

Complaint

106 F.T.C.

## IN THE MATTER OF

## SERVICE ONE INTERNATIONAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT*Docket C-3172. Complaint, Oct. 29, 1985—Decision, Oct. 29, 1985*

This consent order requires a Chatsworth, Calif. credit counseling service and two corporate officers, among other things, to cease misrepresenting that they will obtain credit or credit cards for applicants; have developed working relationships with any creditors; or will provide a full or partial refund of any fees paid by consumers seeking credit or credit cards. Additionally, respondents are prohibited from misrepresenting the likelihood of any consumer obtaining credit or credit cards; the extent to which it can help consumers seeking credit or credit cards; or the conditions under which it will furnish refunds. Further, respondents are required to send to all customers who paid for the service and did not receive a credit card, a notice that gives them the option of receiving a full refund within 30 days or participating in respondents' new credit-counseling service without additional charge.

*Appearances*

For the Commission: *David G. Grimes, Jr.*

For the respondents: *Robert L. Mabee, Sioux Falls, S.D.*

## 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 Service One International Corporation, a corporation, also trading and doing business as Service One Corporation and First Credit Services, and Reza Fayazi and Ali Fayazi individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Service One International Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 21032 Devonshire Street, Suite 215, Chatsworth, California. Service One International Corporation also

trades and does business as Service One Corporation and First Credit Services.

Respondents Reza Fayazi and Ali Fayazi are officers of Service One International Corporation. They have formulated, directed and controlled the acts and practices of Service One Corporation, including the acts and practices hereinafter set forth. Their address is the same as that of Service One International Corporation.

PAR. 2. Respondents are now, and for some time in the past have been preparing and causing the dissemination of retail advertising and promotional material to the public describing services and soliciting business. Respondents have caused such advertising and promotional material to be disseminated by various means, including insertion in magazines with national circulation that are distributed through the mail across state lines, and direct distribution through the mail across state lines. Typical statements in said advertisements and promotional materials, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits 1 through 3.

PAR. 3. Respondents maintain and have maintained a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business through advertisements, promotional literature or other written materials, including Exhibits 4, 5, 6, and 7, attached hereto, respondents have made the following statements:

Get Credit Visa/Mastercard Call Toll Free 1-800-423-2714

NOW YOU CAN GET THE CREDIT YOU WANT through FirstCreditServices . . . HOW DO I APPLY??? Complete the information requested. Sign the application as indicated. Return this form and your check or money order in the postage-paid envelope today. Processing of your application normally takes three weeks. Applications received without the required fee will not be processed. . . .

FIRSTCREDITSERVICES CREDIT CARD APPLICATION . . .

. . . Let us get you the credit you desire . . .

Please accept this invitation to VISA, MasterCard, and the world of credit. Simply complete the enclosed application form and return it with your \$25 check or money order in the postage-paid envelope. Your application will be processed within three weeks . . .

FCS has developed working relationships with banks across the country which will issue our clients' VISA and MasterCard regardless of past credit experience.

PAR. 5. By statements such as the ones set forth in Paragraph Four, respondents have represented, directly or by implication, that they will obtain credit cards for consumers for a fee, and that they have

working relationships with banks that will issue such credit cards to consumers regardless of past credit experience.

PAR. 6. In truth and in fact, respondents do not obtain credit cards for consumers after payment of fees, and have not developed any working relationship with banks that will issue such credit cards regardless of past credit experience. Therefore the representations set forth in Paragraph Five were and are false and misleading.

PAR. 7. In the course and conduct of their business, in connection with the representation in Paragraph Five, *supra*, through advertisements, promotional literature or other written materials, including Exhibits 6 and 7, attached hereto, respondents have made the following statements:

In the event you are unable to obtain credit, a full refund will be made with (sic) 20 days. If FCS cannot successfully process your application, your uncashed check or money order will be returned to you.

What if I can't get credit? If you are unable to obtain credit, FCS will refund your fee in full within 20 days. If FCS cannot process your application for any reason, your uncashed check or money order will be returned to you immediately.

PAR. 8. By statements such as those in Paragraph Seven, respondents have represented, directly or by implication, that consumers who have paid a fee to respondents to obtain a credit card but do not receive a credit card will obtain from respondents a full refund of the fee paid.

PAR. 9. In truth and in fact, a substantial number of consumers who have paid \$25 to \$50 in fees to respondents to obtain a credit card and have not received a credit card have not received any refund despite having requested one. Of those consumers who have received a refund, a substantial number have received only a partial refund, with a \$10 "processing fee" withheld. Therefore, the representations set forth in Paragraph Seven were and are false and misleading.



PAR. 10. The use by respondents of the aforesaid, false and misleading representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said representations were, and are, true and complete, and into the purchase of substantial quantities of respondents' services in reliance on said erroneous and mistaken belief.

PAR. 11. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act. The acts and practices of respondents as herein

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alleged, are continuing and will continue in the absence of the relief hereby requested.

Regardless of  
Past Credit  
Experience...

AS SEEN  
ON  
TV

## GET YOUR OWN CREDIT CARDS.

Whether you have had  
slow payments, insuffi-  
cient credit for income,  
even bankruptcy, we  
can help.

you get credit cards  
like VISA® and  
MasterCard®. So get  
the credit you want.  
Call today.

## 1-800-CARD-800

24 hours toll free or send in the coupon below.

FIRST CREDIT SERVICES / 426 South Beverly Drive, Suite 203 / Beverly Hills, CA 90242

**YES!** I want to get my own credit cards. Please tell me how.

MY NAME \_\_\_\_\_


MY ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Mail to:

**FIRST CREDIT SERVICES**  
Data Processing Center  
P.O. Box 7803  
Van Nuys, CA 91409



© 1983 First Credit Services  
VISA and MasterCard are registered trademarks of VISA International and MasterCard International, respectively.

## EXHIBIT 2

## Wednesday

4:30 PM to 5:30 PM

- 4:35 (13) HOGAN'S HEROES—Comedy  
 5 PM (2) (3) (7) (10) NEWS  
 (5) LITTLE HOUSE ON THE PRAIRIE  
 Miss Beadle (Charlotte Stewart) and Nellie (Alison Argrim) fall for a hog farmer and his son. (60 min.)  
 (9) VIDEO ONE—Music  
 Included: Pat Benatar, John Cougar Mellencamp, Culture Club. (60 min.)  
 (11) ONE DAY AT A TIME—Comedy  
 Nick won't let Alex get away with turning in a shoddy science project. Nick: Ron Rifkin.  
 (15) BEWITCHED—Comedy  
 Sam spends a harrowing weekend with Darrin's parents.  
 (18) HEIDI—Novela  
 (24) (25) 3-2-1 CONTACT (CC)  
 Ant behavior is examined by Miguel.  
 (23) 3-2-1 CONTACT (CC)—Children  
 A look at an automobile assembly line.  
 (27) EN BUSCA DEL PARAISO  
 —Novela  
 (30) UP ON MELODY MOUNTAIN  
 —Religion  
 (33) (34) COLLEGE BASKETBALL  
 Fordham at Notre Dame. (Live)  
 (37) SEASON PREVIEW  
 (38) NEWS—Dobbs/Ladendorf  
 (40) EVERLY BROTHERS—Music  
 (41) COLLEGE BASKETBALL  
 Tulane at Louisville. (Live)  
 (42) MOVIE—Comedy  
 "Lovesick." (1 hr., 40 min.)  
 (43) COLLEGE BASKETBALL  
 Villanova at St. John's. (Live)  
 5:05 (15) MOVIE—Drama  
 "Oklahoma Crude." (1973) George Scott and Faye Dunaway play rough in this brawling saga of the Southwestern oil fields. In 1913. Doyle: John Mills. (2 hrs., 10 min.)  
 5:30 (3) M\*A\*S\*H  
 Not all MASH personnel work up a sweat over the impending visit of Gen. Douglas MacArthur.  
 (11) JEFFERSONS (CC)—Comedy  
 George (Sherman Hemsley) recalls the day he struggled to open his first store—the day of Martin Luther King Jr.'s assassination.  
 (15) ANDY GRIFFITH—Comedy (11)  
 Opie (Ronny Howard) accidentally handcuffs a friend to the flagpole.  
 (23) IN RECITAL  
 Piano duo Ralph and Alberine Votapek perform Rachmaninoff's Suite No. 2 for Two Pianos, Op. 17.  
 (23) SPACES (CC)—Children  
 A study of computer technology in

REGARDLESS OF  
CREDIT EXPERIENCEGET  
YOUR  
OWN  
VISA® and

MASTERCARD®

Credit Cards

Whether you have a history of slow payments, insufficient credit or income, even bankruptcy, First Credit Services can help you get your own VISA and Mastercard credit cards.

For complete information call:

CREDIT LINE NUMBER

1-800-227-3800

operator 80

Call Toll Free 24 Hours

NO COST OR  
OBLIGATION!!!

Tell me more about how I can receive my VISA and Mastercard Credit Cards.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Mail to First Credit Services  
P.O. Box 7803, Van Nuys, CA 91409



FIRST CREDIT SERVICES

420 South Beverly Dr., Suite 203  
Beverly Hills, CA 90212

VISA and MASTERCARD are registered  
trademarks of VISA International and  
MASTERCARD International respectively.

© 1983 First Credit Services

A subsidiary of Service One Corporation

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## EXHIBIT 3

★ Regardless of Past Credit Experience

GET YOUR OWN  
**VISA**® and  
**MASTERCARD**®  
 CREDIT CARDS



FIRST CREDIT SERVICES can help you get your own credit cards, including VISA® and MASTERCARD® credit cards, even if you have

- Bad Credit
- No Credit
- Slow Payments
- Even bankruptcy!

For complete information  
 call today:

CREDIT LINE NUMBER  
**1-800-CARD-800**  
 Operator 100  
 Call Toll Free 24 Hours

Tell me more about how I can receive my VISA® and MASTERCARD® credit cards.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Mail to: FIRST CREDIT SERVICES, Data Processing  
 Center, P.O. Box 7803, Van Nuys, CA 91409



**FIRST CREDIT SERVICES**

420 South Beverly Drive

Suite 203

Beverly Hills, CA 90212

VISA and MASTERCARD are registered trademarks of VISA International and MASTERCARD International, respectively.  
 © 1983 First Credit Services

A subsidiary of Service One Corporation

EXHIBIT 4

Dialing for time and not getting it?

Please use this number:

976-1616

It's the correct number to dial for the right time. And it's no more than a dime for our customers in 212, 914, and 516 areas. Long distance elsewhere.

A DIAL-IT Service of New York Telephone.

THE SUPREME COURT HAS ORDERED A RE-PARTY PRIMARY ELEC COUNCILMANIC DISTR BE HELD ON TUESDAY WILL BE OPEN FROM 6.

406- MONEY TO LEND CREDIT Get Credit... 500-MERCHANDISE MARKET... 524-MERCHANDISE WANTED

534-FLEA MARKET/BAZAAR... 700-DOGS... 704-TROPICAL FISH

700-DOGS... 701-CATS... 702-ADOPTION... 703-BIRDS

704-TROPICAL FISH... 707-PET TRAINING... 708-STUD SERVICE

708-STUD SERVICE... 709-ADOPTION... 710-BIRDS

LEGAL SERVICES

ACCIDENTS PAUL S. MIRMAN Attorney At Law... 1508 Rockaway Pkwy, Brooklyn, N.Y. (212) 272-5100

AMNESTY FOR ALIENS PREPARE NOW! THOUSANDS OF GREEN CARDS... DAVID SCHEINFELD, J.D. (212) 697-6000

ACCIDENTS-ALL KINDS CAR ACCIDENTS You may be entitled to money. No advance Fees. WE COME TO YOU Salzman, Ingber & Winer, Esq. (212) 233-6550 (316) 794-0152

A BANKRUPTCY ATTY 25 yrs exp. Relief from debt in 24 hrs... MORWITZ & ASSOC. (212) 725-1070

WOMEN'S SER

YOU CAN AFFORD TO CHOOSE PRIVATE CARE... AB To 24 Weeks Board Cert. Gynecologist... ABORTION \$79

Abortion \$8... BROOKLYN ABORTION 788-1919... MEDICAID ACCEPTED



FEDERAL TRADE COMMISSION DECISIONS

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EXHIBIT 5

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**Give Yourself Credit...**

**Regardless of past credit Experience**  
FIRSTCREDIT SERVICES

**Member Bank**  
**MasterCard**

**VISA**

**AMERICAN EXPRESS**  
3600 2355 7875 70  
FINANCIAL INSTITUTION

**TEXACO**  
**Hertz**  
**Dollars to Millions**  
**CONOCO**  
**STURTEVANT SERVICE**

**VISA**

**VISA Money Card**  
Accepted like a check and is your business credit card. So there's never a monthly bill.

**Courtesy Express**  
Lines your pocket with rapid replacement checks for your business. Free to use at your bank, any bank, or wherever you go.

**MasterCard**  
Make your credit card work for you. Get the most out of it. Use it to make purchases and cover your expenses. It's a 20th century answer to your needs.

**VISA**

**VISA**

**MasterCard**

**FIRST CREDIT SERVICES**  
CREDIT CARD APPLICATION



**NOW YOU CAN GET THE CREDIT YOU WANT**  
through FirstCreditServices

As the pioneer in consumer credit advisement, FirstCreditServices has become "America's Credit Expert®". Our unique approach can provide you with a new opportunity to establish or re-establish credit with a VISA® and MasterCard®, department store and oil company cards, and a check guarantee card.

**HOW DO I APPLY???**


Complete the information requested. Sign the application as indicated. Return this form and your check or money order in the postage-paid envelope today. Processing of your application normally takes three weeks. Applications received without the required fee will not be processed.

NAME OF APPLICANT		FIRST	MIDDLE	INITIAL	LAST	PLEASE PRINT LEGIBLY WITH DARK INK									
PERSONAL MR. MRS. MISS ADDRESS												SOCIAL SECURITY NO.			
MONTHLY PAYMENT		RENT		LIVE WITH PARENTS		DATE OF BIRTH	AGE	AREA CODE	STATE	HOME TELEPHONE	NO. OF DEP.	NO. OF DEP.			
PREVIOUS ADDRESS		APT. NO.		CITY	STATE	ZIP CODE									
PRESENT EMPLOYER		ADDRESS		CITY	STATE	ZIP CODE									
POSITION/RANK		BUSINESS PHONE		YEARLY SALARY		OR COMMISSIONS		WITH FIRM							
OTHER SOURCE OF INCOME (Income from husband or separate maintenance income need not be included in this section)		ADDRESS		CITY	STATE	ZIP CODE	POSITION/RANK		YEARLY AMOUNT						
NAME AND ADDRESS OF EMPLOYER (Do not include home address)		ADDRESS		CITY	STATE	ZIP CODE	POSITION/RANK		YEARLY AMOUNT						
APPLICANT'S DRIVERS LICENSE NUMBER		APPLICANT'S DRIVERS LICENSE NUMBER													
COMPLETE IF JOINT ACCOUNT IS DESIRED		JOINT APPLICANT'S FULL NAME		DATE OF BIRTH		AGE									
NAME AND ADDRESS OF JOINT APPLICANT'S PRESENT EMPLOYER		ADDRESS		CITY	STATE	ZIP CODE	POSITION/RANK		SOCIAL SECURITY NO.						
OR COMMISSIONS															
<b>OFFICE USE ONLY</b>															
I/We certify the information provided is correct. I authorize you to investigate my credit report. If you require this application, I understand that FIRST CREDIT SERVICES will assist me in obtaining credit or my fee will be refunded. I understand a savings and/or checking account may be required. I understand that the contents of this application will remain confidential.															
Signature												Date		Joint Applicant	

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## EXHIBIT 6

DATE: &DATE&	REFER ID: #&CLIENIN0&
&FNAME& &LNAME& &STREET& &CITY&, &STATE& &ZIP1&	 <b>FIRSTCREDITSERVICES</b>

Dear &amp;FNAME&amp; &amp;LNAME&amp;:

Thank you for your interest in FirstCreditServices.

Whether you have a bankruptcy, slow payments, insufficient credit or income, you can have a VISA and MasterCard.

Each month, thousands of consumers with credit problems become credit cardholders through FirstCreditServices. That's why we have become "America's Credit Expert." Our service starts when we receive your completed application, and it ends when you have a VISA and MasterCard, department store and oil company cards, and a check guarantee card.

The good life and good credit go hand in hand. Let us get you the credit you desire so you can purchase furniture, stereos, and clothes or take a vacation.

Please accept this invitation to VISA, MasterCard, and the world of credit. Simply complete the enclosed application form and return it with your \$25 check or money order in the postage-paid envelope. Your application will be processed within three weeks.

If you don't receive credit, your fee is returned. In full. Within 10 days.

If you require further information, please call (213) 709-2072 and a member of our staff will gladly assist you.

I am looking forward to the day when a VISA and MasterCard are yours, &FNAME& &LNAME&.

Sincerely,

Henry A. McDonald III  
 FirstCreditServices  
 Consumer Credit Division

## EXHIBIT 7

**FIRST CREDIT SERVICES**

(800) 423-2714  
Operations Center  
13615 Victory Blvd.  
Suite 117  
Van Nuys, CA 91401

**CORPORATE OFFICES**  
420 So. Beverly Drive  
Suite 207  
Beverly Hills, CA  
90212

(213) 786-0941  
Telemarketing Center  
P.O. Box 77  
Van Nuys, CA 91408

Dear Consumer:

Thank you for your interest in First Credit Services. FCS is a nationwide service organization which successfully assists thousands of consumers each year to become credit cardholders.

FCS has developed working relationships with banks across the country which will issue our clients' VISA and MasterCard regardless of past credit experience. For the vast majority of our clients, no savings account deposit is required. Our Total Credit Concept<sup>®</sup> provides integrated credit counseling.

How does the Total Credit Concept<sup>®</sup> operate? When your completed application is received, one of our counseling staff will evaluate your credit profile in sixteen separate categories. This financial and credit data is then used to match your application to the requirements of our selected banks. Institutions will be selected for your successful applications for VISA and MasterCard. Further, local department stores which will extend your credit will be selected from our data bank. In addition, an institution from which you will receive a Check Guarantee Card will be selected. Also, one of eleven proven legal methods will be selected for your use in removing any unfavorable information from your credit file.

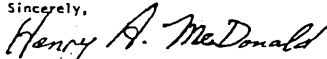
All of this information selected for you is then transcribed into a written portfolio of between 15 to 28 pages. Your portfolio is then forwarded to you. After its receipt, you will complete the Total Credit Concept<sup>®</sup> Program by receiving personal credit reports, removing any unfavorable past credit data from your credit file, and submit applications for VISA and MasterCard to the selected banks. Fifteen days are required for processing and arrival of your portfolio. Your assigned counselor is available for telephone consultations at no charge whenever the need arises.

We at FCS know good credit is a necessity, not a luxury. Because FCS pioneered consumer credit advisement, our total fee is only \$30. There are no further fees or costs. Our fee includes all processing and one copy of your written portfolio. In the event you are unable to obtain credit, a full refund will be made within 20 days. If FCS cannot successfully process your application, your uncashed check or money order will be returned to you.

Please accept your invitation to VISA, MasterCard, and the world of credit. Simply complete and return the enclosed application form along with your check or money order in the amount of \$30, using the postage-paid envelope provided. If you require further information, please call 213/989-6046 and a member of our staff will assist you.

Thanking you for this opportunity to be of service, I remain,

Sincerely,



Henry A. McDonald III  
Director/Credit Services Division

Enclosure

## 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 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 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 Service One International 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 21032 Devonshire Street, Chatsworth, California. Respondents Reza Fayazi and Ali Fayazi are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and 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

## I.

*It is hereby ordered,* That respondents Service One International Corporation, a corporation, its successors and assigns, and its officers, and Reza Fayazi and Ali Fayazi individually and as officers 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 and distribution of any service or material purporting to secure, or to assist in securing, credit or a credit card for any consumer(s) or to assist any consumer(s) in obtaining credit or a credit card, do forthwith cease and desist from:

1. Representing directly or by implication, in any manner, contrary to fact, that they:

(a) Will obtain credit or a credit card for, or will send a credit card to, any member of the public;

(b) Have developed any working or other relationship with any credit card issuer or other creditor that issues or will issue credit cards or grants or will grant credit;

(c) Will provide a full or partial refund of any fee paid to secure or obtain credit or a credit card.

2. Misrepresenting in any manner:

(a) The conditions under which any consumer can secure or obtain credit or a credit card or the likelihood that any consumer will secure or obtain credit or a credit card, including, but not limited to, the percentage or number of credit applicants who receive credit and whether bankruptcy, no credit history or a prior, adverse credit history make it more difficult to secure or obtain credit or a credit card;

(b) The extent to which help will be given any consumer to secure or obtain credit or a credit card;

(c) The conditions under which any refund will be furnished to any consumer.

## II.

*It is further ordered,* That respondent Service One International Corporation shall:

1. Within twelve months after the date of service of this order, send by first class mail in the manner described below, a copy of the notice that is affixed hereto as Attachment A, to each person who between

February 1, 1982, and the date of service of this order paid money to First Credit Services in connection with its credit card program and has not received a refund of the full amount paid. If ninety percent or more of the customers to whom the notice is sent within the first three months after the date of service of this order return the notice within six months after the date of service of this order, the words "twelve months" in the first line of subparagraph 1 are changed to "eighteen months." The notice shall appear by itself in not less than 12 point bold face type, on one side of a sheet of paper not less than 8½ inches by 11 inches. The print shall be black and the color of the paper shall be yellow. The notice shall be accompanied by a postage-prepaid, addressed return envelope. The notice may be accompanied by not more than 3 other pieces of paper, none of which shall be larger than the notice or the same color as the notice. The notice shall be mailed to the customer at the last known address shown in respondent's records for said customer. The face of the envelope in which the notice is mailed to the customer shall contain the following phrase printed in 12 point bold face type: "First Credit Services-Refund Offer."

2. Send by first class mail a refund check to each customer who returns the notice with Option 1 checked. Service One International Corporation shall also mail a refund check to each such customer who requests a refund by any other method. In each case the refund check shall be made payable to the customer for the total amount the customer paid, less any refund previously provided the customer and be mailed within 30 days of receipt of the notice or other request to the address the customer provides. If the customer does not provide an address, the check shall be mailed to the address to which the notice described in II(1) was mailed or to the customer's last known address, whichever is most recent.

3. Within thirty days of receipt of the notice, send by first class mail to each customer who returns the notice with Option 2 checked, to the address the customer provides:

(a) (1) a letter stating that the customer has been approved for a Visa or MasterCard credit card together with the name and address of the institution to which the customer should send the \$250 to serve as a minimum balance for the savings account; and

(2) a postage prepaid envelope made out to that name and address;  
or

(b) (1) a letter stating that the customer has not been approved for a Visa or MasterCard credit card (which letter shall be in addition to the adverse action notice required by the Equal Credit Opportunity

Act, 15 U.S.C. 1691 *et seq.*, and Section 202.9 of Regulation B, 12 C.F.R. 202); and

(2) a refund check payable to that customer for the total amount the customer paid, less any refund previously provided the customer.

If the customer does not provide an address, the items shall be mailed to the address to which the notice described in Paragraph 1 of Section II was mailed or to the customer's last known address, whichever is most recent.

4. Within thirty days after receipt of \$250 by the card issuing institution on behalf of each customer described in Subparagraph 3(a), above, send such customer by first class mail a Visa or MasterCard credit card in that customer's name, which that customer may use in connection with a credit card account opened in his or her name. The address to which the card shall be sent shall be determined in the manner described in Paragraph 3, above.

### III.

*It is further ordered,* That respondents shall maintain for at least three (3) years and, upon request, make available to the Federal Trade Commission for inspection and copying:

1. Copies of all advertising and promotional materials concerning any service or material offered to help secure or obtain credit or a credit card.

2. Copies of all advertising and promotional materials concerning any offer of a refund.

3. Copies of all requests made for a refund and of all correspondence and other records relating to such requests, as well as evidence of what refunds are made.

### IV.

*It is further ordered,* That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes 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 corporate structure of respondents that may affect compliance obligations arising out of this order.

### V.

*It is further ordered,* That respondents shall deliver a copy of this order to each present and future employee engaged in preparing or



making any oral or written representations to consumers concerning the securing or obtaining of credit or a credit card or the making of any refund offer or engaged in the granting or denying of refund requests and obtain from such person a signed statement acknowledging receipt of a copy of this order.

## VI.

*It is further ordered,* That respondents herein shall within sixty (60) days after the date of service upon them 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.

## ATTACHMENT A

## PREVIOUS SUBSCRIBERS OF FIRST CREDIT SERVICES:

NOTE THIS REFUND OFFER

If you previously paid money to First Credit Services to get a credit card, you may choose either Option 1, or Option 2, as part of an agreement with the Federal Trade Commission.

*Option 1.* If you decide not to participate in Service One Corporation's new credit offer outlined below, Service One will refund to you the money you paid to First Credit Services, if you so request.

*Option 2.* You may apply for a Visa/Mastercard credit card through Service One Corporation, using the enclosed application, and you pay *no processing fee*. To obtain a card, from us you must establish and maintain a savings account with a minimum balance of \$250 with the card issuer and you will be billed for a \$35 annual card fee. If your application is rejected, we will automatically refund in full any fee you paid to First Credit Services when you previously applied to First Credit Services for credit.

**CHECK THE APPROPRIATE BOX, FILL IN YOUR NAME AND ADDRESS,  
AND RETURN THIS FORM IN THE ENCLOSED BUSINESS REPLY  
ENVELOPE.**

Option 1 ( ) Please refund the money I paid to First Credit Services.

Option 2 ( ) Please accept my enclosed application for a Visa or Mastercard credit card with no processing fee.

Name \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_, State \_\_\_\_\_ Zip \_\_\_\_\_

For refund assistance or more information, you may write or call us:

Service One Corporation  
Consumer Affairs Department  
21032 Devonshire Street  
Chatsworth, California 91311

Phone (818) 709-2072

IN THE MATTER OF  
NATIONAL ASSOCIATION OF TEMPORARY SERVICES, INC.  
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3173. Complaint, Nov. 5, 1985—Decision, Nov. 5, 1985*

This consent order requires an Alexandria, Va. association of temporary help companies, among other things, to cease engaging in any practices or maintaining any code of ethics provision or other written provision that has the purpose or effect of restraining the recruitment or employment of employees registered with another temporary help firm; the solicitation of another temporary help firm's clients; and the provision of temporary help employees to companies involved in a strike or lock-out. The Association is barred from affiliating or federating any organization of temporary help firms that has adopted by-laws or a code of ethics containing a prohibited provision; and required to maintain records relating to disaffiliations and refused affiliations or federations for three years. The order further requires that the Association send a copy of the complaint and order, together with an explanatory letter, to each of its current members and provide a copy of the order to all new members for a period of three years.

*Appearances*

For the Commission: *Dennis D. McFeely.*

For the respondent: *Arthur L. Herold, Webster, Chamberlain & Bean, Washington, D.C.*

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 National Association of Temporary Services, Inc., a corporation, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

*Definitions:* For purposes of this complaint, the following definitions shall apply:

A. The term *temporary help employees* shall mean employees who are assigned to work for customers on a nonpermanent basis.

B. The term *temporary help firms* shall mean businesses employing temporary help employees.

C. The term *registration* shall mean the written, oral or other agreement of temporary help employees to be available to a temporary help firm for assignment to jobs.

PARAGRAPH 1. Respondent National Association of Temporary Services, Inc. (hereafter "NATS"), is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia. Its headquarters is at 119 South Saint Asaph St., Alexandria, Virginia.

PAR. 2. NATS is a trade association with approximately 400 members located in most of the states of the United States. It operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended.

Among its other activities, NATS has issued codes of ethical conduct for its members.

PAR. 3. Members of NATS primarily provide temporary help employees to businesses in the office/clerical, technical/professional, industrial, and medical fields. For supplying such employees, NATS members charge and receive payment from the businesses, usually at an hourly rate. The members in turn pay the temporary help employees for their work.

To have temporary help employees available to provide to businesses, NATS members and other firms in the temporary help industry make efforts to obtain the registrations of individuals who will work for them. These efforts may include advertising and direct solicitation of persons employed by other temporary help firms.

Except to the extent that competition has been restrained as herein alleged, members of NATS have been and now are in competition among themselves and with other temporary help firms in the procurement and sale of temporary services.

PAR. 4. Some of the members of NATS are firms with offices in many of the major cities of the United States and in the District of Columbia. These firms and other NATS members supply temporary help services across state lines and in the District of Columbia. NATS members also send and receive money, personnel, and communications across state lines as a regular and customary part of their business. As a result of these activities the acts and practices of NATS and its members, including those complained of in this complaint, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. NATS and its members have entered into a combination and arrangement to maintain code of ethics provisions and to engage in acts or practices, such as providing advice on the propriety of conduct.

that have the purpose or effect of restricting, restraining, limiting, or preventing:

1. the solicitation, the recruitment, or the employment by temporary help firms of the temporary help employees registered with other temporary help firms;
2. the solicitation of and advertising directed to the customers of temporary help firms by other temporary help firms;
3. the providing of temporary help employees to potential or existing customers of temporary help firms who are involved in a strike or a lock-out.

PAR. 6. The purpose or effect of NATS' acts and practices as alleged in Paragraph Five has been to restrain trade and hinder competition in the procurement of registrations of temporary help employees, in the solicitation of customers of temporary help firms by other temporary help firms, and in the providing of temporary help employees to potential or existing customers who are engaged in a strike or lock-out.

PAR. 7. The acts, practices and methods of competition described in Paragraphs Five and Six are unfair methods of competition which violate Section 5 of the Federal Trade Commission Act, as amended.

#### 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 Seattle 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, 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 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:

1. Respondent National Association of Temporary Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 119 South Saint Asaph Street, in the City of Alexandria, Commonwealth of Virginia.

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. The term *NATS* means the National Association of Temporary Services, Inc., its successors or assigns, and its officers, board members, directors, committees, agents, representatives and/or employees.

B. The term *temporary help employees* shall mean employees who are assigned to work for customers on a non-permanent basis.

C. The term *temporary help firms* shall mean businesses employing temporary help employees.

D. The term *registration* shall mean the written, oral or other agreement of temporary help employees to be available to a temporary help firm for assignment to jobs.

##### II.

*It is ordered*, That NATS, directly or indirectly, or through any corporate or other device, in or affecting commerce, shall cease and desist from:

A. Maintaining any code of ethics provision, or other written provision, such as Paragraph 7 of the Code of Ethics, Paragraphs 5 and 7 of the Code of Fair Practices for Temporary Office/Clerical Services, and Paragraph 9 of the Code of Employment Practices for Medical Services which are contained in the NATS membership directory for

1983-1984, or engaging in any acts or practices, such as providing advice on the propriety of conduct, that have the purpose or effect of restricting, restraining, limiting, or preventing:

1. the solicitation, through advertising or otherwise, the recruitment, or the employment by any temporary help firm of the temporary help employees registered with any other temporary help firm;
2. the solicitation, through advertising or otherwise, of customers of a temporary help firm by any other temporary help firm;
3. the providing of temporary help employees to potential or existing customers who are involved in a strike or a lock-out.

B. Affiliating or federating as set forth in the NATS by-laws, or continuing an affiliation or federation, with any organization of temporary help firms that:

1. has adopted any by-law, code of ethics, or other provision that violates Section II.A of this order; or
2. has engaged in any act or practice that, to NATS' knowledge, violates Section II.A of this order after the date of service of this order.

### III.

*It is further ordered, That NATS shall:*

A. Send to each of its members within thirty (30) days after the date of service of this order a copy of the complaint and decision and order in this matter, along with the letter attached to this order.

B. Provide written notice of the name and address of any organization of temporary help firms within twenty (20) days of the disaffiliation or refusal of affiliation or federation pursuant to Section II.B of this order. The notice shall be sent to the Assistant Director for Compliance, Bureau of Competition, Federal Trade Commission and shall reference this matter by name of case and docket number. NATS shall keep for three (3) years all papers and records pertaining to disaffiliations and refused affiliations or federations pursuant to this paragraph.

C. Provide for a period of three (3) years from the date of service of this order to each new NATS member and affiliate a copy of the complaint and decision and order in this matter. These documents shall be provided not later than thirty (30) days after the new member is accepted into membership or the organization is accepted as an affiliate.

## IV.

*It is further ordered,* That NATS shall, within ninety (90) days after 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.

## V.

*It is further ordered,* That NATS shall notify the Commission at least thirty (30) days prior to any proposed change in NATS including, but not limited to, disbanding, dissolution, assignment, the formation of a successor or substitute entity, or any other change in NATS which may affect compliance obligations arising out of this order.

## ATTACHMENT

[NATS letterhead]

Dear Member:

This letter is to notify you that, without admitting liability for any wrongdoing, we have voluntarily entered into an agreement with the Federal Trade Commission which resulted in the entry of a consent order on [enter date of order]. The order requires that the National Association of Temporary Services, Inc. not engage in certain practices. Copies of the complaint and order are included.

In accordance with the terms of the order, you are hereby notified that, among other requirements of the order, NATS shall not restrict, restrain or in any way interfere through application of the NATS Codes of Ethics or otherwise with 1) the solicitation, through advertising or otherwise, the recruitment, or the employment by any temporary help firm of the temporary help employees of any other temporary help firm; 2) the solicitation, through advertising or otherwise, of customers of a temporary help firm by any other temporary help firm; or 3) the providing of temporary help employees to customers who are engaged in a strike or a lock-out.

Moreover, if any NATS affiliate association uses a code of ethics to restrict or limit the solicitation or recruitment of temporary help, such action will result in NATS disaffiliating with that association.

As you may know, we previously repealed the specific language in the Code of Good Practices for Office Services which had condemned direct solicitation of individuals employed by competing firms. The terms of the consent agreement with the FTC are consistent with this change in the Code of Good Practices.

This letter summarizes the important parts of the order, but you should read it carefully in its entirety.

Sincerely,

Samuel R. Sacco  
Executive Vice-President

IN THE MATTER OF  
COLUMBIAN ENTERPRISES, INC., ET AL.

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

*Docket 9177. Complaint, May 8, 1984—Decision, Nov. 13, 1985*

This consent order requires a Tulsa, Okla. producer and distributor of carbon black, a component in the manufacture of natural and synthetic rubber, among other things, to obtain Federal Trade Commission approval before acquiring substantial assets or stock in its competitors' production facilities. Such approval is needed if the total acquisitions over a five year period would increase the respondent's yearly carbon black production capacity by 130 million pounds or more.

*Appearances*

For the Commission: *Michael Wise.*

For the respondents: *C. Loring Jetton, Jr., John Rounsaville, Jr. and Robert M. Pozin, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Columbian Enterprises, Inc. ("Columbian") intends to acquire all of the voting securities of Continental Carbon Company ("Concarb"), a wholly owned subsidiary of Conoco Inc. ("Conoco"), 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 that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. COLUMBIAN ENTERPRISES, INC.

1. Respondent Columbian Enterprises, Inc. is a corporation organized and existing under the laws of the State of New York with its corporate headquarters at 425 Park Avenue, New York, New York.

II. CONOCO INC.

2. Respondent Conoco Inc. is a corporation organized and existing under the laws of the state of Delaware with its corporate headquarters at 1007 Market Street, Wilmington, Delaware.



## III. JURISDICTION

3. At all times relevant herein, each of the companies named in this Complaint has been engaged in activities that are in or affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended (15 U.S.C. 12), and Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

## IV. THE PROPOSED ACQUISITION

4. On November 12, 1983, Columbian entered into an agreement to acquire 100 percent of the voting securities of Concarb.

## V. TRADE AND COMMERCE

5. The relevant product market in which to assess the competitive effects of the acquisition is the market for carbon black.

6. The relevant geographic market in which to assess the competitive effects of the acquisition is the United States.

7. The relevant market is highly concentrated.

8. Barriers to entry into the production and distribution of the relevant product are substantial.

9. Both Columbian and Concarb are substantial competitors in the relevant product and geographic markets.

## VI. EFFECTS OF THE PROPOSED ACQUISITION

10. The effect of the proposed acquisition, if consummated, may be to substantially 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 Federal Trade Commission Act, as amended (15 U.S.C. 45), inasmuch as it will, among other things, result in the following:

(a) Eliminate substantial actual competition between Columbian and Concarb in the relevant market;

(b) Eliminate Concarb as a substantial competitor in the relevant market;

(c) Substantially increase concentration in an already highly concentrated market, therefore increasing the likelihood of collusion;

(d) Encourage additional mergers or acquisitions in the relevant market, thereby further increasing the likelihood of collusion;

(e) Tend to reduce the degree of price competition in the relevant market;

(f) Tend to reduce the volume of production of carbon black below competitive levels; and

(g) Tend to reduce actual competition among other companies engaged in the production and distribution of the relevant product.

## VII. VIOLATIONS CHARGED

11. The proposed acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Columbian Enterprises, Inc. 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 425 Park Avenue, in the City of New York, State of 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 the purposes of this order the following definitions shall apply:

*Rubber carbon black* means furnace-process and thermal-process carbon black used for the manufacture of rubber.

*Columbian* means Columbian Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

*Rubber carbon black production capacity* means the practical annual productive capacity in the United States of any production units, including both units currently in operation and existing units that could be put into operation with or without time delay or additional investment. The term shall not include units dedicated to the manufacture of carbon black for industrial end uses. The term shall include reactor vessels, including associated nozzles and reaction chambers, and associated baghouses and dryers, but shall not include other equipment.

## I.

*It is ordered*, That for a period of five (5) years from either (a) the date this order becomes final or (b) February 15, 1985, whichever is earlier, Columbian shall not acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States rubber carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of business, if as a result of such acquisition Columbian would cumulatively increase its United States rubber carbon black production capacity by more than 130 million pounds.

## II.

*It is further ordered*, That, while Paragraph I of this order is effective, Columbian shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this order.

## III.

*It is further ordered,* That (a) if the Commission dismisses its complaint in *Bass Brothers Enterprises, Inc., et al.*, Docket No. 9178 [107 F.T.C. — (1986)], with respect to Respondents Bass Brothers Enterprises, Inc. or Sid Richardson Carbon & Gasoline Co., (hereinafter collectively “Richardson”) then this order shall, upon application of Respondent, be dismissed, unless the Commission determines that the grounds for the dismissal of Richardson are a material change in the market for rubber carbon black or in the competitive significance of Richardson in that market, and the Commission finds that said grounds are not applicable to Columbian; (b) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that does not require prior Commission approval of future acquisitions by Richardson or requires prior Commission approval for a period shorter than that set forth in Paragraph I above, then this order shall, upon application of Respondent, be modified to impose only such lesser restriction on Respondent herein; and (c) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that permits without prior Commission approval acquisitions that would cumulatively increase Richardson’s United States rubber carbon black capacity by more than 130 million pounds (including any permitted acquisition of capacity by Richardson from Ashland,) then this order shall, upon application of Respondent, be modified to permit Respondent herein to acquire United States rubber black production capacity in the same amount.

## IV.

*It is further ordered,* That if Columbian shall make an acquisition of United States rubber carbon black production capacity permitted under this order while Paragraph I of this order is effective, it shall file with the Commission a written report describing such acquisition. Commissioner Calvani dissented.

Complaint

106 F.T.C.

IN THE MATTER OF  
OKLAHOMA OPTOMETRIC ASSOCIATION

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

*Docket 9191. Complaint, Feb. 28, 1985—Decision, Nov. 19, 1985*

This consent order requires the Oklahoma Optometric Association, among other things, to cease prohibiting any member optometrist from: affiliating with or operating franchises; operating branch offices; or truthfully advertising the prices, terms and availability of optometric services or optical goods.

*Appearances*

For the Commission: *Toby G. Singer, Raymond L. Randall and Alan R. Soudakoff.*

For the respondent: *Daniel J. Gamino, Daniel J. Gamino & Associates, P.C., Oklahoma City, Okla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (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 the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and 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 Oklahoma Optometric Association is a corporation formed pursuant to the laws of the State of Oklahoma, with its mailing address at 4545 N. Lincoln Blvd., Suite 173, Oklahoma City, Oklahoma.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of optometrists who practice in Oklahoma and the profession of optometry in Oklahoma. Respondent has approximately 300 members, constituting approximately ninety percent of the practicing optometrists in Oklahoma. A significant portion of respondent's activities furthers its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

viding optometric care or services for a fee. Some are also engaged in the sale of optical goods and devices. Except to the extent that competition has been restrained as herein alleged, respondent's members have been and are now in competition among themselves.

PAR. 4. In the conduct of their business, respondent's members: receive substantial sums of money, which monies flow across state lines, from the federal government and from private insurers for rendering optometric services; prescribe and sell optical goods and devices that are shipped in interstate commerce; receive and treat patients from other states; and use supplies and equipment that are shipped across state lines. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third parties who pay for optometric services, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

PAR. 5. The practice of optometry is defined by Oklahoma law as the science and art of examining the human eye and measurement of the powers of vision by the employment of any means, including, among other things, diagnosis of conditions of the human eye, the employment of visual training and orthoptics, and the correcting and relief of ocular abnormalities by means including prescribing and adaption of lenses, contact lenses, and eyeglasses. Oklahoma law also provides that a lay person may, pursuant to a written prescription of a licensed optometrist or physician, adapt, provide, and sell optical goods and devices, including lenses and eyeglasses, without a license to practice optometry.

PAR. 6. In Oklahoma, most optometric services have traditionally been provided by private optometrists practicing from a single office location. Most of these optometrists have also sold optical goods and devices such as prescription eyeglass lenses, eyeglass frames, contact lenses, and accompanying paraphernalia from a separate room or area within their office. Most have engaged in little or no advertising of competitive aspects of their services.

PAR. 7. Some optometrists do not sell optical goods and devices in their professional offices. These optometrists either have chosen not to sell such goods or have chosen to sell them from a location that is separate and distinct from their professional office but usually located near it. This method of selling, used by a small number of optometrists in Oklahoma, is often conducted under a franchise arrangement with a national seller of optical goods and devices. For the purposes of this complaint, "franchise arrangement" shall mean an arrangement to market and sell optical goods and devices under the trade name of a franchisor from a location other than a licensed optome-

trist's professional office where optometric services are provided. The franchised retail optical store will, like other optical goods sellers, sell to any person who brings in a valid prescription or request for available optical goods and devices.

PAR. 8. For various reasons, including their scale of operation, franchised retail optical stores are often able to provide quality optical goods and devices at prices lower than those generally charged for comparable items by independent optometrists or opticians in the local area.

PAR. 9. Branch offices permit an optometrist to provide optometric services from more than one location. Where branch offices exist, optometrists can increase consumer access to optometric care, and operating efficiencies can be achieved. Optometrists do not have branch offices in Oklahoma.

PAR. 10. In selecting an optometrist, consumers consider factors such as quality of service, price and other terms of sale, reputation, experience, and convenience. Advertising, including comparative advertising and advertising of guarantees and refund policies, enables optometrists to inform consumers about these factors. Such advertising benefits consumers by increasing the information available to them and promoting competition among optometrists.

PAR. 11. Respondent has restrained competition in the delivery of optometric services and the sale of optical goods and devices in Oklahoma by acting as a combination of at least some of its members, or by combining and conspiring with at least some of its members, to restrict the use of franchise and branch office arrangements and to restrict dissemination by optometrists of truthful information to consumers. In particular, respondent has combined or conspired to:

A. Prohibit, restrict, or coerce its members from selling, or offering to sell, optical goods and devices to the public through any franchise arrangement;

B. Prohibit its members from providing optometric services from a separate or branch office; and

C. Restrict its members' ability to engage in certain kinds of truthful advertising, non-deceptive marketing, and dissemination of information to consumers.

PAR. 12. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

A. Declaring that optometrists who are affiliated with a franchise arrangement are engaging in an unethical and objectionable "mode of practice";

B. Summarily suspending from membership optometrists who are

affiliated with a franchise arrangement, despite having no reason to believe that any of these members were engaged in "capping and steering" or any other deceptive practice, and although none of the suspended members has been charged with, or found liable for, any violation of any Oklahoma law with regard to his or her affiliation with the franchise arrangement;

C. Adopting and maintaining a rule prohibiting each member from practicing optometry "in such proximity to a retail optical establishment so as to induce patronage for himself by such location";

D. Adopting and maintaining an ethical rule that prohibits any member from "associating his title with a lay practice," without regard to whether or not such association deceives the public or in any manner degrades or reduces the quality of visual care received by any person;

E. Adopting and maintaining an ethical rule prohibiting its members from operating a separate or branch office;

F. Adopting and maintaining, for the acknowledged purpose of maintaining "professional unity," a rule that declares it unethical for any member to make any representation in such a manner as to "carry the slightest intimation" of possessing qualities superior to other members, which applies even to truthful representations and which operates to prevent an optometrist from engaging in comparative advertising or otherwise representing that he or she has particular skills, experience, or special training in, for example, providing care to pediatric, geriatric, or low-vision patients;

G. Adopting and maintaining an ethical rule requiring that its members "refrain from specific guarantees," which operates, for example, to prevent optometrists from offering to refund the cost of optical goods if a patient is dissatisfied with them;

H. Adopting and maintaining rules requiring its members to refrain from the display of eyeglasses or representations of eyes under any circumstances; and

I. Adopting and maintaining an ethical rule requiring that its members refrain from all criticism of another optometrist.

PAR. 13. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts or practices of respondent as described in Paragraphs Eleven and Twelve above have been and are to unreasonably restrain competition and injure consumers in one or more of the following ways, among others:

A. Competition in the delivery of optometric services and the sale of optical goods and devices on the basis of price, service, and quality has been frustrated and restrained;

B. Consumers have been deprived of the benefits of truthful infor-



mation about the availability of optometric services and optical goods; and

C. Consumers have been deprived of the potential cost savings, convenience, and efficiency benefits of retail optical franchise arrangements and separate or branch offices in their purchases of optometric services and optical goods and devices.

PAR. 14. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices that violate Section 5 of the Federal Trade Commission Act. This combination or conspiracy is continuing and will continue unless the Commission enters appropriate relief against respondent.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Oklahoma Optometric Association is a corporation organized, existing and transacting business under the laws of the State of Oklahoma, with its office and principal place of business located at 4545 N. Lincoln Blvd., Suite 173, Oklahoma City, 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.

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

A. *Respondent* means the Oklahoma Optometric Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. *Optometrist* means any individual licensed to engage in the practice of optometry in the State of Oklahoma.

C. *Franchise Arrangement* means any arrangement to market and sell optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office where optometric services are provided.

### II.

*It is ordered*, That Respondent, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from:

A. Prohibiting, restricting, restraining, or coercing any optometrist from entering into or maintaining a franchise arrangement, or from affiliating with an optometrist who has done so or is doing so, through any means, including, but not limited to:

1. Declaring it to be an unethical or objectionable practice or mode of practice for any optometrist to enter into or maintain a franchise arrangement, or to affiliate with an optometrist who has done so or is doing so;

2. Expelling, excluding, suspending, or threatening to expel, exclude, or suspend, any optometrist from membership for entering into or maintaining a franchise arrangement, or for affiliating with an optometrist who has done so or is doing so;

3. Adopting or maintaining a rule, policy, guideline, or ethical standard that prohibits optometrists from practicing optometry in proximity to a retail optical establishment; and

4. Adopting or maintaining any rule, policy, guideline, or ethical standard that prohibits any optometrist from associating his or her title with a lay practice;

B. Prohibiting, restricting, restraining, or coercing any optometrist from establishing or maintaining any separate or branch office; and

C. Restricting, regulating, impeding, declaring unethical, interfering with, restraining, or advising against the advertising, publishing, or disseminating by any person of the prices, terms, availability, characteristics, or conditions of sale of optometric services or optical goods and devices that are offered for sale or made available by an optometrist or by any organization with which an optometrist is affiliated through any means, including, but not limited to, the adopting or maintaining of any rule or policy that prohibits any member from:

1. Representing that he or she has particular or special qualities, including, but not limited to, those that may be the result of special training, skills, or experience;

2. Engaging in comparative advertising, including, but not limited to, advertising that could be construed as criticizing another optometrist;

3. Displaying eyeglasses, representations of eyes, or other optical goods; or

4. Offering guarantees, including, but not limited to, offering to refund the cost of optical goods if a patient is dissatisfied with them or offering to match a competitor's price for the same goods.

*Provided*, that nothing contained in this part shall prohibit Respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

### III.

*It is further ordered*, That Respondent shall cease and desist from:

A. Taking any action against a person alleged to have violated any rule, policy, guideline, or ethical standard without first providing such person with written notice of any such allegation, and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

#### IV.

*It is further ordered,* That this order shall not be construed to prevent Respondent from:

A. Exercising rights guaranteed against infringement by the First Amendment of the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding; or

B. Reporting to appropriate governmental authorities any act or practice that it in good faith believes is a violation of federal or state laws or regulations, along with the basis for such belief.

#### V.

*It is further ordered,* That Respondent shall:

A. Within sixty (60) days after this order becomes final, send by first-class mail the letter attached hereto as Attachment A, an application for membership, and a copy of this order and the complaint to each optometrist who has been suspended from membership, whether permanently, temporarily, or indefinitely, because of his or her "mode of practice;" offer to reinstate any such optometrist's membership; and if any optometrist so desires, reinstate such membership within thirty (30) days after the application is returned;

B. Within sixty (60) days after this order becomes final, send by first-class mail the letter attached hereto as Attachment B to every optometrist who is licensed to practice in the State of Oklahoma;

C. For a period of seven (7) years after this order becomes final, provide each applicant for membership in Respondent Oklahoma Optometric Association with a copy of this order and the complaint;

D. Within sixty (60) days after this order becomes final, publish a copy of this order and the complaint in "Oklahoma OD," the Respondent's newsletter, or in any successor publication, with the same prominence as regularly published feature articles;

E. Within ninety (90) days after this order becomes final, remove from its Code of Ethics, Rules of Practice, Constitution, bylaws, and any other existing policy statement or guideline of Respondent, any

provision, interpretation or policy statement that is inconsistent with Part II of this order, or amend any such inconsistency in such a manner as to eliminate the inconsistency so that the amended language does not violate the prohibitions contained in this order, and, within one hundred and twenty (120) days after this order becomes final, publish in the "Oklahoma OD," or in any successor publication, notice of the removal or amendment of any such provision, interpretation, or policy statement;

F. Within one hundred and twenty (120) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this order;

G. For a period of seven (7) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order, including, but not limited to, the rendering of any advice or interpretation with respect to any advertising or franchise arrangement involving any optometrist; and

H. Within one (1) year after this order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with any activity covered by Part II of this order, including, but not limited to, any advice or interpretation rendered with respect to any advertising or franchise arrangement involving any optometrist.

## VI.

*It is further ordered,* That Respondent shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution or reorganization resulting in the emergence of a successor corporation, association, or other entity or any other change in the Respondent which may affect compliance obligations arising out of this order.

### ATTACHMENT A

Dear Dr. \_\_\_\_\_:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or operating a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional

office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement, or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from engaging in any form of advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the terms of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards, we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Accordingly, you have a right to reinstatement of your membership in the Oklahoma Optometric Association. If you wish to reinstate your membership, please fill out the enclosed application form and return it to the Association.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)  
Oklahoma Optometric  
Association

#### ATTACHMENT B

Dear Dr. \_\_\_\_\_:

This letter is to inform you of a Consent Order (copy enclosed) entered by the Federal Trade Commission. Under the terms of this Order, the Oklahoma Optometric Association has agreed that we will not prevent or impede any optometrist from: entering into or affiliating with a franchise arrangement for the sale of optical goods and devices under the trade name of a franchisor from a location other than an optometrist's professional office, or affiliating with an optometrist who has done so; operating a separate or branch office; or engaging in any form of truthful, non-deceptive advertising.

The Consent Order provides that we may not declare it to be an unethical or objectionable mode of practice for an optometrist to enter into or operate a franchise arrangement or to affiliate with an optometrist who has done so. In addition, we may not expel, exclude, or suspend an optometrist for entering into, operating, or affiliating with such an arrangement. The Consent Order also provides that we may not prohibit or restrict optometrists from operating a branch office, and that we may not restrict optometrists from engaging in advertising, except to the extent that there is reason to believe that such advertising is false or deceptive.

Under the Consent Order, we must amend our Code of Ethics and Rules of Practice to comply with the terms of the Order. In addition, if we take action against a person alleged to have violated any of our rules or ethical standards we must provide that person with written notice of the specific allegations and a reasonable opportunity to respond to them.

Consequently, membership in the Oklahoma Optometric Association is now open to any optometrist licensed in the State of Oklahoma, regardless of any affiliation with

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a franchisor or franchisee of optical goods and devices, or the structure or location of his or her practice, or the optometrist's decision to engage in truthful advertising.

If you have any questions, please feel free to contact us.

Sincerely,

(Name and Title)

Oklahoma Optometric Association

IN THE MATTER OF  
CHESEBROUGH-POND'S INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-602. Consent Order, Sept. 25, 1963—Modifying Order, Nov. 25, 1985*

The Federal Trade Commission has modified a 1963 consent order issued against the New York City-based manufacturer and marketer of Vaseline petroleum jelly (63 F.T.C. 927). The modified order deletes provisions prohibiting the company from claiming that Vaseline provides a protective barrier to the skin and is effective for the relief of itching, and allows respondent to make limited claims about the product's beneficial effects, provided respondent has competent and reliable scientific evidence to support its claims. These modifications were granted based on reports from the Food and Drug Administration's over-the-counter drug review program. The modified order also allows respondent to compare Vaseline's effectiveness to that of other products, provided competent and reliable scientific evidence is available.

ORDER REOPENING THE PROCEEDING AND  
MODIFYING CEASE AND DESIST ORDER

On April 11, 1985, Chesebrough-Pond's Inc. ("Petitioner") filed a request to reopen and to set aside or modify the consent order entered against it by the Commission on September 25, 1963, in Docket No. C-602 (63 F.T.C. 927). The order prohibits Petitioner from making certain usage and effectiveness claims with respect to the advertising of its over-the-counter drug product, "Vaseline" petroleum jelly.<sup>1</sup> The request to reopen and to set aside or modify the consent order was placed on the public record on April 23, 1985, and a press release regarding the request was issued on the same date. The public comment period ended May 23, 1985. Comments were filed by four individual consumers during that period.<sup>2</sup> The deadline to rule on Petitioner's request was subsequently extended to November 25, 1985.

The order requires Petitioner to cease making a variety of advertising claims with respect to the therapeutic and protective qualities of "Vaseline." The order contains twelve specific prohibitions relating

<sup>1</sup> "Vaseline" petroleum jelly is the product trade name. It is composed mostly of petrolatum, a purified mixture of semi-solid hydrocarbons derived from petroleum. "Vaseline" contains both white petrolatum and yellow petrolatum, which are essentially identical except for color. The terms "Vaseline", "petrolatum", and "product" are used interchangeably throughout this Decision and Order.

<sup>2</sup> All four commenters expressed that they have used the product for a number of years and have used it to treat minor burns, cuts, and scratches. Two of the commenters stated that they have used the product as a skin softener. One commenter stated that she has used the product on heat rash, as a preventative for diaper rash, and as a deodorant.



to the following types of claims: infections; skin injuries; a protective barrier; diaper rash; cradle cap; advertising slogans; and escape of tissue fluids.

Petitioner sets forth several arguments as justification for its request. First, it asserts that the Food and Drug Administration's (F.D.A.) over-the-counter drug review program has resulted in changed conditions of law and fact that require the order to be set aside or modified to allow those claims which the F.D.A. review program has substantiated. Second, Petitioner asserts that the order is no longer necessary or appropriate to protect consumers and thus should be set aside in its entirety. Finally, Petitioner asserts that the order should be modified to allow it to make any claim for which there is a reasonable basis.

Since the order's entry some twenty-two years ago, the F.D.A. has undertaken a comprehensive review evaluating the safety and effectiveness of the ingredients in over-the-counter drug products such as "Vaseline". Petitioner submits that several F.D.A. Advisory Review Panels have concluded that petrolatum, the principal ingredient in "Vaseline", is effective for claims prohibited by the order. It is Petitioner's position that the findings and conclusions of these panels now provide adequate substantiation for these prohibited claims which justifies setting aside these prohibitions.

As Petitioner points out, the Commission has allowed the conclusions and recommendations of F.D.A. Advisory Review Panels to demonstrate adequate substantiation for performance claims. In prior decisions, the Commission has held that F.D.A. final monographs<sup>3</sup> may be relied upon to substantiate performance claims for over-the-counter drug products, *AHC Pharmacal, Inc.*, 101 F.T.C. 40 (1983); *Thompson Medical Co.*, Docket No. 9149, Slip. op. at 80 (November 23, 1984) [104 F.T.C. at 826]. In addition, the Commission has held that F.D.A. preliminary documents subject to revision, such as tentative final monographs, are also presumptively reliable for substantiation. *American Home Products Corp.*, 98 F.T.C. 136 (1981) at 368. We have reviewed the monographs relied on by Petitioner and compared the findings and conclusions of the various panels reviewing petrolatum with the claims prohibited by the order. Based on this review we conclude that the findings and conclusions do substantiate two of the claims now prohibited by the order.

Paragraph 1.(b) of the order prohibits Petitioner from making any claim that "Vaseline" provides a protective barrier to the skin unless such claim is limited to the water repellant effect of a continuous film

<sup>3</sup> A monograph sets out the findings and conclusions of the F.D.A. Advisory Review Panels. A monograph can be published as a proposed monograph, a tentative final monograph, and a final monograph depending on the stage of the review process.

of the product. The Skin Protectant Panel conclusively states that petrolatum is a skin protectant. It defines a skin protectant as "any agent that isolates the exposed skin or mucous membrane surface from any harmful or annoying stimuli." 43 FR. 34630 (August 4, 1978). The panel further concludes that "protectants act as mechanical barriers that physically alter the superficial wound environment by excluding air, removing wetness, prevent drying and protecting from intertriginous contact." *Id.* In addition, the F.D.A. has published a tentative final monograph for skin protectants which determined that petrolatum "protects injured or exposed skin or mucous membrane surfaces from harmful or annoying stimuli." 48 FR. 6823 (February 15, 1983). We conclude that these findings and conclusions establish that petrolatum provides a protective barrier to skin without limitation to its water repellant effect, and accordingly decide that this paragraph of the order shall be set aside.

Paragraph 1.(c)(5) of the order specifically prohibits Petitioner from claiming that "Vaseline" will have any effect upon itching unless limited to itching from sunburned, dry, chapped, chafed or scraped skin or other minor skin injuries. The Skin Protectant Panel did find that petrolatum is effective for the treatment of itching associated with dry skin conditions. This panel found the product useful as a soothing topical lubricant. The Hemorrhoidal Panel went even further. It concluded that petrolatum is effective for (1) relief of itching or other anorectal discomfort; (2) for the temporary relief of anorectal itching; (3) for the temporary relief of itching associated with hemorrhoids and other anorectal disorders; and (4) in forming a protective coating over inflamed tissue that can relieve itching. 45 FR. 35628 (May 27, 1980). We conclude that these findings and conclusions substantiate that petrolatum relieves itching other than itching associated with sunburned, dry, chapped, chafed or scraped skin, and accordingly decide that the limitation on itching claims is inappropriate and shall set aside this paragraph of the order.

The findings and conclusions of the F.D.A. Advisory Review Panels fall short of providing adequate substantiation justifying the setting aside of the proscribed claims relating to burns (1.(c)(1)), scrapes (1.(c)(1)), scratches (1.(c)(1)), abrasions (1.(c)(1)), scabbed skin (1.(c)(2)), diaper rash (1.(c)(3)), cradle cap (1.(c)(4)), and escape of tissue fluids (1.(g)). These same findings and conclusions do not address other claims that are proscribed by the order, namely claims relating to the prevention of infection (1.(a)), treatment of cuts or open wounds, (1.(d)), or advertising slogans (1.(e)). Since the findings and conclusions of the F.D.A. panels are the only evidence Petitioner has submitted to support its request, there is nothing before us to support any action

with respect to provisions 1.(a), 1.(d) and 1.(e). Consequently, these provisions of the order will remain unchanged.

Petitioner next argues that the order is no longer necessary or appropriate to protect consumers. In essence, Petitioner argues that most of the proscribed claims have been addressed by the F.D.A. Advisory Review Panels and their findings and conclusions are in conflict with a number of the provisions of the order. In addition, Petitioner contends that combined with the ongoing F.D.A. review of over-the-counter drugs, the age of the order renders it obsolete.

The Federal Trade Commission Act, 15 U.S.C. 45(b) requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact requires such modification or setting aside. The Commission's rules implementing this statutory mandate amplify on this by stating that an order should be set aside or modified if "the public interest so requires." Rule 2.51(b) Commission's Rules of Practice, 16 C.F.R. 2.51. When an order no longer serves any useful purpose and impedes truthful advertising, it is clear under the statute and the rules that it should be set aside. However, where the provisions of an order are not inconsistent with the F.D.A. and its advisory review panels, such an order retains its usefulness irrespective of its age. Other than the provisions of the order we have decided should be set aside, several provisions, namely those relating to burns (1.(c)(1)), scrapes (1.(c)(1)), scratches (1.(c)(1)), abrasions (1.(c)(1)), scabbed skin (1.(c)(2)), diaper rash (1.(c)(3)), cradle cap (1.(c)(4)), and escape of tissue fluids (1.(g)), are not wholly consistent with the findings and conclusions of the advisory review panels. While these findings and conclusions do not justify setting aside the proscribed claims, they do justify some claims of a similar nature which the current order prohibits because of the absolute nature of these prohibitions. For example, the panels found that petrolatum is safe and effective in the temporary relief of minor skin irritations; soothes minor skin irritations; gives comfort to minor skin irritations; affords temporary protection of minor skin injuries; aids in the prevention of diaper rash; affords protection against wetness that causes diaper rash; softens skin; and prevents water loss from stratum corneum. Accordingly, we have concluded that these claims will be subjected to a reasonable basis standard, as requested by Petitioner as alternative relief, as being in the public interest.

This is appropriate relief under Commission policy. The Commission has long held that an advertiser is not required to demonstrate the absolute truth of a particular claim, only a reasonable basis for making it. Bureau of Consumer Protection, F.T.C. *Advertising Substantiation Program, Analysis of Public Comments and Recommended*

in *AHC Pharmacal, Inc.*, *supra*, where we modified an order to permit AHC to rely on F.D.A. panel recommendations as a reasonable basis for substantiating superiority claims. *See, also, Thompson Medical Co.*, *supra*, and *Ogilvy & Mather International Corp.*, 101 F.T.C. 1 (1983).

As noted above, the findings and conclusions of the F.D.A. Advisory Review Panels do justify the use of some claims of a similar nature to those prohibited under the order, namely qualified claims with respect to burns, scrapes, scratches, abrasions, scabbed skin, diaper rash, cradle cap and escape of tissue fluids. Petitioner does possess a reasonable basis for making these similar, albeit qualified claims but can not do so under the current order. Because of this dichotomy, we will modify the order to allow any such claims that can be supported by a reasonable basis consisting of competent and reliable scientific evidence. *See e.g., Sterling Drug, Inc.*, 101 F.T.C. 375 (1983). Although Petitioner has only presented the findings and conclusions of the various F.D.A. panels in support of its request, we do recognize that competent and reliable evidence consisting of tests, analyses, research, studies or other materials based on the expertise of professionals in the relevant area may also provide a reasonable basis to substantiate some of the claims in issue here. Consequently, either the findings and conclusions of the F.D.A. panels or competent and reliable scientific evidence may be used by Petitioner as a reasonable basis to substantiate such advertising claims, if such evidence does in fact support such claims. In addition, although it is not clear that the advisory review panels addressed this issue, we will also accord the comparative soothing and softening claims similar treatment in accord with our policy to encourage comparative claims where justified.

Because of the nature of the modifications granted hereby, it has been necessary to restructure the order. All reference to the two previously prohibited claims which we have decided to set aside will be deleted from the modified order. Part I of the modified order prohibits those claims for which no evidence justifying their vacation has been presented and will remain unchanged from the original order. Part II of the modified order prohibits the use of certain other claims unless substantiated by competent and reliable scientific evidence establishing a reasonable basis or which are supported by the findings and conclusions of the various F.D.A. Advisory Review Panels. The final sentence in Part II of the modified order is intended to clarify the fact that current versions of the F.D.A. Advisory Review Panels' findings and conclusions may be used as a reasonable basis for substantiating claims, unless and until such findings and conclusions are modified. Part III of the modified order prohibits the dissemination of

advertising of any representations or claims not allowed under the modified order.

*It is therefore ordered,* That the proceeding is hereby reopened and the Decision and Order issued September 25, 1963 in Docket No. C-602 is hereby modified to read as follows:

#### ORDER

##### I.

*It is ordered,* That respondent Chesebrough-Pond's Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of "Vaseline" petroleum jelly (White Petrolatum, U.S.P. or Yellow Petrolatum, N.F.), or any other preparation of similar composition or possessing substantially similar properties, 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 indirectly:

- (a) That respondent's product is of value in preventing infection;
- (b) That respondent's product is of any benefit in the treatment of cuts or open wounds; or
- (c) That respondent's product is a substitute for a "First Aid Kit in a Jar" unless such slogan is used in direct connection with or in close proximity to illustrations or descriptions of the unprohibited first aid uses of the product.

##### II.

*It is further ordered,* That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of "Vaseline" petroleum jelly (White Petrolatum, U.S.P. or Yellow Petrolatum, N.F.), or any other preparation of similar composition or possessing substantially similar properties, 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 indirectly:

- (a) That respondent's product is of any benefit in curing, or in promoting or accelerating the healing of, burns, scrapes, scratches, abrasions, scabbed skin, diaper rash or cradle cap;

(b) That respondent's product will soothe and soften the skin better than competitors' products having substantially similar properties; or

(c) That respondent's product prevents the escape of tissue fluids from the skin;

Unless at the time that such representation is made respondent possesses and relies upon a reasonable basis consisting of reliable and competent evidence that substantiates the representation. Reliable and competent evidence establishing a reasonable basis for such representation shall consist of:

(a) Tests, analyses, research, studies or any other materials based on the expertise of professionals in the relevant area, provided such tests, analyses, research, studies or other materials are 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; or

(b) The findings and conclusions of the Food and Drug Administration (F.D.A.) or an F.D.A. Advisory Review Panel as published in the Federal Register to describe such findings and conclusions, unless and until any such findings or conclusions are modified.

Nothing herein shall be deemed to create or support an inference that evidence in existence at the time this Modified Order is issued does not constitute a reasonable basis for any representation subject to this paragraph.

Interlocutory Order

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IN THE MATTER OF  
THE KROGER COMPANY

*Docket 9102. Interlocutory Order, Nov. 26, 1985.*

ORDER REVOKING *IN CAMERA* TREATMENT AND  
PLACING DOCUMENTS ON THE PUBLIC RECORD

During the administrative hearing in this matter, certain documents and testimony received *in camera* treatment. On July 10, 1979, the Kroger Company filed a motion to revoke the *in camera* designation and to place on the public record the entire Initial Decision issued by the Administrative Law Judge and all the evidence and argument it offered during the proceeding. The Commission, in entering its final decision and order, 98 F.T.C. 639 (1981), *modified*, 100 F.T.C. 573 (1982), did not address respondent's pending motion that the *in camera* status of these materials be revoked. Respondent now asks the Commission to withdraw from *in camera* status and place on the public record certain internal documents admitted into evidence in the proceeding.

The exhibits accorded *in camera* treatment consist of documents provided by respondent and internal agency materials. Kroger consents to the public disclosure of its own materials.<sup>1</sup> The agency records were compiled in investigations that closed more than three years ago. We have determined that most of the agency materials made part of the *in camera* record no longer warrant confidential treatment and should be made part of the public record. Several exhibits, however, reflect the predecisional views of individual Commissioners and advice from the General Counsel. These sensitive deliberative materials are protected from public disclosure, *see NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1972), and the Commission believes there is good cause to preserve their *in camera* status. Accordingly, the Commission declines to revoke the *in camera* status of these documents.<sup>2</sup>

*It is ordered*, That the *in camera* treatment of exhibits received in evidence and of other documents in the record relating to those exhibits be eliminated in accordance with this order.

<sup>1</sup> Letter from N. Diamond, counsel for Kroger, dated May 14, 1985.

<sup>2</sup> In its letter dated May 14, 1985, Kroger's counsel advised that respondent was specifically interested in five exhibits, RX221, RX222, RX240, RX241 and RX1003. Portions of RX222 and RX1003 set forth the predecisional views of individual Commissioners and will remain nonpublic. The remaining portions of these exhibits as well as RX221, RX240 and RX241 will be publicly disclosed.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

*Docket 9189. Interlocutory Order, Nov. 27, 1985*

ORDER

Administrative Law Judge Timony has certified, pursuant to Rules 3.22(a) and 3.15(a)(1), complaint counsel's motion to dismiss the complaint as to respondent Warren E. Avis. It appears that Mr. Avis has had no meaningful connection with the conduct at issue in this case. Although Mr. Avis is an absentee owner of respondent Avis Ford, Inc., he did not act as Chairman and Treasurer of the firm, as complaint counsel previously believed. Accordingly, it is not in the public interest to continue these proceedings as to Mr. Avis. The motion is granted.

*It is so ordered.*



Complaint

106 F.T.C.

IN THE MATTER OF

LARRY BROG

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

*Docket C-3174. Complaint, Dec. 3, 1985—Decision, Dec. 3, 1985*

This consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

#### *Appearances*

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *Cheryl I. Jolley, Anderson & Holland, Salt Lake City, Utah.*

#### 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 Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Meadow Fresh Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah with its office and principal place of business located in Salt Lake City, Utah.

Respondent Larry Brog was formerly Chief Executive Officer of said corporation. He, among others, formulated, directed and controlled the acts and practices of said corporation, including the acts and practices hereinafter set forth. His address was the same as that of said corporation.

the manufacture, offering for sale, and sale of food products, including Meadow Fresh, a powdered, dairy-based drink, through a multilevel business opportunity.

PAR. 3. Respondent has caused to be prepared, published and disseminated advertising and promotional material, including, but not limited to, the promotional material referred to herein, to promote the sale of Meadow Fresh and membership in the Meadow Fresh multilevel business opportunity.

PAR. 4. Respondent has operated in various States of the United States and in the District of Columbia. Respondent's manufacturing, offering for sale, sale, and distribution of food products, including Meadow Fresh, constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, respondent has disseminated and caused the dissemination of advertisements and promotional material for food products, including Meadow Fresh, and for a multilevel business opportunity involving the sale of such food products, by various means in or affecting commerce, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the following:

(A) Contains over twenty times less "XO"\* than the whole version of the other product. \*\*"XO" is xanthine oxidase, a major contributor to cardiovascular problems.

(B) Meadow Fresh has an expected dry shelf life of 5 to 10 years.

PAR. 7. Through the use of the statements referred to in Paragraphs Six (A) and Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

(A) The use of Meadow Fresh is associated with a reduction in the incidence of cardiovascular disease due to reduced levels of xanthine oxidase.

(B) Xanthine oxidase is a major contributor to cardiovascular problems.

(C) Meadow Fresh has an expected storage life of 5 to 10 years under reasonable storage conditions.

PAR. 8. Through the use of the statements referred to in Paragraphs Six (A) and Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that at the

time of the initial dissemination of the statements and of each subsequent dissemination, he possessed and relied upon a reasonable basis for the representations set forth in Paragraphs Seven (A) through Seven (C).

PAR. 9. In truth and in fact, at no time has respondent possessed and relied upon a reasonable basis for making the representations set forth in Paragraphs Seven (A) through Seven (C). Therefore, respondent's representation as set forth in Paragraph Eight was and is false and misleading.

PAR. 10. In the course and conduct of his business, respondent has disseminated, as previously described, promotional flipcharts upon which the current average monthly income of each level in the distributor hierarchy is to be entered. (A copy of this flipchart is attached to this complaint as Exhibit A.) These flipcharts are headed "CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL" and contain blanks following the terms "ADVISOR. . . ; COORDINATOR. . . ; MANAGER. . . ; AMBASSADOR. . ." for income figures to be entered. These flipcharts have represented, directly or by implication, that the income figures shown thereon reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question.

PAR. 11. In truth and in fact, the income figures shown on the flipcharts do not reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question. Respondent provides distributors with monthly income figures for use on the flipchart which are computed by taking into account only those distributors who earn some income during the month in question, and the total amount of money earned by them. Because the large majority of distributors earn no income during a given month, this manner of computation results in average income figures which are substantially larger than would be the case if the figures were computed by the method set forth in Paragraph Ten. Therefore, respondent's representation as set forth in Paragraph Ten is false and misleading.

PAR. 12. The use by respondent of the aforesaid false, misleading and unfair statements and representations and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid false, misleading and unfair statements and representations have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce such persons to purchase Meadow Fresh and

become Meadow Fresh Farm distributors by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondent were and are to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

# CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL

ADVISOR .....	_____
COORDINATOR .....	_____
MANAGER .....	_____
AMBASSADOR .....	_____

**NOTE:** The amounts listed here only reflect rebates, overrides and bonuses, not retail profits.

## 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 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, 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. Meadow Fresh Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 391 South Orange Street, in Salt Lake City, State of Utah.

Proposed respondent Larry Brog is a former officer of said corporation. He, among others, formulated, directed and controlled the policies, acts and practices of said corporation and his address was the same as that of said corporation.

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 respondent Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, dairy-based drink called "Meadow Fresh" or any other food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, unless at the time of such representation respondent possesses and relies upon reliable and competent scientific evidence that substantiates any such representation, (a) any benefit to health to be derived from using any such product, (b) any nutritional or other health related attribute of such product, or (c) any expected shelf life of such product.

*Reliable and competent* shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

## II

*It is further ordered,* That respondent Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, 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 representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

*Distributor* as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or

sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

### III

*It is further ordered,* That respondent shall, for at least three years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, or demonstrations in his possession or control, or of which he has knowledge, that contradict any representation covered by this order.

### IV

*It is further ordered,* That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's 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 respondent's duties and responsibilities in connection with the business or employment.

### V

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

### VI

*It is further ordered,* That respondent 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 he has complied with this order.



Complaint

106 F.T.C.

## IN THE MATTER OF

## WEIDER HEALTH AND FITNESS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5  
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9182. Complaint, July 26, 1984—Decision, Dec. 11, 1985*

This consent order requires a Woodland Hills, Calif. manufacturer and distributor of nutrient supplements and three corporate officers, among other things, to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence." If the refunds total less than \$400,000, respondents are required to donate the difference to fund research on the relationship of nutrition to muscle development. Respondents are required to publish notices of the refund offer in two bodybuilding magazines. Additionally, respondents are prohibited from: (1) making unsubstantiated claims that its products promote muscular development, produce human-growth hormone or that its products are unique; and (2) misrepresenting any scientific test, research article, survey or other scientific opinion or data as it applies to their products.

*Appearances*

For the Commission: *Michael L. Sirota* and *Timothy T. Hughes*.

For the respondents: *Kirkpatrick W. Dilling, Dilling, Dilling & Gronck*, Chicago, Ill.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Weider Health and Fitness, Inc., a corporation, and Joseph Weider, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Respondent Weider Health and Fitness, 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 at 21100 Erwin Street, Woodland Hills, California.

Respondent Joseph Weider is an officer of the corporate respondent named herein. He has formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth below. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are, and have been engaged in the manufac-

ture, offering for sale, promotion and distribution to the public of the nutrient supplements "Anabolic Mega-Pak" and "Dynamic Life Essence" and other foods, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional materials, including, but not limited to, the advertising and promotional materials referred to herein, to promote the sale of their nutrient supplements and other foods. As advertised, respondents' nutrient supplements and other foods are foods, as "food" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents operate in various States of the United States and in the District of Columbia. Respondents' manufacturing, offering for sale, promoting and distributing of nutrient supplements and other foods, constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondents have disseminated and caused the dissemination of advertisements and promotional materials for nutrient supplements and other foods, by various means in or affecting commerce, including *inter alia*, placing advertisements in national magazines distributed through the mail and across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of respondents' nutrient supplements and foods.

PAR. 6. Typical statements in such advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through E. Specifically, these advertisements and promotional materials contain the following statements:

A. In regard to the Anabolic Mega-Pak:

1. It is "scientifically created . . . for the creation of maximum fat-free muscle mass!"
2. It produces "faster-than-ever-before muscle growth."
3. It is "A Natural Steroid Replacement Kit You Can Live With. The only kit on the market scientifically created to replace steroids. . . ."
4. It can "produce gains that approximate, in a physiological way, the muscle-building effect caused by the dangerous drugs it was designed to replace."
5. "Over the course of a few months use, Joe Weider's revolutionary

new discovery could produce gains that approximate those of the most potent anabolic steroids—with virtually no negative side effects.”

6. “The most advanced benefit of using Joe Weider’s steroid replacement kit is that your muscle growth and development are long-lasting, not temporary like those derived from drugs.”

7. It can “stimulate the release of human growth hormone (hGH) from the pituitary gland,” “enabling manufacture of more muscle-building protein for solid, lasting muscle tissue.”

8. “[A]t great expense and effort Joe Weider assembled the world’s most reknowned [sic] nutritional biochemists, exercise physiologists and trainers, all committed to evolve the most effective steroid replacement that experience and science could provide.”

B. In regard to “Dynamic Life Essence”:

1. Life Essence is superior to “conventional protein sources to muscle up.”

2. “Life Essence Builds Bigger Muscles—Faster!”

3. “Life Essence gently activates anabolic activity by coaxing the pituitary gland to secrete greater amounts of growth hormones into the bloodstream.”

4. “Life Essence is unlike any other amino acid source in the world. So unique, in fact, that it has a worldwide patent pending.”

PAR. 7. Through the use, *inter alia*, of the statements referred to in Paragraph Six (A) through Six (B), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondents have represented, and now represent, directly or by implication that:

A. A typical user of the “Anabolic Mega-Pak” and “Dynamic Life Essence” will achieve greater muscular development over the course of a few months of a weight training program than a non-user of these products, all other conditions remaining equal.

B. A typical user of the “Anabolic Mega-Pak” and “Dynamic Life Essence” will achieve at least the muscular development of the non-user of these products, but in a shorter period of time, all other conditions remaining equal.

C. A typical user of the “Anabolic Mega-Pak” and “Dynamic Life Essence” will achieve results equivalent to those results bodybuilders generally believe are achievable through use of anabolic steroids, *i.e.*, rapid and substantial muscular development.

D. The “Anabolic Mega-Pak” and “Dynamic Life Essence” will stimulate greater than normal production or release of human growth hormone, resulting in greater or faster muscular development.

E. "Dynamic Life Essence" is unlike any other amino acid source in the world, *i.e.*, it is unique.

F. The "Anabolic Mega-Pak" was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers.

PAR. 8. In truth and in fact:

A. A typical user of the "Anabolic Mega-Pak" and "Dynamic Life Essence" will not achieve greater muscular development over a course of a few months of a weight training program than a non-user of these products, all other conditions remaining equal.

B. A typical user of the "Anabolic Mega-Pak" and "Dynamic Life Essence" will not achieve faster muscular development than a non-user of these products, all other conditions remaining equal.

C. A typical user of the "Anabolic Mega-Pak" and "Dynamic Life Essence" will not achieve results equivalent to those results body-builders generally believe are achievable through use of anabolic steroids.

D. The "Anabolic Mega-Pak" and "Dynamic Life Essence" will not stimulate greater than normal production or release of human growth hormone, resulting in greater or faster muscular development.

E. "Dynamic Life Essence" is similar, if not identical, to other amino acid sources in the world, *i.e.*, it is not unique.

F. The "Anabolic Mega-Pak" was not developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers.

Therefore, the representations set forth in Paragraph Seven are false and misleading.

PAR. 9. Through the use, *inter alia*, of the statements referred to in Paragraph Six (A) through Six (B), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondents have represented and now represent, directly or by implication, that at the time of making the representations respondents have possessed and relied upon a reasonable basis for the representations.

PAR. 10. In truth and in fact, at the time of the initial dissemination of those representations and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, the representation set forth in Paragraph Nine was, and is, false and misleading.

PAR. 11. Respondents' dissemination of the aforesaid representation and the placement in the hands of others of means and instrumentalities by and through which others may have used the

aforesaid representations have had, and now have, the capacity and tendency to mislead consumers and to induce such consumers to purchase respondents' nutrient supplements and foods.

PAR. 12. The aforesaid acts or practices of respondents, were and are to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act and false advertisements in violation of Section 12 of the Federal Trade Commission Act.

## ATTACHMENT A

Take Your Body Beyond Steroids.

**Now! The Secret is Out!****JOE WEIDER'S ANABOLIC MEGA-PAK****A Natural Steroid Replacement Kit You Can Live With.**

The only kit on the market scientifically created to replace steroids for the creation of maximum fat-free muscle mass! Stimulates release of the growth hormone, strengthens your body, and aids recuperation to assure dynamic, faster-than-ever-before muscle growth. All natural!

**DRUGS, BLESSING AND CURSE.**

Joe Weider, like all great coaches and trainers, recognizes that drugs have been both a blessing and a curse for mankind. He is aware of the potential for drug abuse in sports—the reality of trying to win fame, money or self-gratification at any cost has made drug use a serious problem in many sports. Joe Weider found the problem particularly paradoxical: Bodybuilding is a sport where health, strength, overall fitness, high-energy, muscular development and maintenance are the primary goals; these are virtually unattainable when body-builders resort to dangerous pharmaceutical aids such as anabolic steroids.

Joe Weider has spent his life developing the sport of bodybuilding, and he decided to do something about the use of these unhealthy drugs. At stake is the ideal of health and vitality so important to the bodybuilding lifestyle. At best, anabolic steroids are not the wonder drug they have been touted to be. They prematurely age muscle cells, cause testicular shrinkage, impotence, paranoid or extremely aggressive behavior, and a host of serious coronary and liver problems which can prove fatal. Their muscle-building effects are temporary—affecting temporary muscle gains and a false kind of strength that disappears quickly when drug use is discontinued. This kind of "let-down" is both demoralizing and potentially dangerous to the body's delicately balanced endocrine system.

**TACKLING THE PROBLEM.**

Joe Weider's message about the great benefits of the bodybuilding lifestyle could not be spread as long as this dangerous trend continued. That's why Joe took action. His directive was clear, he wanted a steroid replacement that worked! No false hopes. No promises that couldn't be kept. Not only would this product work, but work dramatically, as well or better than anabolic steroids but without their inherent dangers. So at great expense and effort Joe Weider assembled the world's most renowned

nutritional biochemists, exercise physiologists and trainers, all committed to evolve the most effective steroid replacement that experience and science could provide. Joe worked them for well over a year to develop a scientific alternative to dangerous and counterproductive drugs.

**JOE WEIDER'S SOLUTION.**

The result? A combination of natural ingredients so outstanding that its anabolic muscle-building effect could produce gains that approximate, in a physiological way, the muscle building effect caused by the dangerous drugs it was designed to replace.

*"It's Great! Now, I can go into my high-intensity mass building routines without worry or stress."*

Tom Platz.



That's not all! Over the course of a few months use, Joe Weider's revolutionary new discovery could produce gains that approximate those of the most potent anabolic steroids—with virtually no negative side effects. Joe's steroid replacement is designed to work naturally, as food does. How? By stimulating the body's own natural anabolic capabilities! The most advanced benefit of using Joe Weider's steroid replacement kit is that your muscle growth and development are long-lasting, not temporary like those derived from drugs.

**SCIENCE AT WORK FOR YOU.**

The scientists who helped Joe Weider formulate his steroid replacement paks realized that food supplements alone could not produce an anabolic effect in the human body. But the careful arrangement of ingredients, combined with precise scheduling of their intake could cause a strong anabolic effect similar to that of

steroids. Because Joe Weider's ingredients are foods rather than drugs, a lasting anabolic effect could safely be achieved without the harmful side effects generated by drugs. Because nutrients interact on a biochemical level, the Weider scientists had to discover a way to combine these ingredients so they would complement one another to produce a climate within the muscle cells that exceeds their normal anabolic capacity. Furthermore, to register maximum effect this increased anabolic activity should occur in the cells precisely at the time of greatest need. These all-important requirements were met. The result is a food supplement that far exceeds any food ever made in its ability to create a positive anabolic state.

**THE WEIDER SECRET.**

Scientific research into substances that exert an anabolic effect on the human body was thoroughly reviewed to determine the exact combination of nutrients, dosages and intake schedules. Joe Weider found the secret! While others claim that their formulas produce anabolic effects, the truth is that they failed to look beyond their principal ingredients into the complex biochemical interactions that occur after the product is ingested! There's the secret to Joe Weider's ANABOLIC MEGA-PAK! Weider's unique blend of ornithine and arginine is combined with the exact compounds necessary for the biochemical transformation of these powerful amino acids.

Scientists have known for years that certain amino acids (ornithine and arginine in particular, after being biochemically transformed to spermine, have the capability to stimulate the release of human growth hormone (hGH) from the pituitary gland. The Weider scientists discovered that certain mineral catalysts are required to ignite and maintain the transformation process until there is enough spermine change to trigger hGH release. Ornithine and arginine change to spermidine and finally spermine by interaction with exact ratios of magnesium, methionine, potassium, calcium and niacinamide. No other product on the market incorporates these important steps.

**MUSCLE GROWTH TIMETABLE.**

After spermine gently stimulates hGH release, this powerful hormone exerts its anabolic effect on the ribosomes of the muscle cells retaining greater amounts of nitrogen, enabling manufacture of more muscle-building protein for solid, lasting muscle tissue. Moreover fat deposits are mobilized, utilized as fuel for energy, thus causing reductions in bodyfat.

A research shows hGH is more efficiently released during periods of great anabolic activity in the body. Two such periods crucial to muscle growth exist after training, particularly after the intense, vigorous training bodybuilders typically undergo, and during the hours after awakening.

Scientific research also suggests that all the amino acids essential to growth must be present during critical growth periods. The ANABOLIC PAK has this and more! Weider scientists have added LIFE ESSENCE, a unique and powerful blend of free-form amino acids (not egg, milk or soy, and hydrolyzed germ used in liquid preparations), to the ANABOLIC PAK to assure this all-important requirement. The incredible effects of increasing your body's production of hGH also has multi-dimensional effects, synergistically improving human performance. These are functions that no anabolic steroid can provide.

**HOW YOU USE IT.**

To assure maximum anabolic activity, the Weider ANABOLIC PAK should be used as follows:  
**Morning:** Normal meal supplemented with Joe Weider's "Good Life" MULTIVITAMIN PAK and DYNAMIC MUSCLE BUILDER protein powder fortified with a teaspoon of LIFE ESSENCE (mixed with cup of milk or juice).  
**Lunch:** Normal meal fortified with teaspoon of

LIFE ESSENCE (mixed with cup of milk or juice).

**Before workout:** Joe Weider's PRESTRESS FORMULA drink.

**Immediately after workout:** Weider's ANABOLIC PAK and a light meal fortified with 2 teaspoons of LIFE ESSENCE (mixed with milk or juice).

**Evening meal:** Same as morning.

**SHARE THE SECRET!**

**WEIDER HEALTH & FITNESS DEPT. OF AMINOS**

21100 ERWIN ST., WOODLAND HILLS, CA 91367

Thanks Joe! For letting me use your revolutionary new *Anabolic Mega Paks*. Because of your tireless efforts I no longer need to take chances with steroids. Like the Super Stars, my muscles and strength will grow faster than I ever imagined, safely and naturally, without worry or stress. Count me in as one of your up-and-coming Super Stars by rushing me your new *Anabolic Mega Paks* today!

(AMP 30) 30 Day Supply \$24.95  (AMP 60) 60 Day Supply \* \$44.00

\*SPECIAL INTRODUCTORY OFFER MAIL ORDER ONLY

I've enclosed \$\_\_\_\_\_ plus \$1.50 for postage and handling. Sorry no C.O.D.s.

California, New Jersey and Missouri residents add appropriate sales tax.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Credit card customers call (800) 423-5713. In California (800) 382-3399. These numbers are for orders only; no inquiries. Similar products are available in Canada. Contact: Weider Institute, 2875 Bates Road, Montreal, P.Q. H3S1B7

Complaint

ATTACHMENT B



A new age begins...with the awesome power of Life Essence.

If you're using conventional fitness routines to build up your body in the gym, Life Essence is the answer.

**Life Essence** is pure, bio-aminic acid... the essence of protein. And it's patented muscle-builder... all the essential amino acids... that build muscle... without the fat, calories, sugar, and additives found in other protein foods.

**How Life Essence Builds Bigger Muscles—Faster!** This is your muscle-builder... working on the cellular level... building muscle... faster... and... stronger... than any other muscle-builder... ever... known... to... man.

When you start out, the muscle fibers are... thin... and... weak... Life Essence... helps... them... grow... thicker... and... stronger... faster... than... any... other... muscle-builder... ever... known... to... man.

Development and recovery... is... faster... and... easier... when... you... use... Life Essence... without... added... body fat.

Life Essence is... unlike... any... other... amino acid... supplement... in... the... world... It's... the... only... one... that... contains... all... the... essential... amino... acids... in... a... pure... form... without... any... additives... or... fillers.

Not... only... that... Life Essence... also... contains... a... special... blend... of... vitamins... and... minerals... that... help... to... build... muscle... faster... and... stronger... than... any... other... muscle-builder... ever... known... to... man.

**Life Essence**  
100 Capsules \$24.95  
100 Grams (Powder) \$24.95

**LIFE ESSENCE**  
Available at your local health food store  
Small quantities for other countries available through our  
WEIDER INSTITUTIONS, BATE, INC., 1000 N. 10th St., P.O. Box 1087

"LIFE ESSENCE:  
so revolutionary,  
it has a  
worldwide  
patent pending."





# AWESOME POWER!



## A NEW AGE BEGINS...WITH THE POWER OF LIFE ESSENCE

### IT'S MADE OF THE SAME SUBSTANCE AS HUMAN MUSCLE!

Now, bodybuilders and anybody interested in maintaining their highest level of personal strength can come to the vital source of it all: Life Essence. Life Essence is a combination of pure amino acids — exactly the same ones that go into production of muscle tissue. Life Essence has no fat, no carbohydrates, no additives of any kind. You don't even digest it! Life Essence is so pure, you assimilate it immediately — so it's unlike all other muscle building foods which are less effective because of inefficiencies in digestion.

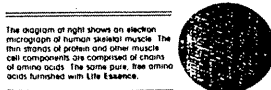
### HOW LIFE ESSENCE BUILDS UP HUMAN MUSCLES

Exercise results in muscular stress. This stress causes a great crowding within the muscle for life's building blocks in the form of pure, free amino acids — exactly like those found in Life Essence. When Life Essence is absorbed into the bloodstream, its amino acids quickly and efficiently find their way into muscle cells, seeking out the areas where they are needed most. Once there, an amazing natural chemical process occurs. The amino acids reassemble into complex protein molecules which cause rapid muscle development and cellular recuperation. But Life Essence does even more.

growth hormones into the bloodstream. These powerful hormones enhance the entire natural bodybuilding process, building your muscles quickly, insuring continued growth, definition and strength at levels far beyond those achievable with inferior protein sources.

### ENTER THE NEW AGE OF POWER

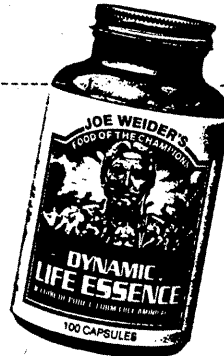
Whether you are a bodybuilder, athlete or just a person who wants to keep fit, experience the awesome power of Life Essence and put it to work for you! It's the beginning of a new age of health, power and self-satisfaction.



The diagram at right shows an electron micrograph of human skeletal muscle. The thin strands of protein and other muscle cell components are comprised of chains of amino acids. The same pure, free amino acids furnished with Life Essence.

### IT EVEN ACTIVATES ANABOLIC ACTIVITY!

Beyond everything else, Life Essence gently activates anabolic activity by coaxing the pituitary gland to secrete greater amounts of



WEIDER HEALTH & FITNESS, 21100 Erwin Street, Woodland Hills CA 91367

Return the order checked below. Enclose \$... plus \$1.50 for each item No C.O.D. in California residents add 6% sales tax

100 Capsules... \$24.95  100 Grams (Powder)... \$24.95  Male  Female

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Charge my  MasterCard  Visa. Expiration date \_\_\_\_\_ Bank No. \_\_\_\_\_

Account No. \_\_\_\_\_ Signature \_\_\_\_\_

Or call toll free Weider Hot Line (MasterCard or Visa customers only). 1-800-423-5713. In California call 1-800-387-3399. These numbers are order-taking lines only, no inquiries.

In Canada: Weider Institute, 2875 Bates Road, Montreal, PQ H3S 1B7. Also available at your local health food store.

# LIFE ESSENCE AWESOME!

## ATTACHMENT D

## Take Your Body Beyond Steroids. Now! The Secret is Out!

### JOE WEIDER'S ANABOLIC MEGA PAK

#### A Natural Steroid Replacement Kit You Can Live With.

The only kit on the market scientifically created to replace steroids for the creation of maximum fat-free muscle mass! Stimulates release of the growth hormone, strengthens your body, and aids recuperation to assure dynamic, faster-than-ever-before muscle growth. All natural!

#### DRUGS: BLESSING AND CURSE.

Joe Weider, like all great coaches and trainers, recognizes that drugs have been both a blessing and a curse for mankind. He is aware of the potential for drug abuse in sports — the reality of trying to win fame, money or self-gratification at any cost has made drug use a serious problem in many sports. Joe Weider found the problem particularly paradoxical: Bodybuilding is a sport where health, strength, overall fitness, high energy, muscular development and maintenance are the primary goals; these are virtually unattainable when bodybuilders resort to dangerous pharmaceutical aids such as anabolic steroids.

Joe Weider has spent his life developing the sport of bodybuilding, and he decided to do something about the use of these unhealthy drugs. At stake is the ideal of health and vitality so important to the bodybuilding lifestyle. At best, anabolic steroids are not the wonder drug they have been touted to be. They prematurely age muscle cells, cause testicular shrinkage, impotence, paranoid or extremely aggressive behavior, and a host of serious coronary and liver problems which can prove fatal. Their muscle-building effects are transitory — affecting temporary muscle gains and a false kind of strength that disappears quickly when drug use is discontinued. This kind of "let-down" is both demoralizing and potentially dangerous to the body's delicately balanced endocrine system.

#### TACKLING THE PROBLEM.

Joe Weider's message about the great benefits of the bodybuilding lifestyle could not be spread as long as this dangerous trend continued. That's why Joe took action. His directive was clear, he wanted a steroid replacement that worked! No false hopes. No promises that couldn't be kept. Not only would this product work, but work dramatically, as well or better than anabolic steroids but without their inherent dangers. So at great expense and effort Joe Weider assembled the world's most renowned nutritional biochemists, exercise physiologists and trainers, all committed to develop the most effective steroid replacement that experience and science could provide. Joe worked with them for well over a year to develop a scientific alternative to dangerous and counterproductive drugs.

#### JOE WEIDER'S SOLUTION.

The result? A combination of natural ingredients so outstanding that its anabolic muscle-building effect could produce gains that approximate, in a physiological way, the muscle-building effect caused by the dangerous drugs it was designed to replace.

"It's Great! Now I can go into my high-intensity mass building routine without worry or stress."

Tom Platz.



That's not all! Over the course of a few months use, Joe Weider's revolutionary new discovery could produce gains that approximate those of the most potent anabolic steroids — with virtually no negative side effects. Joe's steroid replacement is designed to work naturally, as food does. How? By stimulating the body's own natural anabolic capabilities! The most advanced benefit of using Joe Weider's steroid replacement kit is that your muscle growth and development are long-lasting, not temporary like those derived from drugs.

#### SCIENTISTS AND WEIDER'S SOLUTION.

The scientists who helped Joe Weider formulate his steroid replacement packs realized that food supplements alone could not produce an anabolic effect in the human body. But the careful arrangement of ingredients, combined with precise scheduling of their intake, could cause a strong anabolic effect similar to that of steroids. Because Joe Weider's ingredients are foods rather than drugs, a lasting anabolic effect could safely be achieved without the harmful side effects generated by drugs. Because nutrients interact on a biochemical level, the Weider scientists had to discover a way to combine these ingredients so they would complement one another to produce a climate within the muscle cells that exceeds their normal anabolic capacity. Furthermore, to register maximum effect this increased anabolic activity should occur in the cells precisely at the time of greatest need. These all-important requirements were met. The result is a food supplement that could exceed any food ever made in its ability to create a positive anabolic state.

#### THE WEIDER SECRET.

Scientific research into substances that exert an anabolic effect on the human body was thoroughly reviewed to determine the exact combination of nutrients, dosages and intake schedules. Joe Weider found the secret! While others claim that their formulas produce anabolic effects, the truth is that they failed to look beyond their principal ingredients into the complex biochemical interactions that occur after the product is ingested! There's the secret to Joe Weider's ANABOLIC MEGA PAK! Weider's unique blend of ornithine and arginine is combined with the exact compounds necessary for the biochemical transformation of these powerful amino acids.

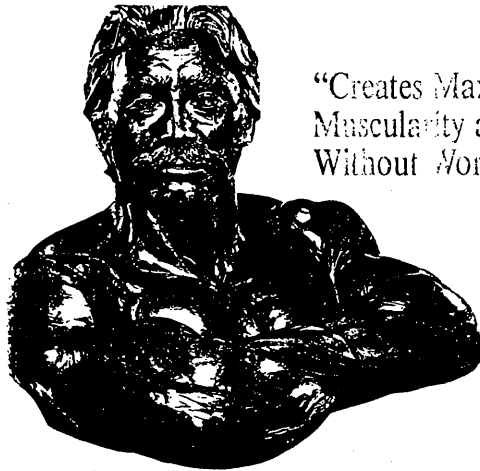
Scientists have known for years that certain amino acids (ornithine and arginine in particular), after being biochemically transformed to spermine, have the ability to stimulate the release of human growth hormone (hGH) from the pituitary gland. The Weider scientists discovered that certain mineral catalysts are required to ignite and maintain the transformation process until there is enough spermine change to trigger hGH release. Ornithine and arginine change to spermidine and finally spermine by interaction with exact ratios of magnesium, methionine, potassium, calcium and niacinamide. No other product on the market incorporates these important steps.

#### MUSCLE GROWTH TIME TABLE.

After spermine gently stimulates hGH release, this powerful hormone exerts its anabolic effect on the ribosomes of the muscle cells retaining greater amounts of nitrogen, enabling manufacture of more muscle-building protein for solid, lasting muscle tissue. Moreover fat deposits are mobilized, utilized as fuel for energy, thus causing reductions in bodyfat.

In addition to the hGH-stimulating amino acids, ornithine and arginine, Joe Weider has supplied your anabolic pak with a generous portion of his incredible new product, LIFE ESSENCE, a blend of all of the free form amino acids that are necessary to support muscular growth. Without these amino acids being available at the right time, there would be no growth.

Another powerful — yet totally natural — anabolic agent was added to the Weider Anabolic Pak. It is Serenoa — derived from saw palmetto berries. And it works! Better than any other herbs claimed to have anabolic characteristics, and far better than any form of animal glandular extracts. With Weider, you get the best available products.



**"Creates Maximum  
Muscularity and Mass  
Without Worry or Stress!"**  
JOE WEIDER

All of the ingredients of Weider's ANABOLIC MEGA PAK are designed to act together in stimulating anabolism through the conversion of your body's natural testosterone into hydrotestosterone, and by stimulating the anabolic functions of cellular RNA and DNA — the muscles' genetic workhorses — further increasing your muscle-building capability! So, there you have it! Improved strength and muscle growth *nutritionally!*

The incredible effect of increasing your body's production of hGH also has multi-dimensional effects, synergistically improving human performance. These are functions that no anabolic steroid can provide.

#### How You Use It:

To assure maximum anabolic activity, the Weider ANABOLIC PAK should be used as follows:

##### Morning:

- **Breakfast:** Eat a normal meal supplemented with WEIDER'S GOOD LIFE multivitamin-mineral pak and DYNAMIC MUSCLE BUILDER protein powder fortified with a teaspoon or 5 capsules of LIFE ESSENCE free form amino acids. On days when you will not work out, take one ANABOLIC MEGA PAK immediately upon rising — about 30-60 minutes before breakfast.

- **Lunch:** Eat a normal meal fortified with a glass of Joe Weider's MUSCLE BUILDER protein powder.

- **30 minutes before workouts:** Joe Weider's PRE-STRESS formula and one ANABOLIC MEGA PAK. Taken this way, your ANABOLIC PAK ingredients will be available for improved anabolism when the most critical need for growth and development occurs — immediately after your workout!

- **During workout:** Take one serving of Joe Weider's CARBO ENERGIZER powder drink during your workout at the time when you feel your energy level starts to drop. (You may also take some of your CARBO ENERGIZER drink after the workout to aid recuperation, as well as before the workout to build energy levels.)

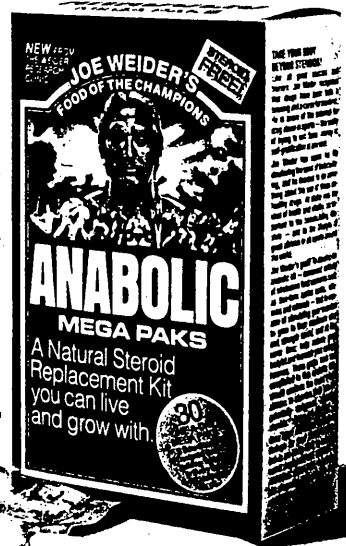
- **Immediately after workouts:** Eat a light small meal rich in protein and fortified with a teaspoon or 5 capsules of LIFE ESSENCE. This will greatly assist your recuperation process.

- **Evening meal:** Eat a normal meal supplemented with DYNAMIC MUSCLE BUILDER protein powder fortified with a teaspoon or 5 capsules of LIFE ESSENCE.

If you're ONLY interested in obtaining the benefits of Joe Weider's ANABOLIC MEGA PAK, without the help of any other supplements, follow these simple instructions for maximum muscularity and recuperation:

**On workout days:** About 30 minutes before working out, take Weider's ANABOLIC MEGA PAK. This will ensure that the ingredients are working anabolically when your muscles demand it most — during and immediately after workout. If you are feeling tired and lethargic, you may wish to take your ANABOLIC MEGA PAK with your favorite carbohydrate-rich fruit juice. This will give you added vigor and energy for your workout.

**On non-workout days:** Immediately upon awakening, take your Weider's ANABOLIC MEGA PAK with some water. Wait about 30 minutes before eating your breakfast.



**SHARE THE SECRET!**

(Patent Pending)

**WEIDER HEALTH & FITNESS** DEPT. MFAMPOB  
21100 ERWIN STREET, WOODLAND HILLS, CA 91367

Thank, Joe! For letting me use your revolutionary new *Anabolic Mega Paks*. Because of your tireless efforts I no longer need to take chances with steroids. Take the Super Stars, my muscles and strength will grow faster than I ever imagined, safely and naturally, without worry or stress. Count me in as one of your up-and-coming Super Stars by rushing me your new *Anabolic Mega Paks* today!

(ANMP) 30 Day Supply \$24.95  60 Day Supply\* \$44.00

\*SPECIAL INTRODUCTORY OFFER MAIL ORDER ONLY  
I've enclosed \$ \_\_\_\_\_ plus \$1.50 per item for postage and handling. Sorry no C.O.D.s  
California and Missouri residents add applicable sales tax.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Credit card customers call (800) 421-1711. In California (800) 582-1199. These numbers are for orders only; no inquiries. Similar products are available in Canada. Contact: Weider Institute, 2275 Bates Rd., Montreal, P.Q. H3J5B7

Complaint  
ATTACHMENT E

# AWESOME POWER!



## A NEW AGE BEGINS...WITH THE POWER OF LIFE ESSENCE

### IT'S MADE OF THE SAME SUBSTANCE AS HUMAN MUSCLE!

Now, bodybuilders and anybody interested in maintaining their highest level of personal strength can come to the vital source of it all: Life Essence. Life Essence is a combination of pure amino acids -- exactly the same ones that go into production of muscle tissue. Life Essence has no fat, no carbohydrates, no additives of any kind. You don't even digest it! Life Essence is so pure, you assimilate it immediately -- so it's unlike all other muscle building foods which are far less effective because of inefficiencies in digestion.

The diagram at right shows an electron micrograph of human skeletal muscle. The thin strands of protein and other muscle cell components are composed of chains of amino acids. The same pure, free amino acids furnished with Life Essence.



### HOW LIFE ESSENCE BUILDS UP HUMAN MUSCLES

Exercise results in muscular stress. This stress causes a great crowding within the muscle for life's building blocks in the form of pure, free amino acids -- exactly like those found in Life Essence. When Life Essence is absorbed into the bloodstream, its amino acids quickly and efficiently find their way into muscle cells, seeking out the areas where they are needed most. Once there, an amazing natural chemical process occurs. The amino acids reassemble into complex protein molecules which cause rapid muscle development and cellular recuperation. But Life Essence does even more.

### IT EVEN ACTIVATES ANABOLIC ACTIVITY!

Beyond everything else, Life Essence gently activates anabolic activity by coaxing the pituitary gland to secrete greater amounts of

growth hormones into the bloodstream. These powerful hormones enhance the entire natural bodybuilding process, building your muscles quickly, insuring continued growth, definition and strength at levels far beyond those achievable with inferior protein sources.

### ENTER THE NEW AGE OF POWER.

Whether you're a bodybuilder or anyone who wants to stay in the best of health, you really should grasp the awesome power of Life Essence and put it to work for you. It's the beginning of a new age of health, power and self-satisfaction. Life Essence, the Mr. and Miss Olympians use it, shouldn't you?

WEIDER HEALTH & FITNESS, 21100 Erwin Street, Woodland Hills, CA 91367 DEPT FFLE08

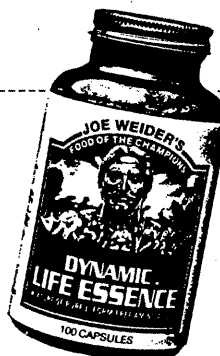
150 Capsules \$24.95 100 Grams (Powder) \$26.95

Name \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Charge my  MasterCard  Visa Expiration date \_\_\_\_\_ Signature \_\_\_\_\_ Bank No. \_\_\_\_\_

Account No. \_\_\_\_\_ Or call toll-free Weider Hot Line (MasterCard or Visa customers only) 1-800-423-5713 In California call 1-800-387-3399. These numbers are order-taking lines only. No inquiries in Canada. Weider Institute, 281 1/2 Bates Road, Murfreesboro, TN 37132. PO #35-1B? Also available at your local health food store.

(Patent Pending)  
LIFE ESSENCE  
AWESOME!



## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, 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 Weider Health and Fitness, 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 21100 Erwin Street, Woodland Hills, State of California.

Respondent Joseph Weider is an officer of the corporate respondent Weider Health and Fitness, Inc. He has formulated, directed and controlled the acts and practices of that corporation. His address is the same as that of Weider Health and Fitness, Inc.

Respondent M.L.E. Holding Co., Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the Province of Quebec, Canada, with its office and principal place of business at 2875 Bates Road, Montreal, Quebec, Canada H3S 1B3. M.L.E. Holding Co., Ltd., owns Weider Health and Fitness, Inc. It has the authority to formulate, direct and control the acts and practices of Weider Health and Fitness, Inc., and derives significant financial

benefits from the allegedly deceptive acts and practices of Weider Health and Fitness, Inc.

Respondent Ben Weider is the President of M.L.E. Holding Co., Ltd., and has voting control of all shares of that corporation. In addition, he was a member of the Board of Directors of Weider Health and Fitness, Inc., until June 1, 1983. He has the authority to control the acts and practices of Weider Health and Fitness, Inc. His address is the same as that of M.L.E. Holding Co., Ltd.

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

##### I

*It is ordered,* That respondents Weider Health and Fitness, Inc., a corporation, its successors and assigns, and its officers, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, its successors and assigns, and its officers, Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding Co. Ltd., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising the nutrient supplements known from 1983 to 1985 as "Anabolic Mega-Pak" and "Dynamic Life Essence" or of any other food of substantially similar composition, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. A typical user of any such food will achieve greater or faster muscular development than a non-user;

B. A typical user of any such food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, e.g., rapid and substantial muscular development;

C. Any such food will stimulate greater production or release of human growth hormone, resulting in greater or faster muscular development in users than in non-users;

D. The nutrient supplement known from 1983 to 1985 as "Dynamic Life Essence" or any other food of substantially similar composition

is unlike any other amino acid source in the world, *e.g.*, it is unique; or

E. The nutrient supplement known from 1983 to 1985 as "Anabolic Mega-Pak" or any other food of substantially similar composition was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers, unless it was so developed.

## II

*It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. A typical user of any such nutrient supplement or other food will achieve greater or faster muscular development than a non-user;

B. A typical user of any such nutrient supplement or other food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, *e.g.*, rapid and substantial muscular development;

C. Any such nutrient supplement or other food will stimulate production or release of human growth hormone or any other bodily substance that affects or is represented to affect muscular development;

D. Any such nutrient supplement or other food is unique; or

E. Any such nutrient supplement or other food was developed, approved, tested or endorsed by any person(s) having the particular qualifications, status, reputation or expertise claimed unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. *Competent and reliable scientific evidence* shall mean for purposes of this order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

## III

*It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, marketed to assist users in achieving greater or faster muscular growth or development than non-users, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, survey or any other scientific opinion or data.

## IV

*It is further ordered,* That respondents shall, within 30 days of service of this order, send a Notice Letter, Refund Form and Notarized Statement by first class mail, in an envelope, as described below, in all material respects consistent with, but not necessarily identical to, the materials attached to this order as Appendices A and B, and no other information, to all consumer mail order purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, to all consumer telephone purchasers whose orders were received on or before September 30, 1984, to all consumers who answered respondents' Anabolic Mega-Pak questionnaire that appeared in the September 1984 issue of *Muscle and Fitness* magazine, to all current subscribers of *Muscle and Fitness* or *Flex* magazines, and to all consumers who call or write to respondents requesting information about this order. In addition, respondents shall send a pre-paid self-addressed return envelope, as described below, to all consumers to whom notice shall be sent by first class mail, except those consumers who are current subscribers to *Muscle and Fitness* or *Flex* magazine. Respondents are not required to send duplicate notice materials if a consumer falls within more than one of the foregoing categories.

The envelope that contains the Notice Letter, Refund Form, Notarized Statement and return envelope mailed to consumers shall contain in the upper left hand corner the following return address:

Federal Trade Commission/  
Weider Refund Agreement  
21100 Erwin Street  
Woodland Hills, CA 91367



The envelope mailed to consumers shall also have the words "ADDRESS CORRECTION REQUESTED" and "RETURN POSTAGE GUARANTEED" in the upper left hand corner. For each Notice Letter for which respondents receive a corrected address, respondents shall within twenty-one (21) business days after respondents have received the corrected address send the Notice Letter, Refund Form, Notarized Statement and return envelope, addressed to the original addressee with the corrected address.

The pre-paid self-addressed return envelope shall contain the following words on the outside of the envelope under, on or below the envelope seal flap:

**MAKE SURE YOU HAVE ENCLOSED  
YOUR REFUND FORM AND**

(for those who didn't purchase by mail or telephone from Weider)

**ONE OF THE THREE WAYS OF SHOWING  
PROOF OF PURCHASE**

V

*It is further ordered,* That respondents shall place, at least twice in the first four (4) months after the date of service of this order, and cause to be disseminated in the national full-circulation editions of both *Muscle and Fitness* and *Flex* magazines:

(1) a prominently placed, conspicuously printed, black on white half page version of the Notice Letter attached to this order as Appendix A, or a half page Notice Letter in all material respects consistent with the NOTICE LETTER attached to this order as Appendix A; and

(2) a REFUND FORM and NOTARIZED STATEMENT form in all material respects consistent with those forms as they appear in Appendix B with the top half of the page containing the Notice Letter (Appendix A) separated from the bottom half by a dotted line and the bottom half containing the Refund Form and Notarized Statement.

VI

*It is further ordered,* That respondents shall in the manner described below offer reimbursement of the total purchase price paid for these products, (including costs of postage, handling and tax) to any mail order consumer purchaser of Anabolic Mega-Pak, Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, and to any consumer who purchased such product(s) on or before September 30, 1984.

Respondents shall mail refund checks, and no other information, within sixty (60) days of the closing date for receipt of both refund requests and proper evidence of purchase, for the total purchase price (including costs of postage, handling and tax) to those purchasers eligible to receive reimbursement who make requests and provide proper evidence of purchase on or before the closing date. Respondents shall reimburse each customer who is eligible for a refund and who did not use a postage-paid return envelope furnished by respondents to request a refund, an additional twenty-two cents (\$.22). The dollar amount of reimbursements shall be based on Weider Health and Fitness, Inc.'s suggested retail price for Anabolic Mega-Pak and Dynamic Life Essence if records of actual purchase prices are not available. For purposes of this Order the "closing date" for receipt of refund requests shall be the last day of the month following the month in which magazines containing the second notice are offered for sale. For purposes of this order, *proper evidence of purchase* shall mean:

(1) for mail order purchases from respondents, respondents' own sales records of purchase orders received on or before October 5, 1984;

(2) for telephone purchases from respondents, respondents' own sales records of purchase orders received on or before September 30, 1984;

(3) for purchases of Anabolic Mega-Pak or Dynamic Life Essence by any other means,

(a) the portion of the Anabolic Mega-Pak box, or Dynamic Life Essence bottle label that contains the batch control numbers issued for those products on or before July 29, 1984; or

(b) copies of a receipt, invoice, credit card record or both sides of a cancelled check, dated on or before September 30, 1984, that indicate the specific product(s) purchased; or

(c) the NOTARIZED STATEMENT form attached to this order as part of Appendix B, or a form in all material respects consistent with the form attached as part of Appendix B. A Notarized Statement shall not be deemed "proper evidence of purchase" for more than two boxes of Anabolic Mega-Pak and two bottles of Dynamic Life Essence.

If respondents' own sales records do not confirm the amount a consumer claims to have purchased by mail order or telephone from respondents, respondents shall immediately notify the consumer of the consumer's right to verify the purchase with the same "proper evidence of purchase" available to other consumer purchasers, and shall, at the time all other refund checks are mailed, mail refund checks to such consumers in the amount that sales records do confirm.

## VII

*It is further ordered,* That if the total of the amount of reimbursement respondents pay to purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, plus the amount respondents pay in postage for mailing of the Notice Letters, return envelopes and refund checks is less than Four Hundred Thousand Dollars (\$400,000.00), then respondents shall in the manner described below donate an amount equal to the difference between the total of the amount paid in reimbursements and Four Hundred Thousand Dollars (\$400,000.00), minus the amount paid for first class postage, to a university, foundation or research institute to which the National Science Foundation awarded program grants or contracts in Fiscal Year 1981 or any year thereafter for research in the fields of physiology, cell or molecular biology. The donation shall be payable in four equal installments over a four year period, the first payment to be made within one hundred and twenty (120) days of issuing the final reimbursement checks and each subsequent payment to be made no later than every twelve months thereafter. Such funds shall be designated "for the purpose of research on the relationship of nutrition to muscle development." Respondents may divide such funds between no more than two (2) recipients. Respondents' donation shall have no conditions attached thereto, including but not limited to retaining any proprietary interest in the results of the recipient's research or requiring the donation recipient to publish in any of respondents' magazines. No portion of these funds may be used to compensate any person, or his or her agent(s), who has been employed by, has consulted for, or has received remuneration from respondents at any time prior to the date of service of this order. In the event of default in any payment, which default continues for ten (10) days beyond the due date of payment, the entire remaining amount shall immediately become due, and be placed in escrow under control of the Federal Trade Commission for the benefit of the university, foundation or research institute previously designated by respondents to receive the funds.

## VIII

*It is further ordered,* That whenever, in any publication that respondents own or control, respondents identify themselves as the funding source for the research referred to in Paragraph VII, they shall also state clearly and conspicuously that the funding was provided pursuant to settlement agreement with the Federal Trade Commission.

mission resulting from a complaint issued by the Federal Trade Commission.

## IX

*It is further ordered,* That respondents shall, for at least two (2) years after the date of the last dissemination of the representation, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. All materials that respondents relied upon in disseminating any representation covered by this order.
2. All test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation of respondents that is covered by this order.
3. All materials evidencing respondents' compliance with Paragraph VII above.

## X

*It is further ordered,* That respondents shall for at least two (2) years after service of this order, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. Records evidencing the number and cost of Notice Letters sent to the U.S. Postal Service for mailing and the actual cost for mailing the return envelopes referred to in Paragraph IV above and the refund checks referred to in Paragraph VI above.
2. All Notice Letters returned to the respondents as undeliverable.
3. The name and last known address of each purchaser of the Anabolic Mega-Pak and/or Dynamic Life Essence, or both, who was sent the Notice Letter and the address to which any subsequent Notice Letter to that purchaser was sent.
4. A copy of each Refund Form, returned to respondents.
5. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who received reimbursement and the amount of such reimbursement.
6. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who requested reimbursement, was refused and the reason for each refusal to reimburse.

## XI

*It is further ordered,* That the corporate respondents shall for ten (10) years following service of this order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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, or of any change in the positions or responsibilities of Joseph Weider or Ben Weider in regard to any corporation or subsidiary of which they are an officer.

## XII

*It is further ordered,* That the individual respondents named herein shall promptly notify the Commission of their discontinuance of their present business or employment and of their affiliation with a new business or employment engaged in the manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising of any foods, physical fitness products or publications relating thereto, or the offering for sale, selling, distributing or advertising of any services relating to any foods or physical fitness, and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with any such new business or employment, each such notice to include the respondent's 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 respondent's duties and responsibilities in connection with the business of employment.

## XIII

*It is further ordered,* That respondents 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 it has complied with this order.

## APPENDIX A

NOTICE TO CUSTOMERS WHO MAY HAVE BOUGHT ANABOLIC MEGA-PAK  
OR DYNAMIC LIFE ESSENCE

Weider Health & Fitness, Inc. (Weider) has recently entered into a consent agreement with the Federal Trade Commission (FTC) regarding its advertising for the "Anabolic Mega-Pak" and "Dynamic Life Essence." Weider has entered into this agreement for settlement purposes only and does not admit that it has violated the law.

This agreement contains four main provisions:

- 1) Weider's advertising will not claim that the Anabolic Mega-Pak or Dynamic Life Essence will cause greater or faster muscular development;
- 2) Weider will support all advertising claims for its food supplements with competent and reliable scientific proof;
- 3) Weider will offer refunds to eligible consumers who purchased Anabolic Mega-Pak or Dynamic Life Essence. To determine if you are eligible, complete and send in the attached form. You do *not* have to return unused portions of either product to qualify for a refund; and
- 4) Weider will fund research on the relationship of nutrition to muscle development. The amount of funding will be based on the refunds made in connection with this offer.

If you bought any of these products by mail or telephone from Weider Health & Fitness, Inc., just fill out the enclosed REFUND FORM. We will check it against our records of your purchases and the total amount you paid for them and then determine your eligibility. *This refund offer expires on (to be inserted).*

If you bought any of these products at a store, health club, etc., you may prove that you purchased them in one of three ways. Just enclose in an envelope the REFUND FORM *and* one of the following:

1. An original or copy of the receipt, invoice or credit card record or both sides of a cancelled check that indicates the specific product(s) you bought, *OR*
2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch number (not the 10-digit UPC number), *OR*
3. A completed NOTARIZED STATEMENT,

*AND* mail the REFUND FORM and one of the three types of proof of purchase to:

Federal Trade Commission/  
Weider Refund Agreement  
21100 Erwin Street  
Woodland Hills, California 91367

Weider Health & Fitness, Inc. will refund your postage if you are eligible to receive a refund.

Weider looks forward to serving you in the future.

Yours truly,  
WEIDER HEALTH & FITNESS, INC.

By \_\_\_\_\_  
Joe Weider

Decision and Order

106 F.T.C.

APPENDIX B

REFUND FORM

Please determine my eligibility for a refund and if I am eligible send me a refund for my purchases of (number) box(es) of Anabolic Mega-Pak and/or (number) bottle(s) of Dynamic Life Essence that I made on (date(s))

Name	
Signature	Address

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence by mail or telephone from Weider and if you want a refund from Weider STOP here. You don't have to fill out or mail in anything else unless you also want refunds for purchases made at a store, health club, etc.

*This refund offer expires on [to be inserted].*

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence at a store, health club, etc., fill out and mail to us the REFUND FORM above, AND enclose:

1. An original or copy of the receipt, invoice credit card record or both sides of the cancelled check, that indicates the specific product(s) you bought, OR
2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch control number (not the 10-digit UPC number), OR
3. A completed NOTARIZED STATEMENT.

NOTARIZED STATEMENT

State of \_\_\_\_\_ )  
 ) SS  
 County of \_\_\_\_\_ )

I, (Your Name—Printed or typed), being duly sworn on oath state as follows:

1) That I bought (number) box(es) of Anabolic Mega-Pak at the following places on the following dates:

\_\_\_\_\_  
 \_\_\_\_\_

and (number) bottle(s) of Dynamic Life Essence at the following places on the following dates:

\_\_\_\_\_  
 \_\_\_\_\_

2) That these facts are true and correct to the best of my knowledge.

\_\_\_\_\_  
(Your Signature)

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_\_.

\_\_\_\_\_  
Notary Signature

## IN THE MATTER OF

## GENERAL MILLS FUN GROUP, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-2965. Consent Order, May 15, 1979—Modifying Order, Dec. 11, 1985*

The Federal Trade Commission has released General Mills, Inc. from its responsibilities under a 1979 consent order that prohibited misrepresentations in advertising by its toy producing subsidiary, but has said the order remains binding on the subsidiary's successor (93 F.T.C. 749). General Mills intends to spin off its toy-producing subsidiary, General Mills Fun Group, Inc., as an independent company called Kenner Parker Toys, Inc., and has no intention of reentering the toy business following the corporate action.

ORDER REOPENING THE PROCEEDING AND  
MODIFYING CEASE AND DESIST ORDER

On September 20, 1985, General Mills, Inc.'s (Petitioner) request to reopen and modify the consent order entered against General Mills Fun Group, Inc. (respondent) by the Commission on May 15, 1979 [93 F.T.C. 749], in the above-captioned matter was placed on the public record for 30 days pursuant to Rule 2.51(c) of the Commission's Procedures and Rules of Practice. That order proscribes representing the performance, operation, use, size, or appearance of toys or related products which (1) cannot be duplicated by children in ordinary use; or (2) through the use of any commercial production technique misrepresents to children these characteristics, or (3) fails to disclose the need for human or mechanical assistance, when such failure, in the context of the advertisement as a whole, misrepresents to children such toy's performance or operation. Part III of that order applies the same proscriptions against Petitioner if it should engage in the advertising of toys, directly or through a subsidiary other than respondent. A second provision of Part III would make Petitioner liable for any penalties or other legal or equitable relief under the order if for any reason respondent or other subsidiary advertising toys while owned by Petitioner is not amenable to suit or execution of full judgment.

The respondent, General Mills Fun Group, Inc., through a series of name changes has become Kenner Parker Toys Inc. (Kenner Parker or respondent). On November 7, 1985, Petitioner spun-off Kenner Parker as a free-standing corporate entity that is now independent of Petitioner through a distribution of Kenner Parker's stock to Petitioner's stockholders of record. The newly independent Kenner Park-



er, with fiscal 1985 sales of \$638 million and assets of \$499 million, will be one of the largest toy companies in the world. As a result of this spin-off, Petitioner will no longer be engaged in the toy business and has stated that it has no present intent to reenter that business in the future. In addition, Petitioner is not in a position to oversee either the management or advertising of respondent Kenner Parker, formerly General Mills Fun Group, Inc. As a consequence of the foregoing, Petitioner requests that it be relieved of its responsibilities under the order by the setting aside of Part III.

Upon consideration of Petitioner's request and supporting materials, and other relevant information, the Commission finds pursuant to Rule 2.51 of the Commission's Procedures and Rules of Practice, 16 C.F.R. 2.51 that changed conditions of fact and the public interest warrants reopening and modification of the order in the manner requested. In doing so, the Commission notes that Kenner Parker, as a successor corporation, remains bound by the terms of the order and that a specific covenant to that effect was contained in the transfer documents between Petitioner, General Mills, Inc., and Kenner Parker.

*It is therefore ordered,* That the proceeding is hereby reopened and the order issued May 15, 1979 in Docket No. C-2965 as hereby modified by setting aside Part III thereof.

IN THE MATTER OF  
HOSPITAL CORPORATION OF AMERICA

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION AND CLAYTON ACTS

*Docket C-3167. Consent Order, Sept. 30, 1985—Modifying Order, Dec. 16, 1985*

The Federal Trade Commission has approved Hospital Corp. of America's proposed divestiture of a hospital in Midland, Texas, to ClayDesta Corp. The Commission also modified the 1985 consent order requiring the divestiture, so that HCA may retain the land that is the location for a planned hospital in Midland. (106 F.T.C. 298)

ORDER MODIFYING CEASE AND DESIST ORDER  
ISSUED ON SEPTEMBER 30, 1985

By a petition filed on November 12, 1985, Hospital Corporation of America ("HCA") requests that the Commission reopen the proceeding in Docket No. C-3167 and modify the order issued by the Commission on September 30, 1985 [106 F.T.C. 298], to remove a parcel of land held by Doctors' Hospital of the Permian Basin, Inc. ("Doctors' Hospital") from the assets to be divested pursuant to Paragraph II of the order. Pursuant to Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51 (1985), HCA's petition was placed on the public record for comments. No comments were received.

After reviewing HCA's petition and HCA's September 26, 1985, application for approval of the divestiture of its Parkview Hospital and the planned Doctors' Hospital, the Commission has concluded that the public interest warrants reopening and modification of the order. In the context of HCA's September 26, 1985, divestiture proposal, elimination of the requirement that HCA divest the parcel of land owned by Doctors' Hospital would facilitate the proposed divestiture which, in turn, will help achieve the remedial purposes of the order. HCA proposes to divest Doctors' Hospital to ClayDesta Corporation, an acquirer who intends to locate Doctors' Hospital on a site of its own choosing within the relevant geographic market. Therefore, ClayDesta does not desire to acquire the Doctors' Hospital land. Consequently, divestiture of the parcel of land currently owned by Doctors' Hospital is not essential to achieving the remedial goals of the order. Eliminating the requirement that HCA divest the Doctors' Hospital parcel of land, in the context of the proposed divestiture, does not appear to have any adverse competitive significance.

Accordingly,

*It is ordered,* That this matter be, and it hereby is, reopened and that *Schedule A: Stock and Assets to be Divested*, Paragraph A 2., of the order in Docket No. C-3167, be modified to read as follows:

2. Doctors' Hospital of the Permian Basin, in Midland, Texas (a planned new facility which, if and when it is completed, will replace Parkview Hospital). Provided, however, that HCA need not divest the parcel of land owned by Doctors' Hospital if the acquirer of Doctors' Hospital possesses another site within the Midland/Odessa area, intends to locate the hospital at that other site and, therefore, chooses not to acquire the Doctors' Hospital land.

IN THE MATTER OF  
ATLANTIC RICHFIELD COMPANY

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION AND CLAYTON ACTS

*Docket 9089. Order, Oct. 29, 1979—Set Aside Order, Dec. 30, 1985*

The Federal Trade Commission has set aside a 1979 order with Atlantic Richfield Co. (ARCO) (94 F.T.C. 1054), so that the company is no longer required to divest its half-interest in Anamax, a joint venture. The Commission cited developments in the copper industry as rendering the Anamax divestiture and the original order unnecessary.

ORDER TERMINATING DECISION AND ORDER ISSUED OCTOBER 29, 1979

On August 30, 1985, Atlantic Richfield Company ("Arco") filed its "Request To Reopen And Set Aside Consent Order" ("Request"). The Request was submitted pursuant to Paragraphs XV and XVI of the Commission's Decision and Order issued on October 29, 1979 [94 F.T.C. 1054], ("the order") and also pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding and terminate the order in its entirety. After reviewing respondent's Request and other relevant information, the Commission has concluded that Arco has made a satisfactory showing that changed conditions of fact and public interest considerations require that the order be terminated.

This proceeding arose out of Arco's merger with The Anaconda Company ("Anaconda") in 1976. The complaint was issued under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act and charged that Arco's acquisition of Anaconda would eliminate three forms of competition: (1) actual competition between Arco and Anaconda in the production and sale of uranium oxide; (2) potential competition between Arco and producers of uranium oxide, including Anaconda; and (3) potential competition between Arco and producers of copper, including Anaconda, in copper mine production and in the production and sale of refined copper. At the time the complaint was issued, Arco, in addition to being a petroleum company, was a producer of uranium oxide through a joint venture operating in Clay West, Texas, with Niagara Mohawk Power Company and United States Steel Corporation. Anaconda was both a producer of uranium oxide and a miner and refiner of copper.

On November 2, 1976, a hearing was held in the United States

District Court for the Eastern District of Virginia on the Commission's motion for a preliminary injunction against the merger pending completion of the Commission's administrative lawsuit. On the same day, Arco announced a plan to sell its interest in the Clay West uranium joint venture to Niagara Mohawk and United States Steel. Later that day the district court denied the Commission's motion. The sale of Arco's Clay West interest was consummated on December 6, 1976. Thereafter, on January 12, 1977, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court, and the merger was consummated later that same day. *FTC v. Atlantic Richfield Company*, 549 F.2d 289 (4th Cir. 1977). The Commission's administrative proceeding continued and the parties subsequently entered into settlement negotiations. On October 29, 1979, the Commission issued its order in this matter.

The order required the divestiture of five specified copper interests that had been owned by Anaconda at the time it was acquired by Arco. These interests were the Heddleston copper and molybdenum mineral property; the Ann Mason copper mineral property; the Bear copper mineral property; its 20 percent stock holding in Inspiration Consolidated Copper Company; and its 50 percent joint venture interest in the Anamax Mining Company ("Anamax"), a copper miner and producer of copper concentrate and electrowon refined grade copper. The time allowed for Arco to accomplish divestiture ranged from a minimum of one year for the Inspiration stock to five years for the Anamax interest. The Order also imposed an acquisition ban and joint venture restrictions on Arco during a "limitation period" defined in the order. The limitation period was to expire after five years (on October 29, 1984), but was subject to a proviso extending the period for as much as an additional five years if the required divestitures had not been completed in accordance with a specified timetable.

Arco has accomplished all of the divestitures required by the order with the exception of its interest in Anamax. Arco sold its interest in Inspiration Consolidated Copper Company prior to issuance of the order. The Ann Mason and Bear properties were sold on August 25, 1981. The Heddleston property was sold to Asarco with the prior approval of the Commission as required by the order in September 1981. Since Arco did not divest its interest in Anamax within four years of the effective date of the order, the limitation period has yet to expire.

Respondent has established that there have been significant changes in the factual circumstances that prevailed at the time the complaint and order issued so that it is now appropriate to terminate the order. These changes include a decline in the market position of

Arco's copper operations; and a sharp curtailment in the copper operations of Anamax.

Perhaps the most significant development since the order issued has been the inability of U.S. copper producers to sustain the two-tier pricing system which historically kept the U.S. price substantially above the price of copper sold outside the United States. Request, pp. 23-24. Imports of refined copper accounted for 27 percent of domestic refined copper consumption in 1983 as compared with 10 percent in 1979 and 9 percent in 1975. Request, p. 25 and Table I. The major exporting nations have kept producing at high levels while United States producers have been forced to cut back output. According to the International Trade Commission

In a broad sense, the copper market is a world market. Both tariffs and transportation costs are small compared with the value of copper. As a result, arbitrage keeps the price of copper relatively the same throughout the world.

*ITC, Unwrought Copper: Report to the President on Investigation No. TA-201-52 Under Section 201 of the Trade Act of 1974 at A-56 (July 1984) (hereinafter "ITC Report").* U.S. producers "have no choice but to follow the depressed and declining world price of copper." *ITC Report* at 43-44. According to the ITC

The current depressed state of the domestic copper industry reflects existing world market conditions and, therefore, is predominantly due to the low level of world prices which are transmitted to the U.S. industry through imports. Current world prices have been driven low by a combination of world overproduction and a decline in demand. In particular, a number of developing countries, with copper as their main source of foreign exchange, are continuing to produce and market increasing quantities of copper despite a worldwide glut, with plans to expand capacity even further in the near future.

*ITC Report* at 6-7. A substantial number of domestic copper production facilities have been permanently closed since 1979. *ITC Report* at A-22, A-23.

These developments have also had a significant adverse effect on Arco's own copper operations. In the period since the order was issued Arco has shut down all of its wholly-owned copper mines and has closed and scrapped its copper smelter and copper refinery. Apart from its interest in Anamax, respondent has not produced refined copper since the fall of 1980 and has not mined copper since June 1983. Arco has written down all of its copper and other non-coal mineral operations and is in the process of permanently exiting from these businesses. Request, p. 3. Likewise, the Anamax copper operations have been sharply curtailed. The only active Anamax copper operation is the processing of stockpiled copper oxide ore at the Twin Buttes oxide plant. Request, p. 36. In the opinion of the Commission,

the developments referred to above have rendered the divestiture of Arco's interest in Anamax unnecessary and have also made it appropriate to terminate the restriction on acquisitions and joint ventures imposed by the Order.

Accordingly, *it is ordered*, that this matter be, and it hereby is, reopened, and that the Commission's Decision and Order issued on October 29, 1979, shall terminate as of the effective date of this order.

IN THE MATTER OF  
FEDERATED DEPARTMENT STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

*Docket C-3175. Complaint, Dec. 30, 1985—Decision, Dec. 30, 1985*

This consent order requires a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The order requires respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's is required to review all credit applications rejected between January 1983 and February 1985 and send appropriate FCRA notices to all consumers who did not receive them.

*Appearances*

For the Commission: *Kristen L. Malmberg.*

For the respondents: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.* and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Federated Department Stores, Inc., a corporation, hereinafter referred to as respondent, through its Foley's Division, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint and the accompanying order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, *consumer reporting agency*, and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating



that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term *information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

PAR. 2. Respondent 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 Seven W. Seventh Street, Cincinnati, Ohio. Foley's is a division of Respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas.

PAR. 3. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the evaluation of applications for credit to be used for personal, family or household purposes. In a substantial number of instances respondent denies credit applications from consumers applying for credit that they intend to use for personal, family or household purposes. The Commission has jurisdiction of the subject matter of this proceeding and of respondent, as provided by Section 621 of the Fair Credit Reporting Act, 15 U.S.C. 1681s, and the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*

PAR. 4. Respondent, in the ordinary course and conduct of its business, obtains consumer reports from consumer reporting agencies. In a substantial number of instances subsequent to April 25, 1971, respondent has denied consumers credit for personal, family or household purposes based wholly or partly on information in consumer reports. For example, Respondent has relied on information in more than one report and has relied on a "no file" response from the consumer reporting agency. In many such instances, at the time when such adverse action was communicated to the consumer, respondent has failed to disclose to the consumer that the credit denial was based wholly or partly on information in one or more consumer reports from consumer reporting agencies and has failed to supply to the consumer the name and address of each consumer reporting agency making such a report. By and through the use of such practices during the period from April 25, 1971 to the present, respondent has violated and

is violating the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 5. Pursuant to Section 621 of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a), the acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

#### 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 Dallas 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 Fair Credit Reporting 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, 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 hereafter 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:

1. Respondent, Federated Department Stores, 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 West Seventh Street, Cincinnati, Ohio. Foley's is a division of respondent. Foley's principal office and place of business is located at 1110 Main Street, Houston, Texas.

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

#### ORDER

*Definitions:* For the purpose of this order the following definitions are applicable:

A. The term *consumer*, *consumer report*, *consumer reporting agency*, and *person* shall be defined as provided in Section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given credit applicant indicating that the consumer reporting agency has no credit history information in its files under the name and/or other identifiers supplied by respondent.

C. The term *information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency reflecting slowly paid or delinquent credit obligations, garnishment, attachment, foreclosure, repossession, bankruptcy, suits or judgments, inquiries from creditors, an insufficient number of accounts reported, the absence or presence of certain types of credit accounts, the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit or insufficient positive information to meet such criteria.

#### I.

*It is hereby ordered,* That respondent Federated Department Stores, 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 any application by a consumer for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever such credit is denied wholly or partly or the charge for such credit is increased wholly or partly because of any information contained in a consumer report from one or more consumer reporting agencies (including a "no-file response"), to disclose to the applicant a) that the adverse action was based wholly or partly on information contained in such consumer report or reports and b)

such a report as required by Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

2. Failing to review each application for consumer credit as to which Foley's took adverse action between January 1, 1983, and February 4, 1985, to identify each of those applications as to which such adverse action was taken based wholly or partly upon information obtained from a consumer reporting agency.

3. Failing, within ninety (90) days of the date of service of this order, for each application identified according to paragraph 2 above, to send, as specified herein, the applicant a copy of the letter attached hereto as Appendix A or B, as applicable, and described herein. The letter shall be on Foley's letterhead and shall show the name and address of the applicant as shown on the application and the date of mailing. The letter shall disclose the name and address of the consumer reporting agency or agencies supplying the report(s) containing the information on which the adverse action was based. A letter need not be sent to any applicant whose application was identified pursuant to Paragraph 2 of this order, if the application file clearly shows that Foley's has previously sent the applicant an adverse action notification that complied in all respects with the provisions of Paragraph 1 of this order, nor to any applicant who subsequent to the adverse action on such application was granted credit by Foley's. Nothing in this order shall prohibit respondent from adding a paragraph to Appendices A and B that resolicits the previously rejected applicants if, preceding such paragraph, respondents insert the following language: "You may want to check your file at the credit bureau mentioned above to make sure it is accurate and complete before reapplying."

## II.

*It is further ordered,* That respondent shall maintain for at least three (3) years, and upon request make available to the Federal Trade Commission for inspection and copying, documents that will demonstrate compliance with the requirement of this order, except that consumer application files need only be kept for the period required by Section 202.12 of Regulation B. 12 C.F.R. 202.12. Such documents include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of the order, any notices provided to consumers pursuant to any provision of this order, and the complete application file to which they relate.

## III.

*It is further ordered,* That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change 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. This provision shall remain in effect for a period of four (4) years from the date of this order.

## IV.

*It is further ordered,* That Foley's shall deliver a copy of this order to cease and desist to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes, or engaged in preparing or furnishing notices to consumers as required by this order. In addition, respondent shall deliver a copy of this order to all present and future credit managers of each division, at least once per year, for a period of four (4) years from the date of this order.

## V.

*It is further ordered,* That the respondents herein shall within one hundred fifty (150) days after service upon it 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.

## APPENDIX A

Dear Customer:

Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit Reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that we obtained a credit report in which we were advised by the consumer reporting agency that it showed no credit history for you. The consumer reporting agency from which we obtained the report is:

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## Decision and Order

(Name of Consumer Reporting Agency)(Street Address)

You have the right to contact the agency listed above to obtain complete information concerning your credit bureau file. However, that agency cannot tell you why credit was denied because it did not make the decision.

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

## APPENDIX B

Dear Customer:

Our records show that Foley's denied your application for consumer credit sometime after January 1, 1983. The Fair Credit Reporting Act gives persons denied consumer credit the right to be informed at the time credit is denied whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Consistent with an agreement we have made with the Federal Trade Commission, we have reviewed your application file. Our records show that we may not have informed you that your Foley's application was denied wholly or in part because of information contained in a credit report. The consumer reporting agency (or agencies) that furnished the report is (are) identified below:

(Name of Consumer Reporting Agency)(Street Address)

You have the right to contact the agency (or agencies) listed above to obtain complete information concerning your credit bureau file. However, that agency (or agencies) cannot tell you why credit was denied because it (or they) did not make the decision.

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.



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