics. "It's a simple business," she says. "Keep it that way."

According to Janice: "There are 3 phases to this business, and you need them all."

1. **RETAIL** - This is what keeps you alive — you must have it. These are the customers I occasionally give small gifts to — flavorings for example — just to let them know I appreciate their business. Janice has a large retail clientele, and she regularly works referrals from these people.

2. **WHOLESALE** - You need wholesale buyers. Last month alone, I did \$6,000 in wholesale business through my

downline. But, put it into perspective. Wholesale buyers are those retail customers who have referred 3-4 people to you and are committed to the product over a long term; that is, those who are at target weight, are committed to maintain that weight, and understand its value as lifetime nutrition. Protect your retail business by carefully selecting those you offer the oppor-

tunity to become wholesale buyers.

3. **LEADERS** - A key group of strong Leaders. I work with them constantly. Currently Janice and one of her Leaders, Jan Cookson, are working trade shows (e.g. bridal fairs and Chamber of Commerce shows).

"You shouldn't expect to come home with actual sales,

but lots of leads, which you need to follow up," she states.

Having always worked from her home, Janice's largest business expense is her telephone. I talk to a lot of people, and have a separate line for Cambridge business. Recently Janice added a personal or business 800 number which is now available from AT&T. It costs just \$6 a month plus 32 cents per minute. With

continued on page 5

"IT WORKS,
IF YOU
WORK IT!" . . .
JANICE JONES, BOSTON



Janice Jones, Jan Cookson

"I had a great day and it was FUN!" confided Janice during a 10 pm phone call one Tuesday in October. Janice and Jan Cookson attended a recent Chamber of Commerce Trade Show in Andover, Massachusetts — declining to take a \$300 booth, they paid the \$1 attendance fee and took a shot at "working" the show. And work it they did! They talked to everyone who would listen about the product — and the people listened.

Professionals dealing with professionals. They talked about the product and nutrition, how well it fits into busy lifestyles and how effective it is. One day and several leads later, plus 2 appointments with individ-

uals to buy the product, they're both eager to join the Chamber and are scouting around for other trade shows to "work". Here are a few tips:

1. Look into joining your local Chamber of Commerce. If they are an active group, networking will work for you. Only one person is required to join and they usually allow 4 - 6 individuals from one organization to use the membership. Split the cost and get the mileage. That's effective PR!

2. While Jones and Cookson shared a table at lunch with others, they enjoyed the new Cambridge Plantation Peanut Bar and fielded questions this brought, and leads.

3. "I have a small business — I'd love to give you my card and flyer. Would you be

interested?" This is Janice's opening, and it works! This eases the concern of many about how to approach someone about reducing weight.

That same day, while waiting at a local copy center, Janice shared her flyer and card with a fellow patron — not someone who obviously needed to reduce weight. The woman's reply was classic. Just that day she and a co-worker discussed how to find a product other than Slim Fast. A principal at a local school, she invited Janice to make a presentation to the teachers.

The moral of this story is: Don't prejudice. You have a business — share your story.

EXHIBIT G

Jones' Model of Excellence
(continued from page 4)

clients throughout New England, she feels the 800 line will boost her business. "The telephone is the backbone of my business," adds Janice. "I'm amazed when I hear Consultants say they have nothing to say to their customers and ex-customers."

"Bologna!" states Jones, in her typical fashion. "There's always something to say. A new flavoring, a recipe, or Eggnog is back. It is hard at times. I may have to psyche myself up. But I do it."

"Whenever I get on the phone, I sell. Last Sunday night, once I got started, I sold 9 cans. I always sell multiple cans — at least 3, which is a two-week supply. Sunday is great. People are home, they're relaxed, and they want to talk. Most people want love and attention, and when you call, you're giving it to them! If you hear negative, be positive. ("I was just going through my list, and came across your name. It got me thinking about you, and I decided to give you a call. Then I ask them how they are doing.") It's that simple," says Janice.

Use the familiar "feel, felt, found" often used in sales. It tells them you understand and are listening. For example:

"I know how you FEEL about liquid diets. I have many people who FELT the same way when they first started. But once they realized how nutritious it is, and how good they feel, they've FOUND they love it and have few problems."

"Most people are glad you call. When people come to my home, it's still simple. I

have an appointment book and my business cards. When they make an appointment for support, I mark it down and write the time on one of my cards, which I give to them. I usually have them call within two days to get started. I keep every name in my notebook, and note the day they start. Then I call them regularly."

At our initial meeting I tell them they have to do three things:

1. They have to take the product 3 times a day. Why? It's their full nutrition.

2. They have to drink water. Why? Where is the fat going to go? Out their ears? It's eliminated through the urine, and you need the water.

3. They have to decide how they are going to use the product along with conventional food.

I weigh them. I measure them. And in two weeks I take their measurements again to remind them that when the scale doesn't move, the measuring tape will.

I do a small amount of advertising, just to let people know I'm still here. And this Fall, she has placed classified ads in WORKING WOMAN magazine. Fully aware that she needs to spend money to make money, Janice is not afraid to make a mistake.

"You need the discipline to do a little something every day," she says. Yet, as successful as she is with her business, Janice saves Monday for herself, and Friday morning for tennis. To simplify her business, she uses a computerized software program designed for Cambridge.

but basically she manually keeps her books with a simple cash journal. **KISS—Keep It Slim & Simple**



"This product makes sense!",
says Janice Jones

Cambridge On The Move (continued from page 1)

Marie, she keeps her scale next to her stove, stepping on it daily as she makes breakfast for her family. When the scale creeps up, she reduces her food intake.

Our Fall schedule of Retreats has been in full swing. Retreats in San Diego, New Jersey, and Boston are completed. All three Retreats resulted in exciting recommitments to the Cambridge business. "Rising stars" were identified—Nancy Merrill and the DeFeo's, to name two. Having made a commitment to their program, Dr. Nan urged Retreat attendees to agree to a program and put into effect a follow-up procedure with the home office. Inspiration and support is just a phone call away!

The magic of Retreats builds! Attendees seeking the inspiration that will make them the next success story. After last October's Georgia Retreat, Margaret Neff of Jacksonville,

Florida, faithfully followed her program through New Year's, maintained, and after again attending our recent Asbury Park, New Jersey Retreat, leaving with a renewed commitment to her program. Carole Matthews from Petersburg, Virginia, another attendee at the New Jersey Retreat, leaving with new answers to her program. — What is the magic? It's understanding, support, the program. It's the product. It's the bonding — special people doing special things. Key to the success of the Retreats is the excellent indepth information Dr. Nan shares about nutrition, eating behaviors, as well as other valuable knowledge. But, additionally, what makes it work is the one-on-one's that occur throughout the meetings — shared hints, secrets that will get you over a rough spot, "what works for me's", hearing from those who have been successful, and recipes. The upcoming cookbook is a reflection of just this kind of sharing by Retreat participants over the last 24 months.

In Los Angeles, Linda Hevern, Executive Vice President, and Barbara Lazar, Lady Cambridge, jointly presented a check to Milan Hamilton, President of Food For All. The check represented a pledge Cambridge made — to aid in ending hunger, which is consistent with the Cambridge mission of promoting optimal health through well-balanced nutrition. Attended by Kay Marovich, LA Area Distributor, and local media, it was an exciting day for all.

Cambridge is on the move! Watch for news on events in your area.

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Marie Carner proudly shared her "before" and "after" photos at the Houston Workshop. Marie has reduced by 52 pounds and has kept it off for 2 years.



Loretta and Lou DeFeo with Ann Wetzler "celebrating" during the Wetzler Retreat in Asbury Park, NJ.



New Jersey Retreat: Kim Cavanaugh plays with images as she maps out her vision, goals, and objectives.



Mari Lowrey in October 1990, "before" Cambridge, with proactive media Leaders Betty and Paul Parker.



Mari Lowrey in October 1991, "after" Cambridge, with Dr. Nan at the Parker's Retreat in San Diego.

San Diego, New Jersey, Boston—wherever we were we heard comments like these:

"Thank You! What a wonderful company and loving people!"

"...This one helped me quit smoking".

"Really great people in charge".

It's refreshing to see inspirations like Kim Cavanaugh, and the DeFeo's who attended the New Jersey Retreat. Loretta and Lou have both maintained their weight reduction for close to 9 years, and to show his support and pride in Loretta's trim, youthful appearance after 25 years of marriage, they celebrated with an impulse purchase in the hotel boutique—a slinky, red holiday dress! Even Ann Wetzler thought Loretta looked fabulous!

Nan and Linda, working together, were a hit in San Diego..."Nan, you were so wonderful, and the sharing of yourself and the love you give to everyone is so wonderful."

"Both of you are so wonderful..."

"Linda, thanks for being here and giving new hope to Cambridge!"

Cecelia Chen, alight with the Cambridge "glow", delighted her Houston audience with amusing anecdotes about her experiences in Taiwan. Having reduced over 20 pounds herself using Cambridge, she is a true believer. Her parents, firm believers in wellness and longevity, are now avid users of the Cambridge product.

Our search for "rising stars" includes Sally Hennessey (on crutches) and Raphael Lara, both who recommitted to their Cambridge business in Asbury Park. Sally, who is already planning a weekend Retreat of her own in December, was revitalized by the New Jersey Retreat.

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TRIBUTES

Recognition based on combined volume for August & September 1991.

TOP CIRCLE OF CHAMPIONS



	Name	Location
1.	Donna & Bob Dugan	Houston, Texas
2.	Betty & Paul Parker	LaMesa, California

TOP CONSULTANTS

Photo
Not
Available

	Name	Location
1.	Ruby McBrayer	Jackson, Mississippi
2.	E. Ruth Saulnier	Tenino, Washington

TOP AREA DIRECTORS



	Name	Location
1.	Millie & Billy Chron	Burton, Michigan
2.	Mike Kirkland	Covina, California

TOP PERFORMING ORGANIZATIONS

Rank	Name	State
1.	Donna & Bob Dugan	TX
2.	Betty & Paul Parker	CA
3.	Janice & Mel Jones	MA
4.	Barbara & Gary Lazar	FL
5.	Kay & Dan Marovich	CA
6.	Bill & Betty Gray	CO
7.	Millie & Billy Chron	MI
8.	Mike Kirkland	CA
9.	Ralph & Dolores Ricapito	PA
10.	Elaine Newbill/Laurelle Pittman	FL

TOP DIVISION MANAGERS



	Name	Location
1.	Ruthann & Bob Morris	Chula Vista, California
2.	Hildegard & Bill Fenske	Portland, Oregon

TOP UNIT LEADERS



	Name	Location
1.	Sue & Dave Fernerquist	Carlton, Oregon
2.	Ramona & Leon Steele	Tigard, Oregon

CONGRATULATIONS TO OUR REACH OUT! PROMOTION DIAMOND AWARD WINNERS

2 Carat Diamond Award
for Promoting the Most Area Directors

Barbara & Gary Lazar

1 Carat Diamond Award
for Promoting the Most Unit Leaders

Lars Klaus Hardt

1/2 Carat Diamond Award
for Most Qualified Consultants

Millie & Billy Chron

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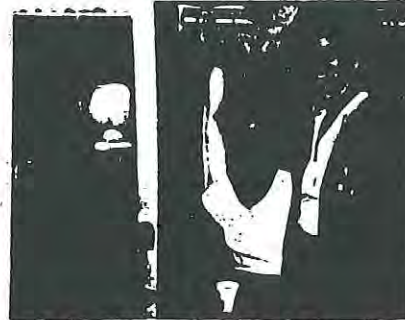
EXHIBIT G

& TRIUMPHS

We wish to extend our heartfelt thanks to our Task Force members

To the Advertising/Visibility Team: Ruthann Morris, Loretta DeFeo, Hildegard Fenske, Betty Gray, Andrea Ileo, Kay Marovich, Pau, Parker, Shirley Riesz, Dolores Ricapito and Julie Virdli for the time and effort all of you put into the package of ideas you sent to us. We will begin to highlight your many useful ideas in the next issue of Breakthrough so that all of our Consultants can benefit from them.

To the Business Tools Team: Barbara Lazar, Alex Boswell and Laurelle Pittman for spearheading the efforts behind our Prospecting Flyer, Prospecting Brochure and Program Guide during a marathon weekend that was inter-twined with a sole source Retreat! Also, to Donna Dugan, Betty Gray, Janice Jones, Kay Marovich and Ruthann Morris for their support and input in developing our new sales support literature.



Leaders Ruthann Morris, Kay Marovich & Barbara Lazar come together at the San Diego Retreat with Paul & Betty Parker, Milan Hamilton and Linda Hevern, to brainstorm strategies for proactive media efforts.

JANICE JONES TAKES CAMBRIDGE FROM A RETREAT TO RADIO TO T.V.!

Good things happen to busy people and Janice has been among the busiest in recent weeks. In our new push to maximize our marketing efforts through Retreats, Janice scheduled several interviews and meetings for Dr. Nan Brenzel prior to the recent Boston Retreat. These events included a presentation to the Wellness Department of Dynamics Research in the Boston area, and a one-half hour interview on a local morning radio talk show with a call-in format.

Nan's presentation focused on wellness and nutrition, covering topics such as cholesterol, body fat, maintenance, low-fat diets, and health. And, what Janice Jones and Jan Cookson have done to follow up on these informative sessions deserves applause.

First, Dynamics Research,

a conservative corporate setting where they proposed a long-term program for employees. This program would include weekly support meetings, with each meeting covering a pre-selected topic on nutrition and wellness—i.e., the importance of exercise, cutting fat from your diet, lowering your cholesterol, etc. To participate in the program, an employee must be on the Cambridge Program. The cost is \$95 per person and will include a Starter Kit and a Control for Life tape set.

In a meeting with corporate executives, Cookson and Jones used the new full-color prospecting brochure plus a set of Control for Life tapes—a professional approach with professional pieces. They followed up immediately after Nan's presentation, listening

to their needs, and designed a program to fit their corporate culture.

The best time to prospect is when you have just come off a success and, Janice, aglow with success, has been prospecting the local media. After Nan's call-in radio appearance, Cookson and Jones approached the station with an idea about appearing weekly with nutrition facts. In negotiation is a three-month commitment beginning in January, a month many focus on health and weight management.

They also will be starting 4 station employees, including the show's host, on the Cambridge program.

Flush with this success, Janice was surprised when Channel 4 in Boston called (through her yellow-page ad) asking for information on the Cambridge Plan. Interested in doing a show over Thanksgiving, "Taking The Fat Out



Media stars Janice Jones & Sandy Nye

Of Your Diet", a 20-minute phone conversation landed Janice a taping session for local viewing! Janice included Sandy Nye, a rising star, who told her weight reduction story during the evening news.

Edited down to 5 minutes of actual air time, Janice and Sandy enjoyed the session, and after a few moments of jitters, felt comfortable and at ease talking about something they both deeply care about.

Congratulations, Janice, Jan & Sandy!

EXHIBIT G

CAMBRIDGE CUISINE

Cambridge is not just a liquid diet — it is a way of life. We are adding recipes galore to round out your Cambridge kitchen and here are a few that will be found in our upcoming cookbook. Share these recipes with your family and watch their health improve!

We all know that variety is the spice of life, but it is the spice that adds variety to this wonderful holiday favorite:

FOOD FOR LIFE PUMPKIN CHIFFON PIE

1 cup cold water
1/2 cup boiling water
2 tbsp. Knox Unflavored Gelatin
2 to 6 scoops (recommended: 4 scoops) FFL Vanilla
1 cup cooked pumpkin (100 calories)
1/2 tsp. Pumpkin Pie Spice (if using extract, use 1/4 tsp.)
4 packages sweetener, or to taste
5 to 7 ice cubes
2 tbsp. Super Oats or Grapenuts

Sprinkle gelatin in 1/2 cup cold water. Set aside. In a blender, add 1/2 cup cold water, FFL Vanilla, Pumpkin Pie Spice, cooked pumpkin, and sweetener. Set aside. Add 1/2 cup boiling water to gelatin; stir until clear. Add gelatin to blender and blend on high. While blending, sprinkle Super Oats or Grapenuts in bottom of 9" pie pan. Add ice cubes to blender (while blending), one cube at a time. Continue to blend for 15 to 30 seconds. Pour mixture into pie pan and place in refrigerator for at least 15 minutes.

Who can resist a slice of

rich creamy cheesecake? Go ahead and sin a little! Try this unbelievably delicious treat without having to worry about all the calories cheesecake usually has!

FOOD FOR LIFE CHEESECAKE

1 cup cold water
1/2 cup boiling water
1 1/2 tbsp. Knox Unflavored Gelatin
4 scoops FFL Vanilla
1/2 cup Ricotta low fat cheese
1/2 cup non-fat yogurt (195 calories)
2 tsp. Vanilla Extract
1/2 tsp. Lemon Extract
4 pkgs. sweetener
1 tbsp. lemon juice
1 tsp. grated lemon rind
5 ice cubes
2 tbsp. Grapenuts (90 calories)

Pour cold water into blender. Sprinkle gelatin over cold water. Set aside. Sprinkle Grapenuts in bottom of pie pan. Add boiling water to blender and stir until gelatin is dissolved. Add remaining ingredients to blender (except ice cubes) and blend until smooth. Add ice cubes and blend on high for 15 to 30 seconds. Gently pour mixture into 9" pie pan. Chill in refrigerator for at least 15 minutes.

Note: Pie is creamier if you let it set out for awhile before serving.



DELICIOUS AND NUTRITIOUS EGGNOG

Don't forget that your holiday guests deserve Cambridge, too!

Add all ingredients to a blender and mix.

HOT NOG

What better way to spread holiday cheer than with Cambridge Food For Life Eggnog? Make it by the punch bowl full. Serve it hot with cinnamon and rum flavoring on those cold winter nights. Warm up your guests with nutrition, not calories.

9 oz. hot water
1 scoop FFL Eggnog
1/2 capful Almond Extract
1/2 capful Butter Extract
1/2 capful Black Walnut Extract
1/2 capful Coconut Extract
1/2 capful Rum Extract
1 pkg. sweetener

EGGNOG DELIGHT

9 oz. hot water
1 scoop FFL Eggnog
Pumpkin Spice
3/4 capful Rum Extract

Add all ingredients to a blender; mix until smooth.

Savor and enjoy these aromatic delights!

INSTANT SALES

Prospect like a pro by using the new Prospecting Flyer (Order #660667: \$7.20 for a package of 50)—Order in quantity! Special offer through January 15th—10 packages (500) for \$50.

Why 500? You need to test, test and test again! Always do a small market test to determine if an idea works for you. Test 5 ideas — 5 venues. Hand out or mail 100 flyers five different ways. For example,

* Take 100 to your local craft fairs. Mill around and hand them out. Your intro: "Would you be interested in a flyer concerning my business?"

* Take 100 to your local shopping center, small village square, strip shopping center. Place them on windshields, (or better yet, have your 12-year old do it!)

* Take 100 to a soccer game or football game, and hand out — have 10 kids hand out 10 each.

* Take 100 to your local beauty salon or tanning parlor, and ask if you can leave them. Let them know that if you receive any sales from these, you will rebate them \$1 per can...Why not?

* Take 100 to your local day care center — ask the Director if you can place these at the front desk, or better yet, put them in the kid's cubbies.

The bottom line is: be inventive. To really test out this marketing approach, mark the flyers, perhaps stamp each group with a different color. Have a better idea? Let us know — the best three ideas will be printed in the next issue of Breakthrough — and the winners will receive 100 prospecting flyers FREE!

EXHIBIT G

Turning Your Dreams Into Reality-

BACK TO BASICS—MARKETING

It's marketing, all marketing. Once you have these basic concepts down, and become professional in your approach to marketing, the sales will take care of themselves. To make any program work, you need to understand three basic marketing secrets:

1. You must be committed to your marketing program.
2. You must think of your marketing program as an investment.
3. Your marketing program must be consistent.

Marketing is repetition. The more you do something, the better it will work. You need to stay with an idea and give it adequate opportunity to work. That's difficult, particularly when you haven't really thought out your marketing plan. That's where it starts. Your marketing plan. Take some time, think it through, and write it out...where you want to go, and how you are going to get there.

Second, recognize that your plan, your program, is an investment. A marketing program (which may include some advertising) should be perceived as a conservative investment. It is not a miracle cure. No ad, no seminar program, no single step, one-shot attempt at building your business will work. It's step-by-step, building-block-by-building-block to that success you seek.

Third, be consistent. Don't keep switching media or messages. Consistent repetition, getting the word out to the same people in the same way is what works. Have you ever

seen a small ad, or received a flyer about a service or product, and totally disregarded it the first or even the second go-round? Then several weeks or months later — once you've had time to think about the ad, or your situation has changed, gone seeking out the original source? This is never more appropriate than when dealing with weight reduction. Don't disappoint your potential customers — be there when they need you. If you're not in the phone book — where are you? How often are you there? If you were looking for you, where would you find you?

Consistency = familiarity. Familiarity = sales.

People buy products they know, from people they know. Are you making it easy to know you and your business? Are you getting the word out, getting your name out? Donna

STEPPING OUT OF YOUR COMFORT ZONE

Donna Dugan did and she got rave reviews! "I'm not a good speaker and I'm not comfortable with it," states Donna, describing her recent seminar on Maintaining Your Weight.

Positioning yourself as credible and knowledgeable in your field is a step toward becoming truly professional. Dugan understands this and she is taking positive steps toward that end. Planning the seminar and putting it together was the difficult part. Then, delivering that first seminar. Now that she's accomplished this, she's ready to roll it out...again and again. Nine

Dugan is and it's working for her.

To turn your dreams or vision into reality, it takes an ACTION PLAN. Small steps, taken one at a time will get you to your destination. Over the next few issues, we'll discuss steps to get you to your goal. But let's start with your marketing plan. Ask yourself these questions:

1. What are my objectives?
2. What are the strengths and weaknesses of what I am offering — my services?
3. Who is my competition?
4. Who is my target market — and what are the needs of this market?
5. What business am I really in?
6. What is my goal?

Easy questions, right? But think through your answers and WRITE THEM DOWN. Remember to start with a purpose, e.g. to make \$1,000 each

people attended her first seminar, where Donna discussed food choices for life. She used slides and rubberized food samples to put across her points.

Dugan, who is now charging customers for support meetings, has begun to position herself in her community as a nutrition and weight management professional, which she truly is. Her new business cards, featuring her photo and designed as a fold-over card include bulleted points on Cambridge products and programs.

If you have a marketing idea or would like suggestions and guidance, call (800) 443-2584.

month — bottom line. Then move to what contributes to that bottom line — your target audience. Concentrate on a specific market (for example: brides or new mothers).

Now comes your positioning statement, which explains why Cambridge has value, and why anyone should buy it, and why they should buy it from you. Think this through. Then write down 10 reasons why anyone should buy it from you. Believe it, memorize it. If you believe it, you can sell it. Remember, selling is simply transferring your enthusiasm: that is, belief, not just in the product, but in yourself.

Next, include marketing tools you might use to achieve your goals. These tools include advertising, workshops for the public, word-of-mouth referrals (with referral incentives), demonstrations in homes or in the workplace, presentations to groups, personal letters, letters to businesses, testimonials, yellow page advertising, free seminars, sampling, publicity, etc. Bring your creativity and personalization into play.

Finally, decide how much your marketing plan will cost. What investment are you willing to make. To make it palatable, define the cost as a percentage of your projected sales. If, for example, your sales will be \$500 each month, allow 10% or \$50 for marketing. And, spend \$50 for marketing each month. Remember, be consistent.

Here are some basic marketing truths for you to remember:

1. The market changes constantly. Nothing is more fickle than the weight reducing public. The market is in a constant state of change. When

EXHIBIT G

you stop advertising or stop getting out your word, you miss this evolving change. **YOU MUST BE THERE TO PLAY!**

2. People forget fast. They are bombarded with literally thousands of messages daily — let's be honest, just how vital is your message in their life?

3. You may give up, and change, but your competition won't. People spend money on weight reduction programs, and if your message isn't out there, their money goes elsewhere.

4. Marketing strengthens your identity — and your credibility. If you stop putting out the word about Cambridge, people begin to lose confidence in you — and your

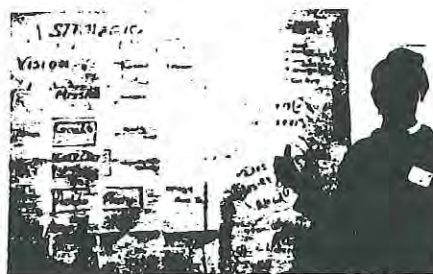
product.

5. Marketing is essential to growth. Unless you continue to put out the word, people will forget you.

6. Marketing builds loyalty with your existing customers. When they hear from you, or about you, they refer business. Referrals can be the lifeblood of your existence.

7. Marketing maintains morale. When you see your marketing work, or see your name and visible rewards from your efforts, it helps you maintain your level of effort.

8. Marketing gives you an advantage over your competitors who are not advertising. A small, well-placed 2-3 line classified ad in the same location each and every week can be more beneficial than a 3-



...from Vision, to Goal, to Action Plan. Executive Vice President Linda Hevern shared a system for turning dreams into reality at the recent Parker Retreat in San Diego!

times-per-year ad. If your ad is there when your prospect needs you, you win!

9. Marketing allows you and your business to keep your doors open. You have overhead — let marketing help

pay the bills.

10. If you don't market, you lose. Invest your money in marketing or lose it entirely. It's your choice. (Next Issue: Let's talk tools — marketing tools and how to use them)

TARGET MARKETS YOU SHOULD AIM FOR...

Brides (the entire wedding party, including mother and mother-in-law)

Hint: For 5 weeks contact every bride-to-be listed in your Sunday newspaper. If you get an appointment or interested response from 10% of your contacts, pursue them!

New Mothers (Get your body back!)

Hint: For 5 weeks contact all new mothers listed in your weekly newspapers (all local papers). Approach them with the nutrition/health aspect as well. Cambridge products are a great supplement for nursing mothers. Call and try to get an appointment — be willing to go to them. That is the kind of customer service which appeals to this market. See if they can get 3 or 4 new mothers together — maybe their entire Lamaze class.

Flight Attendants

Hint: If you are near a major airport, contact 2 or 3 airlines and find out what it would cost to run a small classified ad in their in-house newspaper. Or, if there is a bulletin board for employees, post your flyers. Better yet, see if you can make a presentation to personnel in the employee lounge. (Use the New Presentation Brochure)

Class Reunions (After weddings, when are most women/

men inclined to reduce the most weight?)

Hint: Place a small classified ad in your local paper: Attending your 25th, (10th, 20th) Reunion? Look like you did 25 years ago. Do it now!

Sales Professionals

Hint: Realtors. Find out how much it costs to run a small classified ad in your local realtor newsletter. Inquire about making a presentation on health/nutrition in their local sales offices. Attend sales meetings for professional associations.

Fitness Trainers (What better person to get the word out for you!)

Hint: Approach them regarding fitness and nutrition. Include an incentive for making money.

NOTE: Other groups you should consider are teachers, nurses, temporary employees, aerobic instructors, runners, college students, models (there are modeling agencies in every major city and 8 out of 10 girls who call to inquire need to lose at least 10 pounds to model), singles groups. If you are specifically interested in targeting one particular group, call Customer Service at 1-800-443-2584 or Lynne Murphy at 804-739-2355 for guidance.

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EXHIBIT G

On The Horizon

CAMBRIDGE RETREATS--TRAIN THE TRAINER IS IN FULL SWING!

For Retreats to be successful to your business they must be held often, giving the maximum number of people the special opportunity of experiencing the physical and spiritual benefits of sole source in an atmosphere of fun and support. In a relaxed and caring environment, you assess your eating habits, create a plan to change those habits, and receive valuable information on how your body reduces weight and what to eat and do to keep that weight off.

Each Retreat is a unique experience. The primary goal is to offer an enjoyable weekend where you can successfully begin or regain your commitment to a program which supports your health and well-being. We have found that each group has specific needs and have geared the Retreats accordingly. Happily, our Leaders and Consultants are now running with the Retreat concept, holding different types of Retreats in their areas.

We are here to support you in this endeavor. Retreat modules are being prepared to offer you support in the various subjects which are so well received in this weekend environment. Whether you focus on the behavior modification aspect, nutrition, the physiology of weight loss, changing your eating habits, or another area, you will find what works is the bonding and community spirit that evolves in this intimate encounter.

Whether it's for 6 or 60, a Retreat will work. Not only for your personal program and that of the attendees, but also for your business. Encourage each returning attendee to bring someone new--someone who has never been on a Cambridge program. What better way to be introduced to Cambridge than through a weekend Retreat!

You will leave the Retreat with:

- A positive sole source experience
- A structure for applying your experience to improve weight management success
- Inspiring and motivational techniques on goal setting for yourself or your business

We guarantee you'll return home with a plan!

Tuition includes lodging (double occupancy) and a CDS fee. Please call your area Retreat coordinator or Cambridge Direct Sales at 1-800-443-2584 (800-356-0082 from Chicago) for more information.

A very profound experience awaits you at a Retreat!

Spring '92 Schedule

The enthusiasm our Leaders and Consultants are showing for holding their own Retreats is wonderful! For example:

- Paul & Betty Parker look forward to hosting mini Retreats on an ongoing basis in the San Diego area. Attendees will have their choice of a weekend Retreat or a 5-day Retreat at a bay view home complete with a pool and spa--how luxurious!

- Barbara Lazar has already held two Retreats and plans to host one every other month beginning January 10-12.

- Alex Boswell and Shirley Riesz have both conducted Retreats in the Sarasota, Florida area!

- Janice Jones & Jan Cookson from Massachusetts, not to be outdone by the Far West or Southeast regions, will be holding their own Retreat starting early in the new year, as will MaryAnne Cosgrove and Marilyn McPhee.

- Sally Hennessey from New Jersey will add a new twist to her upcoming Retreats. Sally, who owns toning salons, will bring small groups into her salons for herbal wraps, toning, and sole source, for the ultimate in self-indulgence!

- In addition to these Retreats, the company will sponsor a Retreat for Donna Dugan in Houston on March 13-15, 1992. Attend and earn Continuing Education Units.

THE MARKETING PLAN

The suspension of the Rolling Quarter minimums policy announced in the September/October issue of Breakthrough is being continued indefinitely pending a thorough review, in progress, of the entire marketing plan. This change affects rank only; it does not affect the bonus structure. (Please refer to page 4 of the Sept/Oct Breakthrough for a full explanation.)

RENEWALS

It's time to renew! Renewal notices have been mailed to all Consultants and Leaders. Catch the excitement and mail in your renewal fee of \$20 today!

Every Consultant or Leader who renews by December 31, 1991 and places a personal order (order and renewal must be received no later than December 31, 1991) will receive exciting new Cambridge literature absolutely free. Place your order direct with Cambridge Direct Sales *now!*

All renewals postmarked after the deadline, January 15, 1992, will be assessed a \$10 late filing fee. Leaders who do not renew by January 31, 1992 will also forfeit their Leadership position as well as the benefits of being a Cambridge Consultant.

EXHIBIT G

Cambridge's Newest Consultant!

Meet Sandy Nye from Medfield, Massachusetts. Sandy attended the recent Retreat in Boston and this is what she has to say about Cambridge:

"I am healthy and in love with life, for the first time in my life", an emotional Sandy Nye told the group at the recent Boston Retreat. "All because of Cambridge."

"I've tried other diets, but couldn't lose weight. Nothing worked. My family told me I needed to lose weight, but it wasn't enough to make me do

it. Then Beverly Anderson told me about Cambridge."

Sandy admits one of her worst habits was chocolate milk. "I used to drink 3-4 glasses of chocolate milk every day," she says. "I switched to Cambridge Chocolate and sole sourced for 30 days. I never cheated. After that I switched to the regular program with 3 drinks and 400 calories, usually a frozen low-cal meal, for two weeks. Then sole sourced another 2 weeks. I lost 54 pounds."

At 5'3", 130 pounds, Sandy is a trim size 8 - down from a

size 16/18. "I didn't get discouraged. There were days it was hard, but I just kept going. Support is the biggest thing, and I had it in Cambridge."

Enthusied by the Boston Retreat and the wonderful new friends made over the weekend, Sandy was eager to join as a Consultant, where she can provide sup-



port and encouragement to others, making a difference in their lives.

WHY BECOME A CAMBRIDGE CONSULTANT?

The question we hear repeatedly is: Why become a Cambridge Consultant?

1. EARN MONEY

The first response and, perhaps, the most obvious is: Cambridge gives you the opportunity to earn money and create your own business goals and level of desired income. It means you are your own boss and can set your own working hours. So, one reason is you can make money.

2. BUILT-IN SUPPORT

If you have ever struggled with a weight problem you know the value of support. A more important reason to consider becoming a Cambridge Consultant is support. As a Consultant you are continually presenting the benefits of health and nutrition. You have built-in support to call upon when you personally need these extra encouragements to keep you going. As a Cambridge Consultant you make presentations to individuals and

groups. These presentations, as well as help build your business, keep you motivated to manage your weight and stay healthy. So, the second reason is support.

Why become a Cambridge Consultant?

- Earn Money
- Built-In Support
- Knowledge
- Friendships
- Results
- Fulfillment And Success

3. KNOWLEDGE

As a Cambridge Consultant you are eligible for training and publications offered by the company. These communications keep you on the leading edge in weight management research. Learning what's fact and what's fiction when it comes to managing weight has propelled many a dieter into the arms of success. So, the third

reason is knowledge.

4. FRIENDSHIPS

As a Cambridge Consultant you have opportunities to attend conferences and

meetings which teach you both business and personal development skills. And the opportunity to join in a network of weight management specialists committed to sharing information about health and nutrition. So, the fourth reason is friendship.

5. RESULTS

As a Cambridge Consul-

ant you give yourself the best opportunity to reach and maintain your ideal weight because you place yourself in a position to learn and teach what you need to remember most. Sharing what you know reinforces the changes you made in your personal habits and, therefore, keeps you on target. So, the fifth reason is results.

6. FULFILLMENT AND SUCCESS

As a Cambridge Consultant, you will reap...financial rewards, a healthy, trim body, and friendships that last a lifetime. Call us today to learn more about how you can become a Cambridge Consultant and make a significant impact on the world. You deserve fulfillment, and you deserve success!



EXHIBIT G

Consultant's Corner

PROSPECTING TIPS...Here are prospecting tips # 15-25 from Lynne Murphy to help you jump-start your business.

15. Two-for-one — offer a two-for-the-price-of-one special. Get them started with a Fast Start Kit introductory offer. You double your business, and they will have a built-in PIP to keep them in their program

16. Follow-up — it's an art and a science. Go back through your files now and call those who have indicated an interest, but have not committed. Put together 4 or 5 and schedule a tasting. Run a special and get a commitment.

17. Back to Basics — schedule tastings. Set your goals and determine how many presentations you need to do each week to meet these goals. Write them down.

18. Support — it can make the difference. Put together some new support groups. Give those people a call who have gone off track — let them know they're not alone, and that you are starting some support groups.

19. Recipes — call your people and share some of our new recipes. Whether they're on Fast Start, a longer sole source program or the regular program, new recipes will add spice to their lives!

20. Have a buffet! That's right — get your group together and have a buffet. At the July Orlando Retreat, the highlight of the weekend was the sole source buffet on Saturday night. Twelve different samplings of Cambridge recipes were available, and displayed as beautifully and graciously as any banquet! Great fun and great tastes — for more info on this, call Lynne Murphy (804) 739-2355.

21. Take Control — Control For Life, that is. This effective behavior modification program is terrific. Make it available to your customers — have a support meeting where you listen to part of this program — discuss it, then sell it! It's Dr. Nan at her finest! This program is tops!

22. Customer Survey — everybody's doing it! Jump on the bandwagon. Do it by phone or mail — find out what will help them, what they like, what they don't like. Guidelines are available on this. Most important is to do something with the information you uncover.

23. Reprints — use them. Find 3 or 4 good reprints from your

COMPLIMENTS & COMMENTS

- No MSG (monosodium glutamate)! The Cambridge products contain calcium sodium caseinate but it is not hydrolyzed (broken down into smaller particles) which forms MSG. In an ingredient listing, MSG would be listed as hydrolyzed vegetable protein or hydrolyzed protein.

- In order to provide adequate planning and production time for Breakthrough, we are returning to a bi-monthly schedule. Your input is important to ensure Breakthrough contains information that is helpful and supports your Cambridge business. Please share your comments with us. Help us make your newsletter the best it can be.

- Please note that when you charge your order to a credit card, your statement will show Dean Distributors as the vendor instead of Cambridge.

- We will be closed Tuesday, December 24th; Wednesday December 25th;

and Wednesday, January 1st.

- Minimum individual orders...effective January 1, 1992, the minimum individual product order will be increased from \$50 to a minimum of one case of product or bars, plus \$4 shipping charge. (There is no minimum on separate purchases of literature, however; the shipping charge of \$4 is applicable.)

- The "sale explosion" of the year expires December 31, 1991. Offered at prices of up to 60% off are gift items sold during the past year as Thank You gifts (refer to past issues of Breakthrough). Please contact your upline Leader or call us direct for more information.

- Pumpkin Spice Flavoring has been a holiday favorite this season. Be sure to include it in your next order. First time users should be advised that it is very concentrated and should be added sparingly (a couple drops) to their Cambridge drink.

files or call your Leader. Make 50 copies and send them out — then follow up. Do that every month and you'll be amazed at the interest that is generated.

24. Branch Out — CDS phone tree spreads the word! Be sure to participate in our telephone tree and see how effective this one-on-one method of communication can be. Don't miss out on up-to-date information.

25. Customer Phone Tree — Why not try it out on customers? Try a customer phone tree. Do it regularly — with a new recipe, a new success story, an upcoming Retreat — Give it a try!

Published by: Cambridge Direct Sales
2801 Salinas Hwy., Bldg F, Monterey, CA 93940-6420
(800) 443-2584

EXHIBIT H

EXHIBIT H

MEDIBASE CAMERA-READY ART ADAPTABLE FOR NEWSPAPER AND MAGAZINE ADVERTISING

**If You Have
Weight-Related
Health Problems
And Must Lose Weight...**

**...There Is A
Medically Directed
Program For You**

- ◆ Physician supervised
- ◆ Professionally directed nutrition education
- ◆ Group support with weekly meetings
- ◆ Nutritionally complete, excellent tasting MedilBase® meal replacement
- ◆ Proven safe and effective in University testing

For more information call:

THESE ADS ARE FOR REPRODUCTION - DO NOT FOLD

**If You Have
Weight-Related
Health Problems
And Must Lose Weight...**

**...There Is A
Medically Directed
Program For You**

- ◆ Physician supervised
- ◆ Professionally directed nutrition education
- ◆ Group support with weekly meetings
- ◆ Nutritionally complete, excellent tasting MedilBase® meal replacement
- ◆ Proven safe and effective in University testing

For more information call:

These ads may be enlarged or reduced to fit the various specifications on your newspaper and/or magazine.

Be sure to contact your local newspaper or magazine for instructions on including your phone number and/or name in the area indicated at the bottom of the ad.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Dean Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 1350 Bayshore Hwy., Suite 400, Burlingame, California. Advanced Health Care Systems, an operating division of Dean Distributors doing business as Cambridge Direct Sales and MediBase, has its offices and principal place of business at 2801 Salinas Hwy., Building F, Monterey, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

A. For purposes of this order, "*competent and reliable scientific evidence*" shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has 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.

B. "*Weight loss program*," or "*diet program*," shall mean any program designed to aid consumers in weight loss or weight maintenance; including, but not limited to, the "Food for Life Weight Management System," which includes the "Cambridge Diet Plan," the "Food for Life" weight loss programs, the "Maintain for Life" weight maintenance program; the "MediBase" medically-monitored weight management program; and related weight loss and weight maintenance programs and related food products and/or nutritional products.

C. "*Very low calorie diet*," or "*VLCD*," shall mean any dietary regimen that provides 800 calories or less per day.

D. "*Distributor*" shall mean any purchaser or other transferee of any weight loss product or program who acquires or has acquired, with or without valuable consideration, said product or program and who is or has been engaged in the resale of said product or program to other distributors or to end-use consumers. "Distributor" shall include, but is not limited to, any "counselor," "unit leader," "division manager," "area distributor," "circle of champions" member and all other providers of respondent's weight loss programs.

E. For any order-required disclosure in print media that is disseminated, either directly from respondent, or indirectly through respondent's distributors, to be made "clearly and prominently," or in a "clear and prominent manner," it must be given both in the same type style and in: (1) twelve (12) point type where the representation that triggers the disclosure is given in twelve (12) point or larger type; or (2) the same type size as the representation that triggers the disclosure where the representation is given in a type size smaller than twelve (12) point type.

F. For any order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume

and in the same cadence as the representation that triggers the disclosure.

I.

It is ordered, That respondent Dean Distributors, Inc., a California corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of respondent's very-low-calorie diet ("VLCD") programs unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks, or otherwise misrepresenting any health risk of any weight loss program.

B. Failing to provide to end-use consumers documents prepared for physicians that clearly and prominently disclose the health risks and complications that have been associated with very-low-calorie diets, including but not limited to the fact that VLCDs have been associated through published clinical studies with an increased risk of developing gallstones.

C. Misrepresenting the likelihood that participants of respondent's diet program(s) will regain all or any portion of lost weight.

D. Using any advertisement containing an endorsement or testimonial about weight loss or weight-loss maintenance success by a customer or customers of respondent's weight loss programs if the weight loss or weight-loss maintenance success depicted in the advertisement is not representative of what customers of respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss or weight-loss maintenance success the following statement:

"Results not typical."

Provided that if the endorsements or testimonials covered by this paragraph are in a broadcast medium, the disclosure required by this

paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure;

E. Making any representation, directly or by implication, about the success of customers on any diet program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation; provided, further, that for any representation that:

1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of customers using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All customers who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All customers who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of customers who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of customers who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

F. Representing, directly or by implication, that any customers of any diet program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those customers;

(2) The duration, over which the weight loss was maintained, measured from the date that customers ended the active weight loss phase of the program,

provided, however, that if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed;

(3) The statement: "[respondent] makes no claim that this [these] result[s] is [are] representative of all customers in the [respondent's diet] programs;" and

provided, however, that if the customer population referred to is representative of the general customer population for that program, respondent is not required to make this statement;

(4) The statement: "For many dieters, weight loss is temporary,"

provided, however, that respondent shall not represent, directly or by implication, that this statement does not apply to dieters in respondent's programs.

G. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey; the rate or speed at which any participant in any weight loss program has experienced or will experience weight loss; or the performance, efficacy, safety, or benefits of any weight loss program or weight loss product.

H. Representing, directly or by implication, that prospective participants in respondent's weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

II.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this order.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors or assigns, shall maintain and upon request make available to the Federal Trade Commission staff for inspection and copying:

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

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

IV.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its officers, agents, representatives, independent contractors, and employees, that, directly or through any other corporation, subsidiary, division, or any other device, are engaged in the preparation and placement of advertisements or promotional materials, who communicate with customers or prospective customers, or who have any responsibilities with respect to the subject matter of this order. Respondent shall also distribute a copy of this order to all future officers, agents, representatives, independent contractors, and employees for a period of ten (10) years from the date of entry of this order. This paragraph shall not apply to distributors, who are addressed in paragraph V.

V.

It is further ordered, That:

A. Respondent shall distribute, within thirty (30) days after service of this order, a copy of this order to, and obtain a signed and dated acknowledgment of receipt thereof from, each distributor who has acquired at least 300 cans of respondent's product in any one year;

B. Respondent shall distribute a copy of this order to each future distributor who acquires at least 25 cans of respondent's product in any one month within thirty (30) days of the month in which that individual or entity acquires those cans, and shall obtain a signed and dated acknowledgment of receipt thereof;

C. Respondent shall institute a reasonable program of surveillance adequate to reveal whether any of respondent's distributors are engaging in acts or practices prohibited by this order;

D. Respondent further shall (1) take reasonable steps to notify promptly any distributor that respondent determines is failing materially or repeatedly to comply with any order provision; (2) provide the Federal Trade Commission with the name and address of the distributor and the nature of the noncompliance if the distributor fails to comply promptly with the relevant order provision after being so notified; and (3) in cases where that distributor has been notified as required by subparagraph V.D.(1) and continues conduct that constitutes a material or repeated violation of the order, terminate the distributor, as permitted by applicable state law; and

E. Respondent shall retain and make available to the Commission upon request the originals of the signed and dated acknowledgments required under subparagraphs V.A and V.B.

VI.

It is further ordered, That this order will terminate on June 16, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII.

It is further ordered, That respondent and its successors or assigns shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
AUTODESK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3756. Complaint, June 18, 1997--Decision, June 18, 1997

This consent order permitted Autodesk's acquisition of Softdesk, requires Softdesk to divest its own computer-aided design ("CAD") software engines, "IntelliCADD," to Boomerang Technology, Inc., and prohibits, among other things, the combined firm from reacquiring the IntelliCADD product or any entity that owns or controls it, without prior notice to the Commission, for a 10-year period. In addition, the consent order prohibits Autodesk from interfering with Boomerang's ability to recruit or hire Softdesk employees who worked on the development of IntelliCADD

Appearances

For the Commission: *Daniel Ducore.*

For the respondents: *Charles T. Compton and Neil Nathanson, Wilson, Sonsini, Rosati & Goodrich, Palo Alto, CA. and John Christie and Scott E. Pueschel, Hale & Dorr, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Autodesk, Inc. ("Autodesk") entered into an Agreement and Plan of Merger with Softdesk, Inc. ("Softdesk"), whereby Autodesk agreed to acquire all of the outstanding shares of Softdesk, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would have violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

A. THE RESPONDENTS

1. Respondent Autodesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Delaware, with its office and principal place of business located at 111 McInnis Parkway, San Rafael, California.

2. Respondent Softdesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Liberty Hill Road, Henniker, New Hampshire.

3. At all times relevant herein, respondents Autodesk and Softdesk have been and are now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. THE PROPOSED ACQUISITION

4. In December 1996, Autodesk and Softdesk entered into an Agreement and Plan of Reorganization whereby Autodesk would acquire 100% of the voting securities of Softdesk in exchange for shares of Autodesk common stock with a value of \$90 million (the "Acquisition").

5. Autodesk is a public company that develops and markets computer-aided design ("CAD") software for the architecture, engineering and construction (the "AEC") industries. Autodesk offers a portfolio of software products including a CAD engine marketed and sold under the name "AutoCAD," for use with Windows operating systems on personal computers. Autodesk has had annual sales in excess of \$530 million.

6. Softdesk is a public company that also develops and markets CAD software for the AEC market. Softdesk has had annual sales in excess of \$40 million. Softdesk offers a portfolio of applications software that are used in conjunction with and to supplement CAD engines, primarily Autodesk's AutoCAD. Softdesk was also developing a CAD engine, known as "IntelliCADD."

C. RELEVANT MARKET

7. One relevant line of commerce within which to analyze the effects of Autodesk's acquisition of Softdesk is the market for CAD engines for Windows-based personal computers.

8. CAD engines are used by professional engineers to design and draw structures or other building projects for a variety of industries. CAD engines are the software platform which allows draftsmen to

draw lines, shapes, and objects with their computer. CAD engines can be a stand-alone product or used in conjunction with application software that enhances and increases the capabilities of the CAD system.

9. Customers using Windows-based CAD engines would not be likely to switch to UNIX-based CAD systems even if the price of Windows-based CAD engines increased substantially. Professional engineers at one time used CAD engines designed for use on UNIX-based mainframe computers. With the increase in the power of personal computers and their decline in price, engineers now principally use Windows-based CAD engines. Unix-based CAD software is still in use today, but is primarily limited to use in highly technical and sophisticated projects involving three-dimensional rendering of drawings. UNIX-based CAD software, and the hardware necessary to operate it is substantially more costly than Windows-based CAD software and hardware.

10. The relevant geographic market within which to analyze the effects of Autodesk's acquisition of Softdesk is either the United States or the world. While software is easily transported, there are no significant imports into the United States of Windows-based CAD engines.

D. MARKET STRUCTURE

11. The relevant market for Windows-based CAD engines is highly concentrated. Autodesk commands a dominant market share of the Windows-based CAD engines in North America, controlling nearly 70% of the installed base with approximately 1.4 million seats.

12. Among CAD engines in the marketplace for use on Windows-based personal computers, Autodesk's AutoCAD product is viewed by many in the industry as the de facto standard for Windows-based CAD systems. There are other CAD engines available in the market for use on personal computers, with varying degrees of file compatibility and transferability with AutoCAD, which is necessary to be an effective competitor in this market.

E. CONDITIONS OF ENTRY

13. *De novo* entry or fringe expansion into the relevant market would require an expenditure of substantial sunk costs and would be time-consuming and, therefore, such entry is not likely.

14. Entry sufficient to deter or defeat reductions in competition resulting from Autodesk's acquisition of Softdesk's IntelliCAD product requires developing a CAD engine that offers file compatibility and transferability with AutoCAD. The large installed base of AutoCAD users necessitates that any new CAD engine developed and offered in the market offer file compatibility and transferability to AutoCAD in order to gain sales. Users of AutoCAD have a large number of drawings in the AutoCAD format. Moreover, many users must share files they create with others who must be able to read and edit those files using their CAD software. Since most engineers use AutoCAD any alternative CAD engine must have the capability to read and be compatible with AutoCAD files without losing substantial amounts of data or information.

F. SOFTDESK'S ENTRY INTO THE CAD ENGINE MARKET

15. Softdesk, although historically a developer and seller of CAD application software, was developing and had tested a CAD engine, referred to as "IntelliCADD," for use on Windows-based personal computers. IntelliCADD provides file transferability and compatibility with Autodesk's AutoCAD generated files and application software. The IntelliCADD product is a direct competitor to and substitute and replacement for AutoCAD.

16. Softdesk had developed the IntelliCADD product for more than two years and was testing its IntelliCADD product with customers until sometime prior to the proposed merger with Autodesk. In approximately June 1996, Softdesk determined that it no longer had the financial ability to support continued development and marketing of the IntelliCADD product. The head of the team that had developed the product proposed to purchase the technology and formed Boomerang Technology, Inc. ("Boomerang") for the purpose of acquiring the product, completing its development, and bringing the product to market. Boomerang negotiated with Softdesk for the purchase of the IntelliCADD product and exchanged draft purchase agreements with Softdesk. Softdesk, however, terminated those negotiations at around the time that Autodesk agreed to acquire Softdesk. Softdesk representatives previously told Boomerang that Softdesk would sell the IntelliCADD product to Boomerang if Softdesk were purchased by someone other than Autodesk, but would not sell it to Boomerang if Softdesk were purchased by Autodesk.

17. After being advised by Commission staff that Autodesk's acquisition of Softdesk raised competitive concerns in the market for personal computer-based CAD engines, Softdesk resumed negotiations with Boomerang and divested and sold all of its rights in the IntelliCADD product to Boomerang pursuant to a Technology Transfer Agreement dated February 21, 1997. On that same date, Boomerang assigned and sold all of its rights to the IntelliCADD product to Visio Corporation.

18. Softdesk's development of the IntelliCADD product provided the market with a potential CAD engine that offered file compatibility and transferability with AutoCAD, thus providing direct head-to-head competition to AutoCAD.

19. Customers who had tested the IntelliCADD product reacted favorably to it. Some customers delayed or postponed the purchase of AutoCAD in anticipation of IntelliCADD being made available in the market. By the time Autodesk agreed to acquire Softdesk, the IntelliCADD product was within months of being introduced in the market.

G. EFFECTS OF THE PROPOSED ACQUISITION

20. The acquisition by Autodesk of Softdesk's IntelliCADD product would have substantially lessened competition in the market for Windows-based CAD engines by, among other things:

- a. Eliminating substantial, direct head-to-head competition between Autodesk and Softdesk;
- b. Eliminating actual potential competition from Softdesk in the relevant market;
- c. Preserving and maintaining Autodesk's market power;
- d. Substantially increasing the risk of unilateral exercise of market power;
- e. Maintaining high prices, or preventing the lowering of prices, for Windows-based CAD engines; and
- f. Reducing service to customers of Windows-based CAD engines.

H. VIOLATIONS CHARGED

21. The agreement described in paragraph four violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

22. The acquisition of Softdesk's IntelliCADD product by Autodesk, if consummated, would have violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Autodesk, Inc., a corporation organized and existing under the laws of the State of Delaware ("Autodesk"), Softdesk, Inc., a corporation organized and existing under the laws of the State of Delaware ("Softdesk"), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (the "Commission").

PREMISES

Whereas, Autodesk has proposed to acquire all of the voting securities of Softdesk pursuant to the Agreement and Plan of Reorganization by and among Autodesk, Inc., Autodesk Acquisition Corporation and Softdesk, Inc., dated December 10, 1996 ("the proposed Acquisition");

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm; and

Whereas, the entering into this Interim Agreement by Autodesk and Softdesk shall in no way be construed as an admission by Autodesk and Softdesk that the proposed Acquisition constitutes a violation of any statute; and

Whereas, Autodesk and Softdesk understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, Autodesk and Softdesk agree, upon the understanding that the Commission has not yet determined whether the proposed Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Autodesk and Softdesk agree to execute the Consent Agreement and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Autodesk and Softdesk sign the Consent Agreement.

2. Autodesk and Softdesk agree that, from the date Autodesk and Softdesk sign the Consent Agreement until the first of the dates listed in subparagraphs 2.a and 2.b, they will comply with the provisions of this Interim Agreement:

- a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

- b. The date the order is final.

3. Autodesk and Softdesk waive all rights to contest the validity of this Interim Agreement.

4. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, Autodesk and Softdesk shall permit any duly authorized representative or representatives of the Commission:

- a. Access, during the office hours of Autodesk and Softdesk and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Autodesk and Softdesk relating to compliance with this Interim Agreement; and

- b. Upon five (5) days' notice to Autodesk and Softdesk and without restraint or interference from them, to interview officers,

directors, or employees of Autodesk and Softdesk who may have counsel present, regarding any such matters.

5. This Interim Agreement shall not be binding until accepted by the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Autodesk, Inc. ("Autodesk"), and Softdesk, Inc. ("Softdesk"), and it now appearing that Autodesk and Softdesk, hereinafter sometimes referred to as the "respondents," are willing to enter into an agreement containing an order to refrain from certain acts and providing for other relief, and respondents having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect; and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, makes the following jurisdictional findings and enters the following order:

A. Respondent Autodesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 111 McInnis Parkway, San Rafael, California.

B. Respondent Softdesk, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7 Liberty Hill Road, Henniker, New Hampshire.

C. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent Autodesk*" or "*Autodesk*" means Autodesk, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries (including, after the Acquisition, Softdesk, Inc.), divisions, groups and affiliates controlled by Autodesk, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "*Respondent Softdesk*" or "*Softdesk*" means Softdesk, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Softdesk, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

C. "*Boomerang*" means Boomerang Technology, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 241 Kalbaugh Street, Ramona, California.

D. The "*Acquisition*" means the purchase of Softdesk by Autodesk pursuant to the Agreement and Plan of Reorganization by and among Autodesk, Inc., Autodesk Acquisition Corporation and Softdesk, Inc., dated December 10, 1996.

E. "*Respondents*" means Autodesk and Softdesk.

F. "*Commission*" means the Federal Trade Commission.

G. "*IntelliCADD Products*" means the IntelliCADD software product and all technical system documentation and user

documentation relating thereto identified as the "Acquired Assets" in the Technology Transfer Agreement entered into between Softdesk and Boomerang dated February 21, 1997.

H. "*Documentation*" means all supporting documentation associated with the IntelliCADD Products provided by Softdesk identified in the Technology Transfer Agreement entered into between Softdesk and Boomerang dated February 21, 1997.

II.

It is further ordered, That respondents shall take no action to interfere with the ability of Boomerang to recruit or employ respondents' employees whose primary responsibility at respondents was the development and/or programming of the IntelliCADD Products.

III.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without prior notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

- A. Acquire the IntelliCADD Products;
- B. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in the IntelliCADD Products.

IV.

It is further ordered, That the prior notification required by paragraph III of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such

transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by paragraph III of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That one (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with paragraphs II and III of this order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and reasonable notice, respondents shall permit any duly authorized representative of the Commission:

A. Access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this order; and

B. Upon five (5) days' notice to the respondents, and without restraint or interference, to interview officers, directors, or employees of the respondents, who may have counsel present.

VII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That this order shall terminate on June 18, 2007.

IN THE MATTER OF

COOPERATIVE COMPUTING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3757. Complaint, June 20, 1997--Decision, June 20, 1997

This consent order requires Cooperative Computing, Inc., among other things, to divest its electronic parts catalog to MacDonald Computer Systems through an exclusive, royalty-free and perpetual license with the right to sublicense and to transfer or assign its PartFinder[®] electronic catalog database, its J-CON[®] application program interface, and support software and documentation.

Appearances

For the Commission: *Daniel Ducore.*

For the respondent: *Thomas A. Roberts and Debra J. Pearlstein, Weil, Gotshal & Manges, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cooperative Computing, Inc. ("CCI") has entered into an Agreement and Plan of Merger with Triad Systems Corporation ("Triad"), whereby CCI has agreed to acquire all of the outstanding shares of Triad and that CCI has commenced a tender offer for the outstanding shares of Triad, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

A. THE RESPONDENT

1. Respondent Cooperative Computing, Inc. ("CCI") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 6207 Bee Cave Road, Austin, Texas.

2. At all times relevant herein, respondent has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. THE PROPOSED ACQUISITION

3. In October 1996, CCI entered into a merger agreement with Triad Systems Corporation ("Triad") and announced its intention to commence a tender offer for all of the outstanding voting securities of Triad. Under the terms of the tender offer, Triad shareholders will receive \$9.25 per share, or a total of approximately \$181 million. Immediately prior to the CCI acquisition of Triad, Hicks, Muse, Tate & Furst ("Hicks Muse"), a private investment firm based in Dallas, Texas, will acquire over 50 percent of CCI stock and gain control of CCI.

4. CCI is a privately-held company that develops and markets management information system software for the automotive aftermarket. CCI offers a portfolio of software products that assist auto parts distributors and retailers to track their parts inventory. CCI has developed and markets with its software a proprietary database of auto parts for domestic and foreign automobiles. CCI has had annual sales of approximately \$43 million.

5. Triad, a publicly-held Livermore, California-based company, develops and markets management information system software for the automotive aftermarket and for the hardlines and lumber industries. Triad has had annual sales of approximately \$175 million, including approximately \$90 million attributable to sales to the automotive parts aftermarket. Triad offers a portfolio of applications software that allows automotive parts distributors and retailers to efficiently manage their businesses. Triad also develops and sells a proprietary database of auto parts for domestic and foreign automobiles.

C. RELEVANT LINES OF COMMERCE

6. Warehouse distributors and jobbers are businesses that distribute and sell automotive parts and accessories into the replacement market, known as the automotive aftermarket. Warehouse distributors are large automotive aftermarket wholesalers and distributors of automotive parts and accessories. A warehouse

distributor typically purchases automotive parts directly from manufacturers, carries an inventory of tens of thousands of parts, and distributes those parts to jobbers. Jobbers are generally smaller distributors of automotive aftermarket parts and accessories which purchase parts from warehouse distributors. A jobber typically carries an inventory of a few thousand automotive parts and distributes those parts to professional automotive repair service dealers. The functions of traditional warehouse distributors and jobbers are today sometimes combined in what are known as two-step distributors, which are automotive aftermarket distributors who purchase automotive parts and accessories directly from manufacturers and sell those parts directly to automotive repair service dealers.

7. A management information system or "MIS" system is a computer system, including software, and sometimes including hardware, used by warehouse distributors and jobbers to manage their business including managing the inventory of the millions of aftermarket automotive parts manufactured for domestic and foreign-built automobiles. An MIS system performs many functions including inventory control, point-of-sale purchase ordering, accounts receivable, accounts payable, payroll, and general ledger, and aids the warehouse distributor or jobber in managing the business.

8. An electronic automotive parts catalog or "electronic catalog" is a database of aftermarket automotive part numbers that is searchable by make, model and year of car. An electronic catalog quickly and efficiently determines, with make, model and year of automobile information, which automotive part number, and hence, which automotive part is needed for a particular automobile. An electronic catalog is a very extensive database, containing millions of part numbers for domestic and foreign cars.

9. One relevant line of commerce within which to analyze the effects of CCI's acquisition of Triad is the market for electronic catalogs. There are no economic substitutes for electronic catalogs. Paper catalogs, the only possible substitute for an electronic catalog, are inadequate substitutes because paper catalogs are cumbersome and time consuming to use. The ability of warehouse distributors and jobbers to access information about parts availability and supply the required product is critical to their success, since the industry standard for same day repair service causes service dealers to require delivery of needed parts within 30 minutes. Electronic catalogs are sold as stand-alone products and as parts of integrated MIS systems.

10. Another relevant line of commerce within which to analyze the effects of CCI's acquisition of Triad is the market for MIS systems integrated with an electronic catalog. An MIS integrated with an electronic catalog enables users to access the vast inventory of automotive part numbers of hundreds of automotive part manufacturers on the same computer terminal as the MIS. Customers often demand an MIS integrated with an electronic catalog to be able to electronically transfer automotive parts data from the electronic catalog to a purchase order in the MIS. This transfer of data is important because it saves time and eliminates any risk of human error during the process of rekeying automotive part numbers into purchase orders.

11. The relevant geographic market within which to analyze the effects of CCI's acquisition of Triad is either the United States or North America. Many automotive parts and part numbers are unique to the United States and Canada. While software is easily transported, there are no imports into the United States of either electronic catalogs or integrated MIS systems with electronic catalogs.

D. CONCENTRATION

12. The relevant U.S. or North American markets for electronic catalogs and for MIS systems integrated with an electronic catalog are highly concentrated.

13. There are only a limited number of providers of electronic catalogs. In addition to CCI and Triad, there is only one other firm, Profit-Pro, Inc. ("Profit-Pro"), which develops and sells an electronic catalog for the independent automotive aftermarket. Triad sells both a stand-alone catalog and a catalog integrated with an MIS system, while CCI only sells its catalog integrated with an MIS system. CCI and Triad are, nonetheless, substantial, direct competitors. The electronic catalog offered by Profit Pro, Inc. is considered inferior compared to the CCI and Triad catalogs, in the size of its database, the accuracy of the part numbers in the database, and the speed with which it is updated. Profit-Pro is a weak, fringe competitor with a small market share.

14. One closed automotive aftermarket distribution network and one large automotive aftermarket retail chain of stores have their own, internally developed electronic catalog. These two electronic catalogs are not available to the independent automotive aftermarket. Moreover, these two electronic catalogs are designed to meet the

specific needs of those firms and therefore they have a very limited database of automotive parts compared to the electronic catalogs of CCI and Triad. Therefore, these two catalogs do not constrain the pricing of electronic catalogs by CCI or Triad.

15. Triad and CCI are the dominant providers of MIS systems integrated with an electronic catalog, together controlling approximately 70% of the market. The merger of CCI and Triad would increase the Herfindahl-Hirschmann Index ("HHI") over 1200 points to over 3900. Aside from CCI and Triad, all other firms selling a MIS integrated with an electronic catalog rely upon Triad or Profit-Pro for their electronic catalog. These fringe firms do not constrain pricing nor in any other way substantially impact competition for the development and sale of MIS systems integrated with an electronic catalog.

E. CONDITIONS OF ENTRY

16. *De novo* entry or fringe expansion into the relevant markets which would be sufficient to deter or defeat reductions in competition resulting from the CCI acquisition of Triad would not be timely or likely. Developing an electronic catalog would require an expenditure of substantial sunk costs and would be time-consuming. Electronic catalog data must be entered manually into a database because the electronic parts data is received in a different format from each of hundreds of automotive parts manufacturers. Entry with a catalog covering only a fraction of available automotive parts would not be acceptable to most warehouse distributors and jobbers.

F. EFFECTS OF THE PROPOSED ACQUISITION

17. The proposed acquisition by CCI of Triad may substantially lessen competition in the United States or North American markets for electronic catalogs and for MIS systems integrated with an electronic catalog by, among other things:

- a. Increasing concentration substantially in highly concentrated markets;
- b. Eliminating substantial, direct head-to-head competition between CCI and Triad;
- c. Substantially increasing the risk of unilateral exercise of market power;

- d. Increasing prices for electronic catalogs and MIS systems integrated with an electronic catalog; and
- e. Reducing service to customers of electronic catalogs and MIS systems integrated with an electronic catalog.

G. VIOLATIONS CHARGED

18. The agreements described in paragraph three violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

19. The acquisition of the outstanding shares of Triad by CCI, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of Cooperative Computing, Inc. ("CCI"), and Triad Systems Corporation ("Triad"), and it now appearing that CCI, hereinafter sometimes referred to as the "respondent," is willing to enter into an agreement containing an order to divest certain assets and providing for other relief, and respondent having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Clayton Act and Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed, consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, now in further conformity with the procedure

prescribed in Section 2.34 of its Rules, makes the following jurisdictional findings and enters the following order:

1. Respondent Cooperative Computing, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 6207 Bee Cave Road, Austin, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*CCI*" means Cooperative Computing, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Cooperative Computing, Inc., and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. "*Triad*" means Triad Systems Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3055 Triad Plaza, Livermore, California.

C. "*MacDonald*" means MacDonald Computer Systems, a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 25031 Avenue Stanford, Valencia, California.

D. The "*Acquisition*" means the purchase of shares of Triad common stock pursuant to the Offer to Purchase by CCI dated October 23, 1996.

E. "*Commission*" means the Federal Trade Commission.

F. "*CCI Products*" means the CCI Database, Database Technology, and Documentation, and all technical system documentation and user documentation relating thereto, including, but not limited to, a description of all data elements and all other

information necessary for the Acquirer to use and operate the products.

G. "*CCI Database*" means the CCI PartFinder[®] Electronic Catalog Database data current as of the date of delivery to the Acquirer, for all the product lines and data elements contained in the database as of the date of the Acquisition.

H. "*Database Technology*" means the API, Server Software, Support Software, and TIMDD.

I. "*API*" means CCI's J-CON[®] application program interface for the CCI PartFinder[®] Electronic Database, including all related documentation, current as of the date of the Acquisition.

J. "*Server Software*" means the CCI software utilized to retrieve vehicle data from the CCI Database when a valid request is received from a user, including all related documentation, current as of the date of the Acquisition.

K. "*Support Software*" means the CCI software and all related documentation or data, including, but not limited to, all documentation current as of the date of the Acquisition, and utilized to distribute, maintain or support the CCI Database, including but not limited to, all software for data entry, data extraction, and media creation.

L. "*TIMDD*" means all Triad Integration Module data definitions current as of the date of the Acquisition.

M. "*Documentation*" means all end user documentation associated with the CCI Products provided by CCI.

N. "*Updates*" means all additions, deletions and modifications to the CCI Database, which shall include updated data and information made available by respondent to any of respondent's customers as part of the respondent's standard, commercially available electronic catalog product. Upon delivery of an update, such update shall be considered to be included in the term "CCI Database."

O. "*VAR*" means a person or entity in the business of distributing hardware and/or software systems to warehouses, jobber/retail stores and/or service dealers in the automotive aftermarket but excludes any person or entity whose primary business is the distribution, sale, or installation of automotive parts and accessories.

P. "*Acquirer*" means either MacDonald or the person or entity approved by the Commission to acquire the CCI Products pursuant to paragraph II.B of this order.

Q. "*Proprietary Rights*" means all patents, patent applications, trade secrets, copyrights, trademarks and service marks, know-how, confidential information and other proprietary rights.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, at no minimum price, through a perpetual, royalty-free, transferable, assignable, and exclusive license with the right to use for any purpose, combine with other information, reproduce, modify, market and sublicense, the CCI Products in the United States and Canada. Provided, however, respondent may retain the right to sell, license or otherwise provide the CCI Products to customers of CCI MIS systems until such time as CCI is able to integrate the Triad electronic catalog database to CCI's MIS systems, but in no event for more than six (6) months from the date of delivery of the Database, and provided, however, respondent may retain the right to utilize the CCI Database Technology and Documentation to update, support and maintain an electronic catalog database for any CCI customer licensed by CCI prior to the end of the aforementioned six (6) month period.

B. Respondent shall divest the CCI Products as set forth in paragraph II.A to MacDonald, in accordance with the License Agreement entered into between CCI and MacDonald, dated February 13, 1997 (the "License Agreement"), no later than ten (10) days after the date on which this order is made final. Provided, however, that in the event respondent fails to divest the CCI Products to MacDonald because MacDonald, unilaterally and through no fault of respondent, breaches the License Agreement, respondent shall divest the CCI Products as set forth in paragraph II.A to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within sixty (60) days after the date on which this order is made final. The purpose of the divestiture of the CCI Products is to ensure the continued use of the CCI Products in the same business in which the CCI Products are used at the time of the Acquisition, in competition with respondent, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the CCI Products, respondent shall take such actions as are necessary to maintain the viability and marketability of the CCI Products, including but not limited to updating the CCI Database on a regular schedule, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the CCI Products.

III.

It is further ordered, That:

A. If respondent has not divested the CCI Products, as required by paragraph II of this order, the Commission may appoint a trustee to divest the CCI Products. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

a. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

b. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the CCI Products.

c. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

d. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.c to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

e. The trustee shall have full and complete access to the personnel, books, records and facilities related to the CCI Products or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

f. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

g. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of

respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the CCI Products.

h. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

i. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

j. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

k. The trustee shall have no obligation or authority to operate or maintain the CCI Products.

l. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That:

A. Respondent shall deliver the CCI Products to the Acquirer in machine-readable or other appropriate usable form.

B. After the CCI Products have been divested, respondent shall not exercise any right it may have, whether at common law, in equity, or in bankruptcy or reorganization (including through obtaining any equity interest in a reorganized debtor) or otherwise, to terminate the license granted pursuant to this order or to seek to have such license terminated, or to require, or seek to require, the Acquirer or its successor or assignee to return the CCI Products.

C. Respondent shall make no claim to ownership, title, or interest in any modifications of the CCI Products developed by Acquirer and any copies (in whole or part) thereof and any documentation developed by Acquirer relating thereto, and all Proprietary Rights therein, shall be the property of Acquirer.

D. Respondent shall provide to the Acquirer, updates to the CCI Database on a monthly basis, no later than the time that respondent provides updates to any of respondent's customers, in accordance with the License Agreement, for no more than two (2) years.

E. Upon reasonable notice to respondent from the Acquirer, respondent shall provide such assistance to the Acquirer as is reasonably necessary to ensure that the purpose of the divestiture of the CCI Products is accomplished. Such assistance shall include reasonable consultation with knowledgeable employees of respondent for a period of time sufficient to ensure that the Acquirer's personnel are adequately trained in the sources and processing of the data contained in the CCI Products. Respondent, however, shall not be required to continue providing such assistance for more than twelve (12) months from the date of the divestiture and for no more than three hundred and fifty (350) hours during that twelve month period of time. Respondent may not charge Acquirer for such assistance, except for documented, out-of-pocket expenses (such as food, travel and lodging) incurred by respondent, which shall be billed to Acquirer as they occur.

F. Respondent shall not, for a period of twenty-four (24) months from the date of the divestiture, enter into or enforce non-competition agreements that have the purpose or effect of interfering with the ability of Acquirer to recruit or employ respondent's employees whose primary responsibility at respondent is, or during the six months prior to the Acquisition was, the development, programming, input and/or support of the CCI Database or Database Technology, provided that respondent may enter into or enforce existing confidentiality agreements with any of its employees.

G. Respondent, for a period of eighteen (18) months from the date of the divestiture, (1) shall not enter into any agreement with a VAR to provide, in the United States or Canada, any electronic catalog database, unless such agreement permits the VAR to terminate such agreement during the thirty (30) day period immediately preceding the first anniversary of such agreement; and (2) shall permit any existing agreement with a VAR to provide in the United States or Canada, any electronic catalog database, to be terminated by such VAR during the thirty (30) day period immediately prior to the first anniversary of the effective date of the License Agreement.

V.

It is further ordered, That within fifteen (15) days after the date this order is made final and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraph II of this order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of paragraphs III and IV. A, D, E, F and G of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and reasonable notice, respondent shall permit any duly authorized representative of the Commission:

A. Access, during normal office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the

possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to the respondent, and without restraint or interference, to interview officers, directors, or employees of the respondent, who may have counsel present.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of the order.

IN THE MATTER OF
THE STOP & SHOP COMPANIES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3649. Consent Order, April 2, 1996--Modifying Order, June 20, 1997

This order reopens a 1996 consent order -- that required the respondents to divest specific supermarkets -- and this order modifies the consent order by terminating the requirement that Stop & Shop divest, among other stores, two Purity Supreme supermarkets in Massachusetts, in part, because increased competition from other entrants has made it extremely unlikely that the stores can be divested.

ORDER REOPENING AND MODIFYING ORDER

On January 6, 1997, respondent The Stop & Shop Companies, Inc. ("Stop & Shop")¹ filed a Petition To Reopen and Modify Consent Order (Purity Supreme) ("Petition"). In its Petition, Stop & Shop requests that the Commission reopen the order in Docket No. C-3649 ("order") to set aside paragraphs II.A.3.a and II.A.6.a, which require Stop & Shop to divest Purity Supreme Store number 41 located at 630 American Legion Highway, Roslindale, Massachusetts ("the Roslindale store") and Purity Supreme store number 20 located at 525 Harvard Street, Brookline, Massachusetts ("the Brookline store"). The Petition addresses the remaining 2 of 17 supermarket divestitures required by the order. The Commission previously approved Stop & Shop's applications for divestiture of the other 15 supermarkets.

For the reasons discussed below, the Commission has determined that Stop & Shop has demonstrated that it is in the public interest to reopen and modify the order to set aside these divestiture obligations.

I. THE COMPLAINT AND ORDER

This matter arose out of the 1995 acquisition by Stop & Shop of all of the supermarkets and related assets owned and operated by Purity Supreme, Inc. ("Purity"). The complaint in this matter charged that Stop & Shop's acquisition of Purity violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Specifically, the complaint alleged

¹ On July 21, 1996, Koninklijke Ahold N.V., a Netherlands corporation, acquired substantially all of the outstanding voting shares of Stop & Shop.

that the effects of the acquisition may be substantially to lessen competition "in the retail sale of food and grocery products in supermarkets, and narrower markets contained therein"² in, among other markets, "Brookline [and] the Roslindale neighborhood in Boston"³ At the time of Stop & Shop's acquisition of Purity, Stop & Shop and Purity directly competed in Brookline and Roslindale. The concern thus arose that Stop & Shop would likely be able unilaterally to raise prices in the Brookline and Roslindale markets.

The Commission accepted a consent agreement with Stop & Shop on October 18, 1995, and the resulting consent order became final on April 2, 1996.⁴ Under the terms of the order, Stop & Shop is required to divest, among other stores, "absolutely and in good faith," the Roslindale and Brookline, Massachusetts supermarkets.⁵ The purpose of these divestitures, as of the others, is to ensure the continuation of the Roslindale and Brookline stores as ongoing, viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.⁶

II. THE PETITION

In its Petition,⁷ Stop & Shop requests that the Commission modify the order to eliminate the remaining required divestitures under the order, the Roslindale and Brookline stores.⁸ Stop & Shop bases its Petition on changed conditions of fact and public interest considerations.⁹

² Complaint ¶ 9.

³ *Id.* ¶ 12.c.

⁴ Stop & Shop also entered into a separate consent agreement with the Massachusetts Attorney General. Generally, this agreement mirrors the terms of the Commission's consent agreement. See *Commonwealth of Massachusetts v. SSC Associates, L.P. and Stop & Shop Companies, Inc.*, No. 95-12377NG (D. Mass. Oct. 18, 1995) (Consent Decree).

⁵ Order ¶ II.A.

⁶ *Id.* ¶ II.B.

⁷ In support of its Petition, Stop & Shop provided the affidavits of Brian Hotarek, Vice President in charge of Real Estate and Development for the Stop & Shop Companies, Inc. ("Hotarek Affidavit"), and William C. Hamlin, Vice President, Chief Financial Officer and Secretary of C&S Wholesale Grocers, Inc. ("Hamlin Affidavit").

⁸ Order ¶¶ II.A.3.a. and II.A.6.a.

⁹ Stop & Shop does not assert that any change of law requires reopening the order.

Stop & Shop claims that there is no serious interest by potential acquirers in either store to be divested because of the increased competition surrounding each store and because of the decreased sales volume of the two stores. Stop & Shop claims that new entry has made it difficult for the Roslindale and Brookline stores to compete effectively in their respective markets.¹⁰ The record shows that a new Sav-A-Lot supermarket was opened immediately adjacent to the Roslindale store on January 20, 1996. Likewise, a new Star Markets superstore was opened less than one mile north of the Brookline store approximately 5 months before the order was issued by the Commission. In addition, a Trader Joe's store has opened less than one mile south of the Brookline store. There has been a significant decline in sales at both stores to be divested, which is likely to continue.¹¹

Stop & Shop asserts that operating the Roslindale and Brookline stores has caused significant losses to Stop & Shop and that it needs to end the losses being sustained by the Roslindale and Brookline stores to maintain Stop & Shop's competitive vigor in the relevant markets. Removing the divestiture requirement would enable Stop & Shop to close the stores, halting any further losses.¹²

III. STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").¹³

¹⁰ Petition at 7-10.

¹¹ Petition at 12-14.

¹² Petition at 17. *See also* Hotarek Affidavit, ¶¶ 16 and 18.

¹³ *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC complaints and orders (CCH) ¶22,007 at 22,585 ("Damon Letter"), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

IV. REOPENING AND MODIFYING THE ORDER IS IN THE PUBLIC INTEREST

Based on the record in this matter, Stop & Shop has not demonstrated changes of fact that justify eliminating the remaining divestiture requirement. However, public interest considerations warrant ending the requirement to divest the Roslindale and Brookline supermarkets. Stop & Shop has demonstrated an affirmative need for the change, and the reasons to modify the order outweigh the reasons to retain the divestiture requirement as written.

A. Stop & Shop Has Not Demonstrated Changes of Fact

Reopening is not required for changes in circumstances that were reasonably foreseeable at the time the consent order was entered. *See* Pay Less Drug Stores Northwest, Inc., Docket No. C-3309, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship, and eliminate the dangers that the order sought to remedy). With respect to the Roslindale market, the record shows that Sav-A-Lot's entry¹⁴ took place shortly before the order was issued by the Commission. Consequently, Sav-A-Lot's entry, as a factual matter, does not constitute the requisite significant change in circumstances that requires reopening of the order. Likewise, with respect to the Brookline market, Star's entry took place approximately five months before the order in this matter was issued by the Commission. Thus, as a factual matter, Star's entry does not constitute a changed fact that would warrant modification of the order with respect to the Brookline store.

Trader Joe's entry in Brookline also does not constitute a changed fact that eliminates the need for the divestiture of the Brookline store. Trader Joe's potential entry into the relevant market was not an unforeseen event; the record indicates that Trader Joe's was actively looking for sites for stores in the relevant Boston metropolitan area market, which includes Roslindale and Brookline, considerably before the order was issued by the Commission. More important, however, the Commission does not consider the Trader Joe's store to be a "supermarket" as that term is defined in the order and its entry

¹⁴ Although Sav-A-Lot offers many items sold through supermarkets, Stop & Shop has not demonstrated that the Sav-A-Lot carries all relevant product categories identified in paragraph I.E of the order. Nor has it demonstrated that the Sav-A-Lot carries the variety of brands and sizes within a category that would be found in Stop & Shop's comparable supermarkets. Nonetheless, it is evident that the Sav-A-Lot is attracting business away from Stop & Shop's supermarkets.

into the Brookline market thus does not remedy the competitive harm resulting from Stop & Shop's acquisition of the Purity supermarket in Brookline. *See* order ¶ I.E.

B. Public Interest Considerations

Stop & Shop has demonstrated an affirmative need to modify the order. The record in this case shows that Stop & Shop has made good faith efforts to locate purchasers for both the Roslindale and Brookline stores, but has been unable to divest the two stores. Stop & Shop engaged the services of a well-known investment banking firm to prepare offering packages to potential acquirers. Subsequently, Stop & Shop contacted numerous potential buyers regarding these supermarkets including, among others, parties who ultimately acquired other stores Stop & Shop was required to divest under the order. Stop & Shop offered the Roslindale and Brookline stores as part of larger packages, but the potential acquirers desired only the other assets. Stop & Shop also offered to divest the stores' equipment and fixtures for \$1 and to subsidize the rent, but again no acquirers expressed interest. In sum, none of the parties contacted was interested in acquiring either the Roslindale or the Brookline store.

When the order was entered, the Commission believed that the Roslindale and Brookline stores were divestable, and there is no indication that Stop & Shop has not properly maintained and operated these stores since entry of the order. The declining sales and losses experienced by the Roslindale and Brookline supermarkets thus do not appear to be caused by any failure of Stop & Shop to maintain them. Rather, the declining sales and losses appear to be primarily related to the recent entry by Star and Sav-A-Lot. Although the entries occurred prior to the order becoming final, neither Commission staff nor Stop & Shop anticipated the extent of competitive impact these two entrants have had on the Roslindale and the Brookline store, respectively.

The increased competition in Roslindale and Brookline has adversely affected the Roslindale and Brookline supermarkets' viability and marketability, and it appears that the two stores will continue to sustain significant losses. Consequently, continuation of the requirement to divest and the requirement to maintain the viability and marketability of the stores, which are steadily losing sales, imposes unanticipated costs on Stop & Shop that it asserts impede its ability to compete in the relevant markets. *See* Promodes, S.A., et al.,

Order Granting Request to Reopen and Modify Order Issued May 17, 1990 (January 28, 1994). This constitutes the affirmative need showing under the public interest test.

The remedial purpose of the order was to restore and increase competition in, among other markets, the Boston metropolitan area through the sale of a specified number of supermarkets, including the Roslindale and Brookline stores. Stop & Shop was able to divest all of the specified stores except the stores located in Roslindale and Brookline. These two stores could not be divested in more than fifteen months¹⁵ of serious efforts by Stop & Shop and the investment banker it retained to assist it in its divestiture efforts. Given Stop & Shop's efforts to divest, and the limited time remaining on the Brookline store's lease, it is extremely unlikely that the stores can be divested consistent with the terms of the order.

Stop & Shop asserts that it is suffering continuing losses due to the operation of the Roslindale and Brookline stores, which are competitively harming Stop & Shop. Because it is extremely unlikely that the stores can be divested, whether by Stop & Shop or by a trustee appointed by the Commission, the remedial purpose of the order will not be achieved. Accordingly, on balance, the need to achieve the marginal benefit of divesting two non-competitive supermarkets is outweighed by the continuing costs that the divestiture obligation is imposing on Stop & Shop.

Therefore, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's order be, and it hereby is, modified to set aside paragraph II.A.3.a and paragraph II.A.6.a, as of the effective date of this order.

Commissioner Azcuenaga dissenting, and Commissioner Starek concurring in the result only.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

The Commission today permits Stop and Shop to avoid its obligation under the order to divest two stores in the Boston, Massachusetts, area, because Stop and Shop has failed to divest the stores and the continuing effort to do so is costly. Although I did not agree that these two stores should be required to be divested,¹ the

¹⁵ Stop & Shop began its divestiture efforts immediately after signing the consent agreement in October 1995.

¹ See Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in *The Stop and Shop Companies, Inc.*, Docket C-3649 (April 8, 1996).

respondent's obligation under a final order of the Commission should not be so readily excused. The Commission's action opens the door for all respondents to postpone divestiture, claim that the effort is costly, and avoid the obligation under the order.

The order in this matter provides for the appointment of an independent trustee to accomplish divestiture if Stop and Shop fails to do so in a timely manner, but no trustee has been appointed. In *Promodes, S.A.*,² cited as precedent for modifying this order, the obligation to divest was set aside only after a trustee had been appointed and had failed to locate an acquirer for the stores required to be divested. The inability of the trustee to find an acquirer was cited in *Promodes* as "evidence that divestiture of the two stores [was] extremely unlikely." I concurred in *Promodes*,³ on the ground that "[i]f the trustee cannot identify potential buyers, continued imposition of the divestiture requirement no longer serves the public interest." Comparable evidence of the public interest is not available here, because no independent trustee has been appointed. We have instead allegations of burden resulting from costs that surely were anticipated at the time the order was signed. See *Louisiana-Pacific Corporation*, 112 FTC 547 (1989).

I dissent.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to reopen and modify the order, relieving the respondents of the obligation to divest certain supermarkets in Chattanooga, Tennessee. The Commission-appointed trustee, during a 21-month period, has not accomplished the required divestitures. In classic understatement, the Commission concludes that the trustee's lack of success is "evidence that divestiture of the two stores is extremely unlikely."

A Commission-appointed trustee serves as a neutral arbiter to establish whether the divestiture required by the order can be accomplished (assuming the trustee's good faith and diligence and the absence of evidence that the respondent has frustrated the trustee's efforts). If the trustee cannot identify potential buyers, continued imposition of the divestiture requirement no longer serves the public

² *Promodes, S.A.*, Order Granting Request To Reopen and Modify Order Issued May 17, 1990 (Jan. 28, 1994), reprinted in 5 Trade Reg. Rep. (CCH) ¶ 23,540.

³ A copy of my concurring statement in *Promodes* is attached.

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Concurring Statement

interest. In these circumstances, the requirement imposes costs, and the respondent need not make a particularized showing of those costs.

The Commission has in the past recognized that an obligation to divest particular assets may be modified in the public interest when the respondent "has been unable to find an acquirer [for those assets] at any price." *RSR Corporation*, 98 FTC 872 (1981); compare *Louisiana-Pacific Corporation*, 112 FTC 547, 561 (1989) (asserted financial disadvantage distinguished from impossibility). The trustee having failed to effect divestiture, the requirement now should be lifted.

Response to Petition

123 F.T.C.

**Re: Altmeyer Home Stores, Inc. Petition to Quash or Limit
Civil Investigative Demands. File No. 962-3063.**

February 12, 1997

Dear Mr. Farnan:

This is to advise you of the Federal Trade Commission's ruling on the Petition to Quash Civil Investigative Demands ("Petition") that you filed on behalf of your client, Altmeyer Home Stores, Inc. ("Altmeyer" or "Petitioner"), in the above-referenced matter.

The ruling set forth below has been made by Commissioner Roscoe B. Starek, III, pursuant to authority delegated under Commission Rule of Practice 2.7(d)(4), 16 CFR 2.7(d)(4). Pursuant to Rule 2.7(f), 16 CFR 2.7(f), within three days after service of this decision, Petitioner may file with the Secretary of the Commission a request for full Commission review. The timely filing of such request shall not stay the return date in this ruling unless the Commission otherwise specifies.

Commissioner Starek has carefully reviewed the petition and the accompanying materials. He has also considered the oral presentation on the Petition conducted on January 21, 1997. The Petition is granted in part and denied in part for the reasons discussed below.

I. BACKGROUND

The Civil Investigative Demands ("CIDs") in this matter arise in the context of a Commission investigation to determine whether Altmeyer may have engaged in acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and the Fair Credit Reporting Act ("FCRA") provisions regarding the use of credit reports for employment purposes.¹ On March 22, 1995, staff of the FTC's Chicago Regional Office sent a letter to Altmeyer requesting that the company voluntarily provide certain information and documents regarding its policies and procedures for the FCRA in connection with Altmeyer's use of consumer reports for employment purposes. By letter dated May 2, 1995, you, as counsel for Altmeyer, agreed to permit FTC staff to

¹ The relevant provision of the FCRA is Section 615(a), 15 U.S.C. 1681m(a), which requires users of consumer credit reports, who deny employment applications based in whole or in part on those reports, to provide consumers with the name and address of the consumer reporting agency from which they obtained the report.

inspect the requested information and documentation at your Pittsburgh law office between May 8, and May 25, 1995. Letter from Thomas J. Farnan to John Hallerud, FTC Chicago Regional Office (May 2, 1995). According to FTC staff, you then indicated in a conversation with John Hallerud, the FTC attorney responsible for the investigation at the time, that Altmeyer lacked the necessary policies and procedures for complying with the FCRA. Based on the information from this purported conversation, FTC staff decided to forgo inspecting Altmeyer's documents. Instead, FTC staff offered Altmeyer the opportunity to enter into a consent agreement resolving the investigation without further expense to the company. You have strongly denied that you ever made such a statement to FTC staff, and maintain that Altmeyer is and was in compliance with the law. Letter from Thomas Farnan to Commissioner Roscoe B. Starek, III (Jan. 23, 1997). *See also* Letter from Thomas Farnan to C. Steven Baker, FTC Chicago Regional Office (November 6, 1996).

Later FTC staff renewed its request for access to Altmeyer's documents and information regarding compliance with the FCRA and, once again, you (acting on behalf of the company) agreed to cooperate voluntarily with the request. Instead of providing FTC staff with access to the requested materials from the entire period under investigation (January 1994 to the present), however, Altmeyer submitted only materials from the months of October 1995, March 1996, and September 1996. FTC staff considered this response unsatisfactory because it provided information about Altmeyer's practices and procedures that occurred after the company learned that a Commission investigation was underway. At this point, you withdrew Altmeyer's offer to produce the requested materials voluntarily.

When the prospects for further cooperation between Altmeyer and FTC staff in the investigation appeared remote, the Commission issued two CIDs on December 2, 1996. The CIDs were authorized by the Commission's resolution of June 27, 1990, directing the use of compulsory process in FTC investigations to determine whether unnamed consumer reporting agencies or others are engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act and in violation of the FCRA. One of the CIDs required the

production of 16 categories of documents. The other CID required the oral testimony of Altmeyer's Vice President, Judy Altmeyer.²

On December 18, 1996, the Secretary of the Commission received the Petition from Altmeyer objecting to the CIDs. Pursuant to the Commission's Rules of Practice, a petition to quash or limit a CID must be filed within 20 days after service of the CID (or, if a return date is less than 20 days after service, before the return date). 16 CFR 2.7(d)(1). Because the return date for the CID requesting the production of documents was December 16, the instant Petition (received by the Commission on December 18) was not timely as to this CID. Petitioner neither requested additional time to file a response to that CID nor advanced any explanation for the late filing. The Petition, however, was timely with respect to the CID requesting oral testimony. Despite Petitioner's failure to comply fully with the Commission's procedural requirements for submitting a timely petition to quash, the Commission has determined that it will not dismiss the petition on this basis and will consider each of Petitioner's objections.

II. SPECIFIC OBJECTIONS

A. *Petitioner alleges that before it must produce the requested documents and testimony, the Commission is required to present evidence that Altmeyer violated the law.*

At the oral presentation, you stated that FTC's demand for access to information relating to Altmeyer's practices for complying with the FCRA amounted to a "fishing expedition." Oral Presentation Transcript at 5 (Jan. 21, 1997). You asserted that it is improper for the Commission to order production of the information covered by the CIDs without first advising Altmeyer of the evidence already in the Commission's possession that Altmeyer has engaged in unlawful activity. You also asserted a right to conduct discovery depositions relating to the bases for the Commission's investigation of Altmeyer. Oral Presentation Transcript at 6. Your argument is incorrect and does not take into account the broad scope of the Commission's investigatory powers and the procedural safeguards that are applicable to this agency's pre-complaint investigations.

² The CID requesting production of documents indicated a return date of December 16, 1996, and the CID for oral testimony specified a return date of December 27, 1996.

The Commission has broad investigatory powers to secure relevant information in order to determine whether a law violation has occurred. *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950) (analogizing FTC's compulsory process powers to those of a grand jury). As the Supreme Court stated, the FTC "does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *Morton Salt*, 338 U.S. at 642-43. *Accord*, *FTC v. Carter*, 636 F.2d 781, 786 (D.C. Cir. 1980); *FTC v. Texaco, Inc.*, 555 F.2d 862, 873, n.23 (D.C. Cir.)(*en banc*), *cert. denied*, 431 U.S. 974 (1977). The Commission's power to compel the production of documents and testimony from the target of an investigation through a subpoena is not conditioned on the possession of a specific quantum of evidence or a showing of probable cause to believe that the law has been violated. *United States v. Powell*, 379 U.S. 48, 57 (1964) (rejecting a probable cause requirement); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 216 (1946) (same).³ Indeed, it is well established that the Commission may compel the production of information provided that it is sought for a legitimate purpose and is "reasonably relevant" or not "plainly irrelevant" to that purpose, and that the inquiry is not too indefinite or unduly burdensome. *Morton Salt*, 338 U.S. at 652-53, *FTC v. Anderson*, 631 F.2d 741, 744-45 (D.C. Cir. 1979). Finally, with respect to the issue of relevance, courts have ruled that these standards are far less rigid in the context of an agency investigation than in an adjudicative matter, *FTC v. Green*, 252 F. Supp. 153 (S.D.N.Y. 1966), and have generally deferred to an agency's appraisal of relevance which "must be accepted so long as it is not obviously wrong." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1255 (1993).⁴

³ You have stated that you are unaware of any legal decision in which a court has required a corporation to open its private files to a government agency without articulating a reason to believe that the law is being violated. Oral Presentation Transcript at 14. As support for this view, you cited (*id.* at 15) to *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1327 (Fed. Cir. 1990), a patent infringement case involving two private parties engaged in a discovery dispute. In that case, the appellate court ruled that one of the private parties to the lawsuit could not obtain discovery of certain information held by a non-party based on only "a bare allegation of wrongdoing." That private discovery decision case is not relevant to the FTC matter at hand, which involves the exercise of the agency's power to gather evidence in an investigation by subpoena.

⁴ The relevance of a CID is measured against the scope and purpose of an agency's investigation, which in this instance are set forth in the Commission's Resolution authorizing issuance of compulsory process, attached to the CIDs. *FTC v. Texaco*, 555 F.2d at 874. Moreover, it is respondent's burden to show that the information sought by the investigative demand is irrelevant. *FTC v. Invention Submission Corp.*, 965 F.2d at 1090.

It is clear that the target of a Commission investigation such as Petitioner does not have the rights accorded to a litigant in an adjudicative proceeding. In carrying out its investigative functions, the Commission may proceed on a non-public, *ex parte* basis against targets without according adjudicative procedures such as discovery of any evidence that may have been gathered or the right to confront witnesses called by the agency. *Hannah v. Larche*, 363 U.S. 420, 440-41, 446 (1960); *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1387-88 (5th Cir. 1971); see *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984). Due process rights do not apply in this context because the agency's investigation does not involve an allegation of wrongdoing or an adjudication of legal rights. *SEC v. Jerry T. O'Brien*, 467 U.S. at 742. Such procedural rights will attach only if and when the Commission determines to issue a complaint against Altmeyer. See *Hannah v. Larche*, 363 U.S. at 446.

The CIDs at issue in this matter seek production of relevant information to help the Commission to determine whether Altmeyer may have engaged in conduct that violates the FTC Act and the FCRA. Accordingly, at the pre-complaint phase of the investigation, Altmeyer is not entitled to the procedural rights that would apply to an adjudication. No formal charges against Altmeyer need be formulated in order to secure information relevant to the Commission's investigation. Further, the Commission is under no obligation to divulge to Altmeyer any evidence of wrongdoing that it might have in its possession as a prerequisite to demanding the information from Altmeyer covered by the CID. Accordingly, Petitioner's objection to the CIDs on this basis is denied.

B. Petitioner argues that the CIDs violate the Fourth Amendment.

Petitioner also seeks to quash the CIDs on the ground that they violate the Fourth Amendment prohibition against unreasonable search and seizure. Petitioner argues that the Federal Government is held to a higher standard when it seeks to enter the premises of a private citizen and gain access to private documents. Petition at 2. Petitioner further contends that, in defining the Federal Government's right to enter the private property of a citizen to conduct an investigation, courts have required that the government have "some kind of probable cause or even reasonable suspicion that a violation is taking place." *Id.* See also Oral Hearing Transcript at 8-10.

In raising this objection, Petitioner has overlooked the critical distinction between an actual search and an agency subpoena, as well as the difference between rights of privacy for a corporation and an individual. The Fourth Amendment standards applicable to a search are more stringent than those governing an agency subpoena. *Donovan v. Lone Star, Inc.*, 464 U.S. 408, 413-15 (1984); *FTC v. Carter*, 636 F.2d at 787. As the Supreme Court explained in *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. at 195, agency subpoenas "present no question of actual search and seizure, but raise only the question whether orders of the court for production of specified records have been validly made ***." *Accord, FTC v. Carter*, 636 F.2d at 787-88. It is thus clear that when the Commission investigates by subpoena, the Fourth Amendment simply is not implicated.

The CID requiring Altmeyer to produce specified documents does not require the company to submit to anything resembling a search within the meaning of the Fourth Amendment. Furthermore, Instruction 10 of the CID requesting production of documents permits Altmeyer to avoid the presence of FTC staff on its premises simply by sending the responsive materials to the Commission.⁵ In fact, the instructions to this CID state that Altmeyer may comply with the demand by producing documents and information by mail if it prefers that Commission staff not enter its business premises. Altmeyer declined to pursue either of these options with Commission staff, choosing instead to file this Petition.

The instant case also does not implicate the privacy concerns that might arise if the agency were seeking to compel the production of private personal financial records from an individual who was not the target of the investigation. *In re McVane*, 44 F.3d 1127, 1136 (2d Cir. 1995). Here, the Commission is seeking corporate records and the testimony of a corporate officer in order to determine whether Altmeyer has complied and is complying with federal statutes that the agency is charged by Congress with enforcing. Thus, any assertion of personal privacy interests is misplaced. *See id.* at 1137. It has long been established that so long as a federal agency's demand for information issued to a corporation (or its agents) is not unreasonable, it will be enforced. *Morton Salt*, 338 U.S. at 652. The CID requiring Judy Altmeyer to present oral testimony seeks information regarding

⁵ Section 20(c)(3)(B) of the FTC Act requires the recipients of a CID only to make documents "available for inspection and copying or reproduction." 15 U.S.C. 57b-1(c)(3)(B).

matters within the scope of her official position as an owner of Altmeyer. This information is clearly relevant to the FTC's inquiry to determine whether Altmeyer is in compliance with the law and does not implicate a Fourth Amendment privacy concern. Similarly, no Fourth Amendment concerns is implicated by the CID requesting production of corporate document. Petitioner's challenge to the CIDs based on Fourth Amendment protection is thus denied.

C. Petitioner asserts that the CIDs are unduly burdensome and overbroad.

Petitioner also argues that Altmeyer has already made the documents covered by the CIDs available to the Commission voluntarily. The Petition states that requiring the company to produce the same materials again, for a second time, is "patently harassing, oppressive and vexatious."⁶ Petition at 2. In raising this objection, Petitioner appears to assert that FTC staff's decision not to follow up on Altmeyer's initial offer to inspect the documents on a voluntary basis precludes the Commission from seeking them on a compulsory basis later. In addition, Petitioner argues that the CID requesting production of materials seeks access to documents and categories of documents that exceed the scope of the FTC staff's investigation of Altmeyer. *See* Petition at 3. You also raised these arguments on behalf of your client at the oral presentation.

Petitioner has not met the heavy burden to sustain either of these allegations, which the Commission construes as objections to the reasonableness of the CIDs. As the court stated in *FTC v. Texaco Inc.*, "... the question is whether the demand is unduly burdensome or unreasonably broad." 555 F.2d at 882 (emphasis in original). The court said:

Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party. Further, the burden is not easily met where . . . the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose ***. Thus, courts have refused to modify investigative subpoenas unless compliance threatens to disrupt or seriously hinder normal operations of a business.

Id. (footnotes omitted).

⁶ Because the holiday season is over, Petitioner's argument regarding the burden of complying with the CIDs during Christmas has become moot.

Petitioner simply asserts, without either factual or legal support, that Altmeyer will be harmed by having to undertake the task of producing documents for the Commission a second time and presenting Judy Altmeyer for testimony. You stated at the oral presentation that it had been burdensome and costly for the company to gather the records the first time because "there are hundreds and thousands of them," and that it would be similarly burdensome to do so again. Oral Presentation Transcript at 11-12. You also stated that requiring Judy Altmeyer to appear to give testimony would be burdensome because "you are asking a woman to take a day off" (*Id.* at 12) and that "[a]ny endeavor that takes Judy Altmeyer or anyone else at Altmeyers out of their normal management duties is oppressive." *Id.* at 9.

Neither of these objections, however, even comes close to the standard articulated in *Texaco* -- that the burden of compliance must "threaten[] to disrupt or seriously hinder normal operations." More significantly, there is no indication that at any time you told FTC staff that complying with the CID timetables would cause great hardship to Altmeyer or Ms. Altmeyer. You never asked FTC staff for an extension of time to respond to the CIDs in order to lessen the alleged burden of production.

It should be noted that Altmeyer's initial agreement to make the requested corporate documents available to FTC staff voluntarily, and its production of a portion of these materials, do not make clear why complying with the CIDs at this time would be unduly burdensome for the company. In fact, the previous willingness of the company to produce these documents voluntarily suggests that collecting and providing them to staff at the present time is not unduly time-consuming.⁷

Petitioner has also failed to demonstrate that the CID seeking access to documents is unreasonably broad in light of the Commission's need for such materials. The Petition did not indicate which specific aspect of the CID is alleged to be overbroad. At the oral presentation, you objected only to Specification 1's requirement to produce articles of incorporation, bylaws, minutes, and annual reports for Altmeyer as examples of excessively broad requests. Oral

⁷ In rendering a decision on Petitioner's assertion of undue burden, the Commission need not resolve the factual dispute between Petitioner and the FTC staff regarding the circumstances surrounding the staff decision not to review Altmeyer's documents when voluntarily offered for inspection in May 1995. Oral Presentation Transcript at 6, 19-25. This dispute raises the issue of Altmeyer's substantive compliance with the law, which is not ripe for determination at this stage of the investigation.

Presentation Transcript at 10. On its face, this CID calls only for minimal information on Altmeyer's corporate organization and management (Specifications 1-6). The remaining specifications (7-16) call for information specifically directed to Altmeyer's policies and procedures for complying with the FCRA. For example, it is certainly necessary for the Commission to seek information on related entities (Specification 3) to determine what entities might possess information relevant to the investigation and who is legally responsible for any violations that may be uncovered. Similarly, information on corporate management and compliance with the FCRA (Specifications 6 and 12) is essential for obtaining relevant testimony and information on compliance and for assessing personal responsibility for any violations that might be uncovered. Each of the specifications is narrowly tailored to obtain information germane to the Commission's investigative purpose as set forth in the Resolution.

Further, the CID seeking document production is itself self-limiting in significant respects and provides Altmeyer with various options for minimizing its scope. For instance, Instruction 6 of the CID permits substitution of written statements in lieu of documents for certain specifications. In addition, Instruction 11 specifically permits Altmeyer to submit a negotiated sample of applicant files if the required response to Specification 16 involves more than 500 files. Instruction 11 also provides that, if Altmeyer believes the scope of the demand can be narrowed consistent with the FTC's need for information, the company is encouraged to discuss possible modifications with FTC staff. Finally, Instruction 12 provides that documents that have previously been provided to the Commission need not be produced again.

However, in recognition of the fact that Altmeyer has incurred some expense in providing documents to the Commission, Specification 1 of the CID requiring production of documents is modified to delete the requirement to produce corporate "by-laws." Specification 1 is also modified to require the production of corporate "minutes" only insofar as the minutes discuss the FCRA, "Altmeyer['s]" (as this term is defined in the CID) compliance with that statute, or any change in corporate policy or policies relating to the FCRA.

D. Petitioner asserts that a cease and desist order is unnecessary.

Petitioner also argues that because Altmeyer has supplied documents to the Commission that allegedly demonstrate its current compliance with the FCRA, there is no need for a cease and desist order, and presumably there is no basis for the CIDs to be upheld. Petition at 3. It is premature for Altmeyer to raise the defense of subsequent compliance with the law at this stage, when the Commission has yet to consider whether a law violation has occurred. Once the Commission has gathered the necessary information, the agency can turn to the task of assessing whether the company violated or has ceased violating the FCRA and what the appropriate remedy for such practices might be.

In addition, in raising this argument, Petitioner overlooks the fact even if Altmeyer did bring itself into compliance with the FCRA upon learning of the Commission's investigation, neither is that a defense to liability for violating the FCRA nor does it relieve the company of its responsibility to comply with a validly issued subpoena. "Voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the cases, *i.e.*, does not make the case moot," unless the defendant meets the heavy burden of demonstrating that "there is no reasonable expectation that the wrong will be repeated." *SCM Corp. v. FTC*, 565 F.2d 807, 812 (2d Cir. 1977) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). Accordingly, Petitioner's argument that a cease and desist order is unnecessary because Altmeyer is in compliance with the FCRA does not provide a basis for quashing the CIDs.

III. CONCLUSION

For the foregoing reasons, the Petition is granted in part and denied in part. Pursuant to Rule 2.7(e), Petitioner is directed to comply with the CID for documentary evidence (except as modified *supra* at 8) on or before February 26, 1997 and with the CID for oral testimony on or before March 12, 1997.

Pursuant to Rule 2.7(f), 16 CFR 2.7(f), within three days after service of this decision, Petitioner may file with the Secretary of the Commission a request for full Commission review. The timely filing of such request shall not stay the return date in this ruling unless the Commission otherwise specifies.

**Re: Altmeyer Home Stores, Inc. Petition for Review by
Full Commission Pursuant to Rule 2.7(f).
File No. 962-3063.**

February 21, 1997

Dear Mr. Farnan:

The Commission has considered (a) the Petition to Quash the Civil Investigative Demands ("CID") that you filed on behalf of Altmeyer Home Stores, Inc. ("Petition"); (b) the transcript of the oral presentation on the Petition, held on January 21, 1997; (c) the February 12, 1997 letter ruling by Commissioner Roscoe B. Starek, III, granting in part and denying in part the Petition; (d) your request, filed on February 14, 1997, for full Commission review of that letter ruling; and (e) the CIDs at issue.

The Commission has determined that your request for full Commission review does not raise any new issues regarding the Petition, and that the Petition was properly denied in part and granted in part for the reasons stated in the February 12, 1997 ruling. Accordingly, the full Commission concurs with, and hereby adopts, the February 12 letter ruling in this matter.

The February 12 letter ruling specified a February 26, 1997 return date for the CID for documentary evidence and a return date of March 12, 1997 for the CID for oral testimony. Your request for full Commission review did not stay those return dates. Altmeyer Home Stores, Inc. is thus directed to comply with the CIDs by those dates.

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