

Complaint

121 F.T.C.

IN THE MATTER OF

WLAR CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3641. Complaint, Feb. 21, 1996--Decision, Feb. 21, 1996*

This consent order prohibits, among other things, a Virginia-based corporation and its officer from making unsubstantiated representations for their weight-loss booklets, products or program. The consent order requires the respondents to provide, in future advertisements, a disclosure statement that the products consist solely of a booklet or pamphlet containing information and advice on weight-loss.

*Appearances*For the Commission: *Richard Cleland and C. Lee Peeler.*For the respondents: *Randall Shaheen, Arnold & Porter,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation ("respondents"), have violated the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent WLAR Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Its principal place of business is located at 5622 Columbia Pike #106, Falls Church, VA.

Respondent Michael K. Craig is or was at relevant times herein the sole owner, officer, and employee of the corporate respondent. Individually, or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed weight-loss and body-shaping products, consisting of booklets containing advice on dieting and exercise, to the public. Respondents have marketed these products under various names, including "Swedish 19," "Body Maker," "BM Program," "New Shape," and "Swedish System."

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

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

A. Swedish 19:

Get the look that boys really notice!

You can have a cute body!

Now you, too can have the cute, foxy body you've always wanted -- the kind of body that really gets you noticed. And it can happen faster than you think!

You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind. That's right -- no matter what you look like right now, just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever thought possible! JUST FOLLOW THE EASY INSTRUCTIONS IN THE SWEDISH 19 GUIDE!

No matter how many times you've tried and failed before, this time you really can do it. Finally, here's something that really works!

How Swedish 19 works

Swedish 19 will quickly show you how to lose weight while eating the foods you like -- including those snacks you love so much. It's not a diet -- so there's no list of things you have to eat. No list of things you can't eat, either. But when you use Swedish 19, you'll end up eating less (but still enough to keep you healthy.) Pretty soon, all those extra pounds will be gone for good.

Swedish 19 will help you control your appetite before meals and avoid over-eating -- even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay thin -- with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

And -- if you're too skinny and just dying to get some curves -- you can make your body cuter and foxier -- adding shape and curves in all the right places!

Made for a teenage girl's body

Swedish 19 was designed especially for a teenage girl's body. It's the safest, most natural way to lose weight we could find for you. It's a safe, healthy way to lose weight. And it works. Show it to your doctor -- we're sure he'll agree!

Complaint

121 F.T.C.

Here's more good news. You never have to do any long boring exercises -- and you won't need to! When you use Swedish 19 you'll just feel like being more active all the time. You'll burn up calories while you're having fun!

It works!

Just days after you get Swedish 19, you can be eating less, feeling more active, and really happy about the changes starting to take place.

* * * *

Try to imagine how gorgeous you'll look. How your body can be really slim, trim and firm. Really picture it in your mind. It can happen to you!

You can do it!

The best part is -- you'll be sooo. . . proud of yourself when you find out you really can have a cute body. It's not your fault you haven't lost weight -- it's those worthless diets that don't work!

* * * *

Get a totally cute body - - or your money back!

Swedish 19 has worked for thousands of girls. And we're so sure it'll work for you, too, that we want you to try it for a whole month at no risk.

Go ahead -- really use it as much as you want. Let it help you slim down, shape up and beautify your body.

* * * *

Here's all you've got to do. Fill out the coupon and send it in with \$12 right away. We'll send you Swedish 19 fast. (The package won't say who it's from or what's inside.)

* * * *

(Exhibit A)

B. Swedish System:

New! How you can...

Get the shape that boys really notice!

You can have a cute body!

Now you, too can have the cute, foxy body you've always wanted - the kind of body that really gets you noticed. And it can happen faster than you think!

Swedish girls are famous for their beautiful bodies. And the awesome Swedish System will quickly and easily show you how to get rid of excess, flabby fat - while adding shape and curves in all the right places!

You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind. Yes - just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever thought possible!

No matter how many times you've tried and failed before, this time you really can do it. Finally, here's something that really works!

How the Swedish System works

When you use the Swedish System, you still get to eat the same foods you've been eating - including those snacks you love so much. It's not a diet - so there's no list of things you have to eat. No list of things you can't eat, either. But when you use the Swedish System, you'll end up eating less (but still enough to keep you healthy.) Pretty soon, all those extra pounds will be gone for good.

If you're overweight, the Swedish System will help you control your appetite before meals and avoid over-eating - even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay

thin - with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

Or - if you're too skinny and just dying to get some curves - you can make your body shapelier and foxier - adding shape and curves in all the right places!

Made for a teenage girl's body

The Swedish System was designed especially for a teenage girl's body. It's the safest, most natural weight loss product we could find for you. . . .

Here's more good news. You never have to do any long boring exercises - and you won't need to! When you use the Swedish System you'll just feel like being more active all the time. You'll burn up calories while you're having fun!

It works!

Just days after you start using the Swedish System, you can be eating less, feeling more active, and really happy about the changes starting to take place. Just follow the easy directions in the Swedish System guide.

* * * *

Can you see it? Try to imagine how gorgeous you'll look. How every part of your body can be slim, trim and firm. Really picture it in your mind. It can happen to you!

You can do it!

The best part is - you'll be sooo. . . proud of yourself when you find out you really can have a cute body. It's not your fault you haven't lost weight - it's those worthless diets that don't work! Now you really can make your dreams come true. Definitely!

* * * *

Try it for a whole month!

This system has worked for thousands of girls. And now we've made it even better! We're so sure it'll work for you, too, that we want you try it for a whole month at no risk.

* * * *

(Exhibit B)

C. BM Program:

Get the body that gets the boys

How to lose weight fast and look great

You can have the cute, thin body you've always wanted -- the kind of body that really gets boys' attention. And lose weight fast from your waist, butt, hips and thighs -- so you're thin everywhere. You can do it without going on the usual kind of diet -- thanks to a special new discovery called the BM Program.

A great new body

You'll lose fat from every part of your body. Want a narrow waist? No problem. Firm behind? You got it. Slim hips? Sure. Thin legs? Of course. The BM Program's extra fast action will work on every part of your body. So -- no matter what parts of your body are too big right now -- you'll have the great body you want fast and easy.

It doesn't matter whether you need to lose ten, twenty, even forty pounds or more. You can get them off and keep them off for good. . . .

Every square inch of your body can be trim and firm. . . .

Complaint

121 F.T.C.

At last, here's something that really works. No matter how many times you've tried and failed to lose weight before, now you can do it. Just follow the easy directions in the BM Program guide.

Why diets don't work

You know what all those diets are like. You're supposed to have half a grapefruit for lunch and nothing else. But if you had the willpower to eat just that, you wouldn't have a weight problem now, would you?

* * * *

But it's not your fault. The big problem with diets is that they leave you hungry, and you can only hold out for so long. Heavy exercise just makes you tired and hungry. And diet pills can be dangerous.

It's new

The BM Program is totally different from anything you've ever tried before. Don't confuse this program with any other one. Here's why it's different. It helps you fight hunger and change your eating habits so you eat less -- without getting hungry. There's no "diet" or list of things you have to eat. No forbidden foods, either. No calorie-counting. You can keep on eating your favorite foods -- even snacks. But you'll end up eating less. You just won't feel like pigging out. And, best of all, those extra pounds that make you look ugly will go away fast!

It works

Even if you've tried everything else and failed, the BM Program is the last weight loss solution you'll ever need. It really works.

BM can help you to 1) stop gaining weight, 2) lose weight by getting rid of body fat and best of all 3) help you stay slim and trim.

BM works fast, too. You'll start changing your eating habits the first day -- giving you results you can start to notice in just a couple of weeks. And although not everyone loses weight at the same speed, the results will be absolutely amazing.

This program is so powerful that you have to be careful not to lose weight too fast. If that happens, just stop using it for a day or two. BM is safe and natural. There are no drugs or anything artificial.

* * * *

Here's proof

How well does the BM Program work? We had 100 girls try it. Desperate girls who had tried almost everything else, and who had given up hope. And -- guess what? Only two of them asked for their money back. Just two out of 100.

So we're 98% sure that it'll work for you. . . .

Hard to believe it could be so easy? Of course it is. That's what those other girls thought before they tried it. Boy, were they surprised!

It's the best

We've checked out over a dozen weight loss systems and this one's the best one we found. Just give it a try and we know you'll agree.

* * * *

(Exhibit C)

D. New Shape:

New! How you can...

Get the cute shape that boys like and girls envy!

* * * *

The perfect body

Now you, too, can have the kind of body that boys like and girls envy; thin, shapely legs and thighs, firm behind, narrow waist, and foxy, exciting curves in all the right places. . . .

No matter how many times you've tried and failed before, now you can really do it -- thanks to an excellent new discovery that can really work for you

Extra help for special areas

New Shape™ does more than just help you get rid of excess fat. It helps you add shape and firmness too. It's a total shape-up system that you can customize to your own special needs Whether you're too fat or too skinny, New Shape can help you get the kind of body you've always wanted. It really works.

This system was designed especially for teenage girls and is made to fit your lifestyle. So you can still have snacks and go out for hamburgers with your friends.

Works twice as fast

The New Shape System works twice as well -- and twice as fast -- because it combines two powerful factors. Yet it's completely natural and safe for girls of all ages. With no dangerous crash diets, no drugs, and no special foods.

It's easy and safe (no drugs!)

You won't find a faster, easier, safer way to slim down and shape up your body. We know -- because we've tried pretty much everything there is. Don't confuse New Shape with any other product or company.

* * * *

Order the New Shape System. You'll get it fast -- in a plain, unmarked package Use it as much as you need to get the body you want We've helped thousands of girls just like you -- and we know we can help you, too.

* * * *

(Exhibit D)

E. Body Maker:

HOW YOU CAN HAVE A FIRM, FOXY,
THINNER BODY - in just a few weeks!

THE BODY YOU'VE ALWAYS WANTED!

You can have the cute, foxy body you've always wanted -- the kind of body that really gets guy's attention. And you can look that way sooner than you think!

Just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever imagined -- thanks to an awesome new discovery.

Body Maker™ helps you lose weight from every part of your body. You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind -- and add shape, firmness and curves in all the right places!

No matter how many times you've tried and failed before, now the awesome new Body Maker can quickly and easily show you how to get a body that's cuter and foxier than you ever thought possible! Finally, here's something that really works!

HOW BODY MAKER WORKS

With Body Maker, you still get to eat the foods you like -- including those snacks you love so much. It's not a diet -- so there's no list of things you have to eat. No list of things you can't eat, either. But when you follow the Body Maker program, you'll end up eating less (but still enough to keep you healthy.) You just

won't feel like pigging out! And pretty soon, all those extra pounds will be gone for good.

Body Maker will help you cut down on your appetite before meals and avoid over-eating -- even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay thin -- with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

MADE ESPECIALLY FOR TEENAGE GIRLS

Body Maker was created especially for a teenage girl's body. It's the safest, healthiest way to lose weight we've ever seen. And it works! . . .

Here's more good news. You never have to do any exercises -- and you won't need to! With Body Maker you'll just feel like being more active all the time!

IT WORKS!

Just days after you get Body Maker, you can be eating less, feeling more active, and really happy about the changes starting to take place.

* * * *

It's not your fault you haven't lost weight -- it's those worthless diets that don't work!

* * * *

Body Maker has worked for thousands of girls . . .

Go ahead -- really use it as much as you want. Let it help you slim down, shape up and beautify your body.

* * * *

(The Package won't say who it's from or what's inside.)

* * * *

(Exhibit E)

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

A. BM Program, New Shape, and Body Maker are new weight-loss discoveries; and

B. Users of Swedish 19, Swedish System, BM Program, New Shape, and Body Maker are not required to consciously diet to lose weight.

PAR. 6. In truth and in fact:

A. BM Program, New Shape, and Body Maker are not new weight-loss discoveries; and

B. Users of Swedish 19, Swedish System, BM Program, New Shape, and Body Maker are required to consciously diet to lose weight. These products are booklets containing advice for reducing caloric intake and require conscious dieting to lose weight.

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

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondents have represented, directly or by implication, that:

A. Swedish 19, Swedish System, BM Program, New Shape, and Body Maker cause fast and easy weight loss;

B. Swedish 19, Swedish System, BM Program, New Shape, and Body Maker are more effective than other products or programs in controlling appetite and causing weight loss;

C. Purchasers of Swedish 19, Swedish System, BM Program, New Shape, and Body Maker are successful in controlling appetite, losing weight, and reducing body fat;

D. Swedish 19, Swedish System, BM Program, and Body Maker cause users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; and

E. Thousands of girls have successfully lost weight by using Swedish 19, Swedish System, New Shape, and Body Maker.

PAR. 8. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph seven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time they made the representations set forth in paragraph seven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. In their advertising and sale of Swedish 19, Swedish System, BM Program, New Shape, and Body Maker, respondents have represented that these products will reduce appetite and result in significant weight loss. Respondents have failed to disclose adequately that these products consist only of booklets or pamphlets containing advice concerning techniques for reducing caloric intake and/or exercise, and that reducing caloric intake and/or increasing exercise is required to lose weight. These facts would be material to consumers in their purchase or use decisions regarding the products. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

PAR. 11. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Chairman Pitofsky recused.

EXHIBIT A

Get the look that boys really notice!

You can have a cute body!

Now, you, too can have the cute, foxy body you've always wanted -- the kind of body that really gets you noticed. And it can happen faster than you think!

You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind. That's right -- no matter what you look like right now, just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever thought possible! **JUST FOLLOW THE EASY INSTRUCTIONS IN THE SWEDISH 19 GUIDE!**

No matter how many times you've tried and failed before, this time you really can do it. Finally, here's something that really works!

How Swedish 19 works

Swedish 19 will quickly show you how to lose weight while eating the foods you like -- including those snacks you love so much. It's not a diet -- so there's no list of things you have to eat. No list of things you can't eat, either. But when you use Swedish 19, you'll end up eating less (but still enough to keep you healthy.) Pretty soon, all those extra pounds will be gone for good.

Swedish 19 will help you control your appetite before meals and avoid over-eating -- even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay thin -- with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

And -- if you're too skinny and just dying to get some curves -- you can make your body cuter and fatter -- adding shape and curves in all the right places!

Made for a teenage girl's body

Swedish 19 was designed especially for a teenage girl's body. It's the safest, most natural way to lose weight we could find for you. It's a safe, healthy way to lose weight. And it works. Show it to your doctor -- we're sure he'll agree!

Here's more good news. You never have to do any long boring exercises -- and you won't need it! When you use Swedish 19 you'll just feel like being more active all the time. You'll burn up calories while you're having fun!

It works!

Just days after you get Swedish 19, you can be eating less, feeling more active, and really happy about the changes starting to take place.

Before you know it, you'll be going to the mall to get that cute bikini you always wished you could wear. And when you look in the mirror, you won't believe how good you

look! Can you see it? Try to imagine how gorgeous you'll look. How your body can be really slim, trim and firm. Really picture it in your mind. It can happen to you!

You can do it!

The best part is -- you'll be sooooo proud of yourself when you find out you really can have a cute body. It's not your fault you haven't lost weight -- it's those worthless diets that don't work! Now you really can make your dreams come true. Definitely!

Your high school years are supposed to be the happiest time of your life. Make sure you don't miss out on all those special moments -- the beach, parties, school dances, the prom.

Sure -- once you look so good, all those guys that never noticed you before might start asking you out. But don't just do this for the guys. Do it for yourself. You deserve it!

Get a totally cute body -- or your money back!

Swedish 19 has worked for thousands of girls. And we're so sure it'll work for you, too, that we want you to try it for a whole month at no risk.

Go ahead -- really use it as much as you want. Let it help you slim down, shape up and beautify your body.

Then -- if you feel you haven't changed enough -- if you don't have the awesome body you've always wanted -- just send everything back to us and we'll give you your money back. We don't want your money unless you get the body you want!

Do it now!

Here's all you've got to do. Fill out the coupon and send it in with \$12 right away. We'll send you Swedish 19 fast! (The package won't say who it's from or what's inside.)

So don't wait. If you put it off you might forget, and miss out on the cute body you want, and all the good times you deserve.

Do it now. You'll be so glad you did. P.S.: Wanna get a cute body even faster? We've put together some really easy, fun exercises you can do in just 15 minutes a day. Use them with Swedish 19 and you'll get terrific results super-fast! They're yours for just \$3 extra when you get Swedish 19. Good deal!

Plus -- we'll even throw in a...

FREE Gift!

You'll also get a chart to keep track of your weight loss absolutely FREE, just for ordering Swedish 19.

Hurry up and be the first one at your school to get that cute body! Make this the best year of your life!

© 1995 Swedish 19. Coupon good! Send \$12 with your name and address to Swedish 19, P.O. Box 2245, Kensington, MD 20891.



FREE 30-DAY TRIAL!

Swedish 19 3-S
 Nicholson Lane
 P.O. Box 2245
 Kensington, MD 20891-2245

Good! I want a totally cute body. Send me Swedish 19 fast! Money back guarantee. Here's
 \$12 for just Swedish 19
 \$15 for Swedish 19 plus exercises

PRINT
 Name _____
 Address _____
 City _____ State _____ Zip _____

BODY GOALS SURVEY FORM
 (Answer only if you want to)
 I'm overweight and want a thinner body... or
 I'm too skinny and want more shape & curves

I want to change: (Check as many as you want)

<input type="checkbox"/> Arms	<input type="checkbox"/> Waist	<input type="checkbox"/> Thighs
<input type="checkbox"/> Stomach	<input type="checkbox"/> Butt	<input type="checkbox"/> Legs
<input type="checkbox"/> Chest	<input type="checkbox"/> Hips	<input type="checkbox"/> Other _____



Complaint

121 F.T.C.

EXHIBIT B

New! How you can ...

Get the shape that boys really notice!

You can have a cute body!

Now you, too can have the cute, sexy body you've always wanted - the kind of body that really gets you noticed. And it can happen faster than you think!

Swedish girls are famous for their beautiful bodies. And the awesome Swedish System will quickly and easily show you how to get rid of excess, flabby fat - while adding shape and curves in all the right places!

You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind. Yes - just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever thought possible!

No matter how many times you've tried and failed before, this time you really can do it. Finally, here's something that really works!

How the Swedish System works

When you use the Swedish System, you still get to eat the same foods you've been eating - including those snacks you love so much. It's not a diet - so there's no list of things you have to eat. No list of things you can't eat, either. But when you use the Swedish System, you'll end up eating less (but still enough to keep you healthy.) Pretty soon, all those extra pounds will be gone for good!

If you're overweight, the Swedish System will help you control your appetite before meals and avoid over-eating - even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay thin - with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

Or - if you're too skinny and just dying to get some curves - you can make your body shapelier and fatter - adding shape and curves in all the right places!

Made for a teenage girl's body

The Swedish System was designed especially for a teenage girl's body. It's the safest, most natural weight loss product we could find for you. It won't hurt or harm your body in any way. Everything in the Swedish System is healthy for you. Show it to your doctor - we're sure he'll agree!

Here's more good news. You never have to do any long boring exercises - and you won't need to! When you use the Swedish System you'll just feel like being more active all the time. You'll burn up calories while you're having fun! **It works!**

Just days after you start using the Swedish System, you can be eating less, feeling more active, and really happy about the changes starting to take place. Just follow the easy directions in the Swedish System guide.

Before you know it, you'll be going to the mall to get that cute bikini you always wished you could wear. And when you look in the mirror, you won't believe how good you look!

Can you see it? Try to imagine how



gorgeous you'll look. How every part of your body can be slim, trim and firm. Really picture it in your mind. It can happen to you!

You can do it!

The best part is - you'll be sooo... proud of yourself when you find out you really can have a cute body. It's not your fault you haven't lost weight - it's those worthless diets that don't work! Now you really can make your dreams come true. Definitely!

The new school year is just starting. Your high school years are supposed to be the happiest time of your life. Make sure you don't miss out on all those special moments - the beach, parties, school dances, the prom.

Sure - once you look so good, all those guys that never noticed you before might start

asking you out. But don't just do this for the guys. Do it for yourself. You deserve it! **Try it for a whole month!**

This system has worked for thousands of girls. And now we've made it even better! We're so sure it'll work for you, too, that we want you to try it for a whole month at no risk.

Go ahead - really use it as much as you want. Let it help you slim down, shape up and beautify your body.

Then - if you feel you haven't changed enough - if you don't have the awesome body you've always wanted - just send back the Swedish System and we'll give you your money back. We don't want your money unless you get the body you want!

Do it now!

Here's all you've got to do. Fill out the coupon and send it in with \$12 right away. We'll send you the Swedish System fast. (The package won't say who it's from or what's inside.)

So don't wait. If you put it off you might forget, and miss out on the cute body you want, and all the good times you deserve.

Do it now. You'll be so glad you did.

P.S.: Wanna get a cute body even faster?

We've put together some really easy, fun exercises you can do in just 15 minutes a day. Use them with the Swedish System and you'll get terrific results super-fast! They're yours for just \$3 extra when you get the Swedish System. Good deal!

Plus - we'll even throw in a . . .

FREE Gift!

You'll also get a chart to keep track of your weight loss absolutely FREE, just for ordering the Swedish System.

Hurry up and be the first one at your school to get that cute body! Make this the best year of your life!

©1991 Swedish System

30-Day Trial Coupon

Swedish System 1-5
 Nicholson Lane
 P.O. Box 2245
 Gaithersburg, MD 20878-2245

Cool!! I want a totally cute body. Send me the Swedish System fast! Money back guarantee. Here's

\$12 for just the Swedish System
 \$15 for the Swedish System plus exercises

PRINT
 Name _____
 Address _____
 City _____ State _____ Zip _____

Body Goals Survey Form
 (Answer only if you want to)

I'm overweight and want a thinner body... or
 I'm too skinny and want more shape & curves

I want to change: (Check as many as you want)

Arms Waist Thighs
 Stomach Butt Legs
 Chest Hips Other _____

EXHIBIT
B

EXHIBIT C

Get the body that gets the boys

How to lose weight fast and look great

You can have the cute, thin body you've always wanted - the kind of body that really gets boys' attention. And lose weight fast from your waist, butt, hips and thighs - so you're thin everywhere. You can do it without going on the usual kind of diet - thanks to a special new discovery called the BM Program.

A great new body

You'll lose fat from every part of your body. Want a narrow waist? No problem. Firm behind? You got it. Slim hips? Sure. Thin legs? Of course. The BM Program's extra fast action will work on every part of your body. So - no matter what parts of your body are too big right now - you'll have the great body you want fast and easy.

It doesn't matter whether you need to lose ten, twenty, even forty pounds or more. You can get them off and keep them off for good. And get the look that really gets you noticed.

Every square inch of your body can be trim and firm. Your body will have a great new shape. You'll look great in shorts, a miniskirt, or a bikini. You'll be able to wear the kinds of clothes that show off your new thin body - instead of trying to find clothes to hide it. Even your face will look prettier as you lose extra weight.

At last, here's something that really works. No matter how many times you've tried and failed to lose weight before, now you can do it. Just follow the easy directions in the BM Program guide.

Why diets don't work

You know what all those diets are like. You're supposed to have half a grapefruit for lunch and nothing else. But if you had the willpower to eat just that, you wouldn't have a weight problem now, would you?

So you cheat on your diet. And end up feeling fat and guilty.

But it's not your fault. The big problem with diets is that they leave you hungry, and you can only hold out for so long. Heavy exercise just makes you tired and hungry. And diet pills can be dangerous.

It's new

The BM Program is totally different from anything you've ever tried before. Don't confuse this program with any other one. Here's why it's different. It helps you fight hunger and change your eating habits so you eat less - without getting hungry. There's no "diet" or list of things you have to eat. No forbidden foods,

either. No calorie-counting. You can keep on eating your favorite foods - even snacks. But you'll end up eating less. You just won't feel like pigging out. And, best of all, those extra pounds that make you look ugly will go away fast!

It works

Even if you've tried everything else and failed, the BM Program is the last weight loss solution you'll ever need. It really works.

BM can help you to 1) stop gaining weight, 2) lose weight by getting rid of body fat and best of all 3) help you stay slim and trim. BM works fast, too. You'll start changing your eating habits the first day - giving you results you can start to notice in just a couple of weeks. And although not everyone loses weight at the same speed, the results will be absolutely amazing.

This program is so powerful that you have to be careful not to lose weight too fast. If that happens, just stop using it for a day or two. BM is safe and natural. There are no drugs or anything artificial.

What makes BM extra special is that it was originally developed especially for actresses and models. They need to get and keep a great-looking body fast. But you don't have to be an actress or model to have a slim body that gets you noticed. Very soon all the cute boys will start paying lots of attention to you - instead of the other girls.

Here's proof

How well does the BM Program work? We had 100 girls try it. Desperate girls who had tried almost everything else, and who had given up hope. And - guess what? Only two of them asked for their money back. Just two out of 100.

So we're 98% sure that it'll work for you. And if for any reason it doesn't, you'll get your money back. So you've got nothing to lose by giving it a try.

Hard to believe it could be so easy? Of course it is. That's what those other girls thought before they tried it. Boy, were they surprised!

It's the best

We've checked out over a dozen weight loss systems and this one's the best one we found.

Just give it a try and we know you'll agree. You know what it's like being ignored at a school dance. Or being too embarrassed to be seen in a bikini. You deserve better than that.

Now it's your turn to look great. Your turn to get all the cute boys' attention. Your turn to



have some fun.

You can't get the BM Program in stores. They don't have it yet. But you don't have to wait. You can get it by mail right now.

Send in the coupon with \$12 now and you'll get it right away, in a plain package. And pretty soon you'll have the great-looking body you've always wanted.

Give yourself a chance. You'll be glad you did.

Do it now - before some other girl does and gets all the boys' attention.

FREE bonus gift

P.S.: Order now and you'll also get a special chart to keep track of your weight loss, absolutely FREE.

BM Program	2-W
Twinbrook Center	
P.O. Box 727	
Rockville, MD, 20848-0727	
Hey! I know what kind of body I want. Send me the BM Program in a plain package right away. Here's \$12. Money back guarantee.	
PRINT Name _____	
Address _____	
City _____	State _____ Zip _____

EXHIBIT

EXHIBIT D

New! How you can ...

Get the cute shape that boys like and girls envy!

There's a girl in every school who is so beautiful -- so foxy -- that all the boys just can't keep their eyes off her. A girl who's surrounded by cute guys wherever she goes. A girl that can have any guy she wants. Very soon, that girl could be you!

The perfect body

Now you, too, can have the kind of body that boys like and girls envy: thin, shapely legs and thighs, firm behind, narrow waist, and foxy, exciting curves in all the right places. With THAT kind of body you'll look great in shorts or a miniskirt, and totally awesome in that cute little two-piece swimsuit that you always wished you could wear.

No matter how many times you've tried and failed before, now you can really do it -- thanks to an excellent new discovery that can really work for you. Just think -- only a few short weeks from today you could have a whole new look!

Extra help for special areas

New Shape™ does more than just help you get rid of excess fat. It helps you add shape and firmness too. It's a total shape-up system that you can customize to your own special needs. So you can work on your legs, waist, butt, hips, thighs and other problem parts of your body to make them shapelier, firmer, tighter and more beautiful. You can change your flabby, embarrassing features -- but keep your good parts. Whether you're too fat or too skinny, New Shape can help you get the kind of body you've always wanted. It really works.

This system was designed especially for teenage girls and is made to fit your lifestyle. So you can still have snacks and go out for hamburgers with your friends.

Works twice as fast

The New Shape System works twice as well -- and twice as fast -- because it combines two powerful factors. Yet it's completely natural and safe for girls of all ages. With no dangerous crash diets, no drugs, and no special foods.

It's easy and safe (no drugs!)

You won't find a faster, easier, safer way to slim down and shape up your body. We know -- because we've tried pretty much everything there is. Don't confuse



bikini. You can make the other girls envy you. You can get that cute boy to really notice you in school (and hopefully ask you out!) You can have all the fun you've been missing out on -- and you deserve it!

You can do it. You really can make your dream come true.

Here's all you have to do: Order the New Shape System. You'll get it fast -- in a plain, unmarked package. Try it out for a week, a month, even two months. Use it as much as you need to get the body you want. Then take a look in the mirror. You'll look sooo... cute and foxy you won't believe your eyes! And you can stay that way, too, with nothing more to buy.

We guarantee it

But if you feel you haven't changed enough -- if you don't think you look like a total babe -- just send everything back to us and you'll get your money back right away. We guarantee New Shape because it really works. We've helped thousands of girls just like you -- and we know we can help you, too.

Do it now!

So don't just think about having a beautiful body. Don't just dream about what it would be like. If you put it off until tomorrow, you might never do it. Do something about it now -- and make your dream come true. Don't wait until some other girl starts going out with that guy you've got your eye on. Do it now. Just send in the coupon with \$12 today, and get the kind of body you really want. You'll be so glad you did.

FREE bonus gift

You'll also get an extra free bonus -- a special surprise gift that can help you get a more beautiful body even faster. This free gift is available only while supplies last. Get it before we run out!

©1991 NS
Coupon good? No problem! Just send your name and address with \$12 to New Shape, P.O. Box 2245, Kensington, MD 20891.

You'll love having handsome hunks fight over you!

New Shape with any other product or company.

And, best of all, you'll start working on your own special problem areas right away -- to give them the special attention they need and help you get the cute, foxy shape you really want.

You know what it's like being laughed at in gym class or being ignored at a party. Why put up with it when you don't have to?

It really works

You can look beautiful in that special party dress. You can look awesome in a

New Shape	3-N
Nichols Lane	
P.O. Box 2245	
Kensington, MD 20891-2245	
Yes! I definitely want to look like a babe. Send me the New Shape System in a plain package right away. Here's \$12. Money back guaranteed.	
PRINT Name _____	
Address _____	
City _____ State _____ Zip _____	



EXHIBIT E

HOW YOU CAN HAVE A FIRM, FOXY, THINNER BODY - in just a few weeks!

THE BODY YOU'VE ALWAYS WANTED!

You can have the cute, foxy body you've always wanted -- the kind of body that really gets guys' attention. And you can look that way sooner than you think!

Just a few short weeks from today you could have a body that's thinner, firmer and cuter than you ever imagined -- thanks to an awesome new discovery.

Body Maker™ helps you lose weight from every part of your body. You can have a narrower waist, thinner hips, legs and thighs, and a firmer behind -- and add shape, firmness and curves in all the right places!

No matter how many times you've tried and failed before, now the awesome new Body Maker can quickly and easily show you how to get a body that's cuter and foxier than you ever thought possible! Finally, here's something that really works!

HOW BODY MAKER WORKS

With Body Maker, you still get to eat the foods you like -- including those snacks you love so much. It's not a diet -- so there's no list of things you have to eat. No list of things you can't eat, either. But when you follow the Body Maker program, you'll end up eating less (but still enough to keep you healthy.) You just won't feel like pigging out! And pretty soon, all those extra pounds will be gone for good.

Body Maker will help you cut down on your appetite before meals and avoid over-eating -- even when you're dying to have a snack! And before you know it, you'll have a whole new set of eating habits, be thin, and stay thin -- with nothing more to buy. This is not like those diet pills you have to keep buying over and over again!

MADE ESPECIALLY FOR TEENAGE GIRLS

Body Maker was created especially for a teenage girl's body. It's the safest, healthiest way to lose weight we've ever seen. And it works! Show it to your doctor -- we're sure he'll agree!

Here's more good news. You never have to do any exercises -- and you won't need to! With Body Maker you'll just feel like being more active all the time!

IT WORKS!

Just days after you get Body Maker, you can be eating less, feeling more active, and really happy about the changes starting to take place.



"I tried your product, and it worked." -- Anna, age 16, California (That's her picture, above!)

Before you know it, you'll be going to the mall to get that cute bikini you always wished you could wear. And when you look in the mirror, you won't believe how good you look!

Can you see it? Try to imagine how gorgeous you'll look. How every part of your body can be slimmer, trimmer and cuter than you ever thought possible. Really picture it in your mind. It can happen to you!

YOU'LL FEEL GOOD ABOUT YOURSELF!

The best part is -- you'll be so proud of yourself when you find out you really can lose weight. It's not your fault you haven't lost weight -- it's those worthless diets that don't work! Now you really can make your dreams come true. Absolutely!

Your high school years are supposed to be the happiest time of your life. Make sure you don't miss out on all those special moments -- the beach, pool parties, the prom.

Sure -- once you look so good, all those guys that never noticed you before will start asking you out. But don't just do this for the guys. Do it for yourself. You

deserve it!

TRY IT FOR 30 DAYS

Body Maker has worked for thousands of girls. And we're so sure it'll work for you, too, that we want you to try it for a whole month at no risk.

Go ahead -- really use it as much as you want. Let it help you slim down, shape up and beautify your body.

Then -- if you feel you haven't changed enough -- if you don't have the awesome body you've always wanted -- just send back Body Maker and we'll give you your money back. We don't want your money unless you get the body you want!

DO IT NOW!

Here's all you've got to do. Fill out the coupon and send it in with \$12 right away. We'll send you Body Maker fast. (The package won't say who it's from or what's inside.)

So don't wait. If you put it off you might forget, and miss out on the cute body you want, and all the good times you deserve.

Do it now. You'll be so glad you did.

P.S.: Want a cute body even faster? We've put together some really easy, fun exercises that you can do in just 15 minutes a day. Use them with Body Maker for extra-fast results! They're just \$3 extra when you get Body Maker. Good deal!

Plus -- we'll even throw in a...

FREE GIFT!

You'll also get a chart to keep track of your weight loss absolutely free, just for ordering Body Maker.

Hurry up and be the first one at your school to get that cute body! Coupon gone? No problem! Just send \$12 to Body Maker, P.O. Box 727, Rockville, MD, 20848.

FREE 30-DAY TRIAL COUPON

Body Maker 12-WN
Years Mill Road
P.O. Box 727
Rockville, MD, 20848-0727

Yes! I want a totally cute body. Send me Body Maker right away! Money back guarantee. Here's:
 \$12 for Body Maker and free bonus
 \$15 for Body Maker, free bonus, and exercises

PRINT Name _____

Address _____

City _____ State _____ Zip _____

PERSONAL BODY GOALS FORM

(Answer only if you want to)

I weigh _____ pounds. I WANT to weigh _____

These are the parts of my body I want to change (Check as many as you want)

Face Arms Hips
 Neck Waist Thighs
 Chest Butt Legs

©1991 Body-Maker

May 1991 EXHIBIT

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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent WLAR Co. 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 5622 Columbia Pike #106, in the City of Falls Church, State of Virginia.

Respondent Michael K. Craig is or was at relevant times herein the sole owner, officer, and employee of said corporation. Individually or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of said corporation and his address is the same as that of said corporation.

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

For purposes of this order:

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

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure and given in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. "*Weight-loss product*" shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or elimination of fat, slimming, or caloric deficit in a user of the product or program.

I.

It is ordered, That respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents,

representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System, BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product is new or is a new weight-loss discovery; or
- B. Such product does not require dieting.

II.

It is further ordered, That respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

- A. Such product causes fast or easy weight loss;
- B. Such product is more effective than other products or programs in controlling appetite or causing weight loss;
- C. Purchasers of such products are successful in controlling appetite, losing weight, or reducing body fat;
- D. Such product causes users to develop a new set of eating habits, thereby reducing caloric intake and causing significant and long-term or permanent weight loss; or
- E. Such product has any effect on users' weight, body size or shape, body measurements, or appetite,

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondents, WJAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WJAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been used successfully by any number of persons unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

IV.

Nothing in Parts I through III of this order shall prohibit respondents from making representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. This Part shall not apply, however, if the publication or its advertising is used to promote the sale of some other product as part of a commercial scheme.

V.

It is further ordered, That respondents, WJAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WJAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Swedish 19, Swedish System,

BM Program, New Shape, Body Maker, or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and in close proximity to such representation, that such product consists solely of a booklet or pamphlet containing information and advice on weight loss.

VI.

It is further ordered, That respondents, WLAR Co., a corporation, its successors and assigns, and its officers; and Michael K. Craig, individually and as an officer of WLAR Co.; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such weight-loss product has any effect on weight or body size, unless they disclose, clearly and prominently, and in close proximity to such representation, that diet and/or increasing exercise is required to lose weight; provided however, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the weight-loss product is effective without either dieting or increasing exercise.

VII.

It is further ordered, That respondent, WLAR Co., shall:

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

B. For a period of five (5) years from the date of issuance of this order, provide a copy of this order to each of respondent's future

principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with respondent or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

VIII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

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

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

IX.

It is further ordered, That respondent, WLAR Co., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this order.

X.

It is further ordered, That respondent, Michael K. Craig, shall, for a period of three (3) years from the date of issuance of this order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment involving the advertising, offering for

sale, sale, or distribution of any weight-loss product. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XI.

This order will terminate on February 21, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

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

XII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Chairman Pitofsky recused.

IN THE MATTER OF

GOOD NEWS PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3642. Complaint, Feb. 22, 1996--Decision, Feb. 22, 1996*

This consent order prohibits, among other things, a Michigan corporation from misrepresenting the fat or nutrient content of eggs or products containing egg yolks. In addition, the consent order prohibits the respondent from making health claims regarding such products unless it possesses reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *Phoebe Morse* and *Kristie Ann Wood*.

For the respondent: *David Vander Haagen, Foster, Swift, Collins & Smith*, Lansing, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Good News Products, Inc. ("Good News Products"), a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Good News Products, Inc. is a Michigan corporation with its offices and principal place of business at East Washington & M-40, Hamilton, Michigan.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Good News Eggs to consumers. These eggs are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Good News Eggs, including but not necessarily limited to the attached Exhibits A-G. These advertisements contain the following statements:

A. IF YOU EAT EGGS, HERE'S IMPORTANT NEWS. INTRODUCING, GOOD NEWS EGGS. GOOD NEWS EGGS COME FROM HENS FED A SPECIAL DIET LOW IN SATURATED FAT. THE RESULT IS AN EGG THAT'S LOWER IN SATURATED FAT. . . . IT'S THE BEST NEWS YET FOR PEOPLE WHO LOVE EGGS.

[Exhibit A (Radio: untitled)]

B. Romeo: How do I love thee - let me count the ways. I love thee for thy shape - so round, yet firm and fragile. I love thee for thy good taste and unparalleled versatility. But what I don't care for is your . . .

Announcer: Introducing - Good News Eggs. . . . Good News Eggs are from hens fed a special diet naturally low in saturated fat. So Good News Eggs are lower in saturated fat - and higher in Omega 3's. And that's good news for egg lovers everywhere. . . . Good News Eggs - for today's healthier lifestyle.

[Exhibit B (Radio: "Good News Eggs does Shakespear.")]

C. If You Love Eggs, We've Got Good News

Introducing, Good News Eggs. Fresh, delicious, 100% real eggs with a difference. The difference is, Good News Eggs come from hens fed a unique, all natural diet, low in saturated fats. And that means our eggs are consistently premium eggs.

Clinical Tests Prove It

Eating a diet that's lower in saturated fat is beneficial to your health. Because Good News Eggs are naturally higher in Omega 3, you can enjoy them as part of your lower fat diet and know you're eating right.

[Exhibit C (Print: "If You Love Eggs")]

D. The Good News Egg:

Questions and Answers

...

How is the Good News Egg different?

Our egg is lower in fat than a regular egg. The Good News Egg has only one gram of saturated fat, half as much as a regular egg. The total fat is 20% lower than a regular egg.

...

What else is different about the Good News Egg?

It is five times higher in Omega 3, an essential part of a balanced diet.

What is Omega 3?

Omega 3 fatty acids are polyunsaturated fat - one of the three forms of fat: saturated, monounsaturated and polyunsaturated.

Isn't polyunsaturated the "good" fat?

It is saturated fat that has been linked to heart disease and high blood cholesterol. In contrast, the Omega 3 polyunsaturates have been shown to have positive effects on arteriosclerosis [sic], high blood pressure, rheumatoid arthritis and high blood cholesterol levels.

...

What else does Omega 3 do?

It has been shown to lower blood pressure, and to have anti-inflammatory effects. But the most exciting research shows that Omega 3 may lower blood cholesterol levels.

How does Omega 3 work?

It looks like Omega 3 inhibits the rise in blood lipids, or fat, that occurs after eating. Current thinking emphasizes the level of fat in the blood as the important risk factor for atherosclerosis [sic], or hardening of the arteries. Omega 3 slowed the development of atherosclerotic [sic] plaque in animal studies, even in a high-fat, high cholesterol diet.

Isn't the cholesterol in eggs a problem?

All shell eggs are lower in cholesterol than 40 years ago -- 20% lower. Today's egg has only 213 milligrams of cholesterol. In addition, recent studies have shown dietary cholesterol to have less effect on cholesterol in the blood than previously thought. More important is the level of saturated fat in the diet. And the Good News Egg has only one gram of saturated fat.

...

How much Omega 3 is there in a Good News Egg?

One egg provides a minimum of 220 milligrams of Omega 3, more than five times the level found in a regular egg. Good News Eggs may have up to 300 milligrams of Omega 3.

[Exhibit D (Print: Questions and Answers)]

E. GOOD NEWS FOR PEOPLE WHO LOVE EGGS

Good News Eggs come from hens fed a consistent diet that's low in saturated fats. This low-fat diet produces an egg 50% lower in saturated fat than normal eggs.... Clinical tests have shown that feeding chickens a better diet will improve the egg. Our chickens are fed a consistent diet of all natural ingredients including flax, canola and vitamin E. So, enjoy Good News Eggs as part of a low-fat diet. It's a 100% real egg you can feel good about eating!

[Exhibit E (Point-of-purchase: Tear-off sheet)]

F. The Good News Eggs: Facts and Figures

...

Good News Eggs HAVE

...

- only one gram of saturated fat
- 20% less fat overall
- between 220 and 300 milligrams of Omega 3

Good News Hens

- eat a diet high in Omega 3 and low in saturated fat so they lay a better egg
- are fed an all-natural diet, including flax, canola, and Vitamin E
- naturally lay eggs lower in fat and higher in Omega 3 than regular eggs

[Exhibit F (Print: Facts and Figures)]

G. THE GOOD NEWS EGGS: Questions and Answers

...

How is the Good News Egg different?

The Good News Egg has only one gram of saturated fat. The total fat is 20% lower than a regular egg.

...

Isn't the cholesterol in eggs a problem?

All shell eggs are lower in cholesterol than 40 years ago -- 20% lower. Today's egg has only 213 milligrams of cholesterol. In addition, recent studies have shown dietary cholesterol to have less effect on cholesterol in the blood than previously thought. More important is the level of saturated fat in the diet. And the Good News Egg has only one gram of saturated fat.

[Exhibit G (Print: Questions and Answers)(revised)]

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-G, respondent has represented, directly or by implication, that Good News Eggs are significantly lower in saturated fat than ordinary eggs.

PAR. 6. In truth and in fact Good News Eggs are not significantly lower in saturated fat than ordinary eggs. Good News Eggs have approximately the same amount of saturated fat as ordinary eggs. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits D, F and G, respondent has represented, directly or by implication, that Good News Eggs are significantly lower in total fat than ordinary eggs.

PAR. 8. In truth and in fact Good News Eggs are not significantly lower in total fat than ordinary eggs. Good News Eggs have approximately the same amount of total fat as ordinary eggs. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit D, respondent has represented, directly or by implication, that:

A. The omega 3 fatty acids in Good News Eggs will have a positive effect on risk factors for heart disease, such as atherosclerosis, high blood cholesterol levels and high blood pressure, and on rheumatoid arthritis.

B. The omega 3 fatty acids in Good News Eggs may decrease blood cholesterol.

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit D, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph nine, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time it made the representations set forth in paragraph nine, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits D and G, respondent has represented, directly or by implication, that, because Good News Eggs are lower in saturated fat than ordinary eggs, they will increase blood cholesterol levels less than ordinary eggs.

PAR. 13. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits D and G, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph twelve, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 14. In truth and in fact, at the time it made the representation set forth in paragraph twelve, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

121 F.T.C.

EXHIBIT A



350 E. Michigan, Suite 16
Kalamazoo, Michigan 49007
(616) 344-5569/FAX 344-5668

1666 Newport Blvd., Suite 146
Costa Mesa, California 92627
(714) 953-7160

Date: 3/19/93
Client: Good News Eggs
Length: :30
Copy:
Music:
Producer:
Talent:

WBAP - Dallas

SCRIPT

IF YOU EAT EGGS, HERE'S IMPORTANT NEWS. INTRODUCING, GOOD NEWS EGGS. GOOD NEWS EGGS COME FROM HENS FED A SPECIAL DIET LOW IN SATURATED FAT. THE RESULT IS AN EGG THAT'S LOWER IN SATURATED FAT. ONE HUNDRED PERCENT REAL EGGS IN THE SHELL...NOT PROCESSED AND POURED OUT OF A CARTON LIKE EGG SUBSTITUTES. SO GO AHEAD...POACH 'EM, HARD BOIL 'EM, SUNNYSIDE UP 'EM. ANYTHING YOU DO WITH EGGS WILL BE BETTER WITH GOOD NEWS EGGS. LOOK FOR THE BRIGHT YELLOW AND RED LABEL ON THE TRADITIONAL WHITE CARTON IN YOUR FAVORITE GROCER'S DAIRY CASE. GOOD NEWS EGGS. IT'S THE BEST NEWS YET FOR PEOPLE WHO LOVE EGGS.

EXHIBIT A

ADVERTISING • MARKETING • PUBLIC RELATIONS • FILM AND VIDEO PRODUCTION

119

Complaint

EXHIBIT B

#4 - :30 seconds

ROMEO: Good News Eggs does Shakespeare.
(romantic) How do I love thee –
let me count the ways.
I love thee for thy shape –
so round, yet firm and fragile.
I love thee for thy good taste
and unparalleled versatility.

(fed-up) But what I don't care for is your . . .

ANNC.: Introducing - Good News Eggs. Real California fresh
in-the-shell eggs. Good News Eggs are from hens fed
a special diet naturally low in saturated fat. So Good
News Eggs are lower in saturated fat – and higher in
Omega 3's. And that's good news for egg lovers
everywhere.

ROMEO: Now... get thee to a gro-cer-ee.

ANNC.: Good News Eggs - for today's healthier lifestyle.

Complaint

121 F.T.C.

EXHIBIT C

If You Love Eggs, We've Got Good News™

Introducing, Good News Eggs. Fresh, delicious, 100% real eggs with a difference. The difference is, Good News Eggs come from hens fed a unique, all natural diet, low in saturated fats. And that means our eggs are consistently premium eggs.

Clinical Tests Prove It

Eating a diet that's lower in saturated fat is beneficial to your health. Because Good News Eggs are naturally higher in Omega 3, you can enjoy them as part of your lower fat

diet and know you're eating right.* It's a better egg for today's life-style.

Good News Eggs. Try them for yourself. It's the best news yet for people who love eggs.

*See your nutritionist



MAGAZINE/NEWSPAPER ADVERTISEMENT

EXHIBIT C

Complaint

EXHIBIT D



P.O. BOX 186
HAMILTON, MI 49419

**The Good News Egg:
Questions and Answers**

What are Good News Eggs?

Good News Eggs are all-natural, real eggs in the shell. Unlike liquid eggs and egg substitutes, Good News Eggs haven't been processed, treated or added to.

Do they look the same as regular eggs?

The only difference is in the yolk, which is slightly lighter in color.

Do they taste the same as regular eggs?

Yes. Some people say they taste better.

Do they cook the same as regular eggs?

Yes. Their performance in cooking and baking is identical to regular eggs.

Is the Good News Egg low in cholesterol?

No. The dietary cholesterol is the same as in regular eggs.

How is the Good News Egg different?

Our egg is lower in fat than a regular egg. The Good News Egg has only one gram of saturated fat, half as much as a regular egg. The total fat is 20% lower than a regular egg.

Does that mean there are fewer calories?

Yes. The Good News Egg has ten fewer calories than a regular egg, only 70.

What else is different about the Good News Egg?

It is five times higher in Omega 3, an essential part of a balanced diet.

What is Omega 3?

Omega 3 fatty acids are polyunsaturated fat -- one of the three forms of fat: saturated, monounsaturated and polyunsaturated.

Isn't polyunsaturated the "good" fat?

It is saturated fat that has been linked to heart disease and high blood cholesterol. In contrast, the Omega 3 polyunsaturates have been shown to have positive effects on arteriosclerosis, high blood pressure, rheumatoid arthritis and high blood cholesterol levels.

Is fat an essential part of the diet?

Of course. It is the high-fat diet that puts us at risk for heart disease and other ailments. Experts recommend a balanced diet, with not more than 30% of our daily calories coming from fat.

Should we eat all three forms of fat?

Yes. The 30% should be evenly balanced across the three, and the polyunsaturates, Omega 6 and Omega 3, should be evenly balanced.

more

EXHIBIT D

Complaint

121 F.T.C.

EXHIBIT E

Good News™ For People Who Love Eggs



- Higher in Omega 3
- Less saturated fat



A DIVISION OF GOOD NEWS PRODUCTS

See reverse side for **IMPORTANT INFORMATION**

Good News™ For People Who Love Eggs

Good News Eggs come from hens fed a consistent diet that's low in saturated fats. This low-fat diet produces an egg 50% lower in saturated fat than normal eggs. And, this unique process makes our eggs naturally higher in Omega 3's, a fatty acid that is an essential part of a healthy diet. University studies have shown the North American diet to be low in Omega 3's. Now, Good News Eggs are a source of Omega 3's, having five times more than regular eggs and each one containing over 220 mg of Omega 3. Other important sources of Omega 3's are marine fish and canola oil.

Clinical tests have shown that feeding chickens a better diet will improve the egg. Our chickens are fed a consistent diet of all natural ingredients including flax, canola and vitamin E. So, enjoy Good News Eggs as part of a low-fat diet.* It's a 100% real egg you can feel good about eating!

*Consult your physician or nutritionist about the benefits of Omega 3.

EXHIBIT E

EXHIBIT F



P.O. BOX 186
HAMILTON, MI 49419

**The Good News Egg:
Facts and Figures**

Good News Eggs ARE NOT

- low cholesterol
- a liquid egg substitute
- processed or treated

Good News Eggs ARE

- real eggs in the shell
- higher in Omega 3
- lower in fat

Good News Eggs DO

- come in an egg carton
- look and taste the same as regular eggs
- cook and bake the same as regular eggs
- last as long as regular eggs in your refrigerator
- provide an inexpensive source for the essential Omega 3

Good News Eggs DO NOT

- have fish oil in them
- come in an easy-pour carton

Good News Eggs HAVE

- 10 fewer calories than regular eggs
- only one gram of saturated fat
- 20% less fat overall
- between 220 and 300 milligrams of Omega 3

Good News Hens

- eat a diet high in Omega 3 and low in saturated fat so they lay a better egg
- are fed an all-natural diet, including flax, canola, and Vitamin E
- naturally lay eggs lower in fat and higher in Omega 3 than regular eggs

All shell eggs

- are good for you and your family
- are relatively low in fat
- are an economical source of protein and other nutrients

Good News Eggs

- are premium shell eggs with a little more of something we need, and a little less of something we don't
- can be part of a low-fat, healthy diet
- will make you feel good about eating eggs

Complaint

121 F.T.C.

EXHIBIT G



The Good News Egg:
Questions and Answers

What are Good News Eggs?

Good News Eggs are all-natural, real eggs in the shell. Unlike liquid eggs and egg substitutes, Good News Eggs haven't been processed, treated or added to.

Do they look the same as regular eggs?

The only difference is in the yolk, which is slightly lighter in color.

Do they taste the same as regular eggs?

Yes. Some people say they taste better.

Do they cook the same as regular eggs?

Yes. Their performance in cooking and baking is identical to regular eggs.

Is the Good News Egg low in cholesterol?

No. The dietary cholesterol is the same as in regular eggs.

How is the Good News Egg different?

The Good News Egg has only one gram of saturated fat. The total fat is 20% lower than a regular egg.

Does that mean there are fewer calories?

Yes. The Good News Egg has ten fewer calories than a regular egg, only 70.

What else is different about the Good News Egg?

It is five times higher in Omega 3, an essential part of a balanced diet.

What is Omega 3?

Omega 3 fatty acids are polyunsaturated fat -- one of the three forms of fat: saturated, monounsaturated and polyunsaturated.

Is fat an essential part of the diet?

Of course. Experts recommend a balanced diet, with not more than 30% of our daily calories coming from fat.

Should we eat all three forms of fat?

Yes. The 30% should be evenly balanced across the three, and the polyunsaturates, Omega 6 and Omega 3, should be evenly balanced.

-more-

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 Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that 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 comment 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 Good News Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its offices and principal place of business located at East Washington & M-40, Hamilton, MI.
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 Good News Products, Inc., a corporation, its successors and assigns, and its officers; and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of total fat, saturated fat or any other nutrient or ingredient in such food.

II.

It is further ordered, That respondent Good News Products, Inc., a corporation, its successors and assigns, and its officers; and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication:

A. About the absolute or comparative effect of such food on heart disease or heart disease risk factors;

B. About the absolute or comparative effect of such food on serum cholesterol; and

C. About the absolute or comparative health benefits of such food;

unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests,

analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for eggs or any food containing egg yolk by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

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

V.

It is further ordered, That respondent shall, within thirty (30) days after service upon it of this order, distribute a copy of the order to each of the respondent's operating divisions, to each of its licensees, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VI.

It is further ordered, That respondent, or its successors and assigns, shall promptly terminate its licensing agreement with any licensee if respondent has actual knowledge or knowledge fairly implied on the basis of objective circumstances that such licensee is engaging in acts or practices that respondent is prohibited from engaging in under Parts I and II of this order, unless such licensee immediately ceases engaging in such acts or practices.

VII.

It is further ordered, That respondent, its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That this order will terminate on February 22, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

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

for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

DILLARD DEPARTMENT STORES, INC.

Docket 9269. Interlocutory Order (Summary), March 7, 1996

ORDER

On February 12, 1996, complaint counsel moved that the Commission dismiss the complaint in this matter based on a change in law. The central allegation in the complaint is that Dillard violated Section 133 of the Truth in Lending Act, 15 U.S.C. 1643, and Section 226.12(b) of Regulation Z, 12 CFR 226.12(b), by placing "unreasonable burdens" on cardholders who make claims of unauthorized use. Unauthorized use of a credit card occurs when a card is used without the authority of the cardholder, such as use after a card has been lost or stolen. The complaint alleges that Dillard imposed unreasonable burdens by conducting investigations of claims of unauthorized use in which cardholders were required to: (1) complete an affidavit; (2) have the affidavit notarized; (3) swear that they do not know who made the unauthorized charges, or identify and testify against the person who did; (4) file police or postal reports; or (5) appear in person at a Dillard store to answer questions about the asserted unauthorized use.

Congress "has specifically designated the Federal Reserve Board and staff as the primary source for interpretation of truth-in-lending law." *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 556 (1980). Because the standard for investigation of claims of unauthorized use in the amended Federal Reserve Board Official Staff Commentary appears to differ from the standard reflected in the complaint in this proceeding, the Commission concludes that it is not in the public interest to continue to prosecute the complaint against Dillard.

Accordingly, *It is ordered*, That this matter be, and it hereby is, dismissed.

Complaint

121 F.T.C.

IN THE MATTER OF

THE DANNON COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3643. Complaint, March 18, 1996--Decision, March 18, 1996*

This consent order prohibits, among other things, a New York-based frozen yogurt manufacturer from misrepresenting the amount of fat, calories, or cholesterol in any frozen yogurt products. The consent order requires the respondent to pay \$150,000 to the U.S. Treasury. This action settles allegations stemming from nutritional claims made in advertisements for Dannon's Pure Indulgence frozen yogurt.

*Appearances*For the Commission: *Peter Metrinko and Justin Dingfelder.*For the respondent: *Stuart M. Pape and Mark A. Heller, Patton Boggs, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Dannon Company, Inc., a corporation, ("respondent"), has violated Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a Delaware corporation, with its office and principal place of business located at 120 White Plains Road, Tarrytown, NY.

PAR. 2. Respondent has manufactured, advertised, promoted, offered for sale, sold and distributed a frozen yogurt known by the product name Pure Indulgence. This product is a "food" within the meanings of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Pure Indulgence, including, but not limited to, the following television advertisement, which contained, *inter alia*, the following statements:

Beware: the following graphic images may prompt feelings of guilt among viewers.
Hey. It's OK.
It's Frozen Yogurt.
Proceed Without Caution.

PAR. 5. Through the use of the statements contained in the advertisement referred to in paragraph four, respondent has represented, directly or by implication, that Dannon Pure Indulgence is low in fat, low in calories, and lower in fat than ice cream.

PAR. 6. In truth and in fact, at the time the advertisement was disseminated, certain flavors of Dannon Pure Indulgence were not low in fat, not low in calories, and not lower in fat than many ice creams. Therefore the representations set forth in paragraph five were false and misleading.

PAR. 7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Section 5(a) and 12 of the Federal Trade Commission Act.

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, or that the facts as alleged in such

complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter, and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment 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 The Dannon Company, 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 120 White Plains Road, Tarrytown, NY.
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 respondent The Dannon Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration,

compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

It is further ordered, That respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of \$150,000. Respondent shall make this payment on or before the tenth day following the date of entry of this order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment.

IV.

It is further ordered, That, for three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
2. All materials that were relied upon to substantiate any representation covered by this order; and
3. All test reports, studies, surveys, demonstrations or other evidence in its possession or control, that contradict, qualify, or call

into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

V.

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

VI.

It is further ordered, That respondent shall, within thirty days after service of this order, distribute a copy of this order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other materials covered by this order.

VII.

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 it has complied or intends to comply with this order.

VIII.

It is further ordered, That this order will terminate on the eighteenth day of March, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

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

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

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

Complaint

121 F.T.C.

IN THE MATTER OF

MAMA TISH'S ITALIAN SPECIALTIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3644. Complaint, March 19, 1996--Decision, March 19, 1996*

This consent order prohibits, among other things, an Illinois ice cup dessert manufacturer from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product.

Appearances

For the Commission: *C. Steven Baker* and *Barbara Bender*.

For the respondent: *David Goroff, Hopkins & Sutter, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Mama Tish's Italian Specialties, Inc. ("respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its principal office or place of business at 4800 Central Avenue, Chicago, Illinois.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Mama Tish's ice cups to the public. These products are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Mama Tish's ice cups, including but not necessarily limited to the attached Exhibit 1. These advertisements contain the statement "naturally low in calories."

PAR. 5. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 1, respondent represented, directly or by implication Mama Tish's ice cups are low in calories.

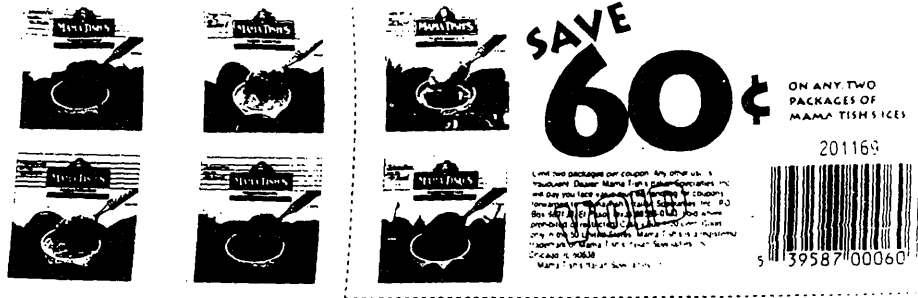
PAR. 6. In truth and in fact, Mama Tish's ice cups are not low in calories. The ten regular flavors of Mama Tish's ice cups contain 104 to 145 calories per four fluid ounce serving. The two flavors sweetened with NutraSweet contain 60 calories per serving. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

121 F.T.C.

EXHIBIT 1

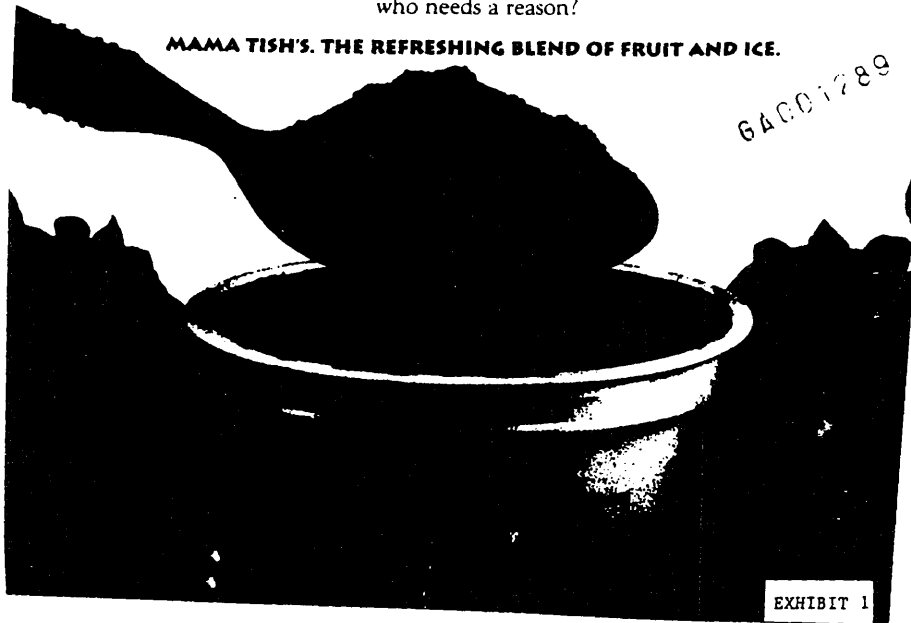


WHY YOU SHOULD TRY A MAMA TISH'S® ICE CUP.

- It's made with real fruit.
- Lots of great refreshing flavors.
- It's fat-free, cholesterol-free, and naturally low in calories.
- The payola at the top of this ad.

On second thought, when something's this good, who needs a reason?

MAMA TISH'S. THE REFRESHING BLEND OF FRUIT AND ICE.



DECISION AND ORDER

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

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

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

1. Respondent Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its office and principal place of business located at 4800 South Central Avenue, Chicago, Illinois.

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

ORDER

I.

It is ordered, That respondent Mama Tish's Italian Specialties, Inc., a corporation, its successors and assigns, and its officers, agents,

representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of calories or any other nutrient or ingredient in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, including complaints from consumers.

IV.

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

V.

It is further ordered, That respondent shall, within thirty (30) days after service of this order, distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, employees, and licensees engaged in the preparation or placement of advertisements or other materials covered by this order.

VI.

It is further ordered, That respondent, or its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements containing any representation covered by this order.

VII.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VIII.

This order will terminate on March 19, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying

consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

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

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

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

IN THE MATTER OF

JOHNSON & JOHNSON

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

Docket C-3645. Complaint, March 19, 1996--Decision, March 19, 1996

This consent order prohibits, among other things, a New Jersey-based manufacturer of health care products to divest, within 12 months, the Cordis Neuroscience Business to a Commission-approved acquirer. If the transaction is not completed as required, then the Commission may appoint a trustee.

Appearances

For the Commission: *Ann Malester, Michael Moiseyev and William Baer.*

For the respondent: *Steve Newborn, Rogers & Wells, Washington, D.C. and Mindy Hatton, Hogan & Hartson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Johnson & Johnson, a New Jersey based corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of Cordis Corporation ("Cordis"), a Florida based corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Johnson & Johnson is a corporation organized and existing under and by virtue of the laws of the state of New Jersey, with its principal executive offices located at One Johnson & Johnson Plaza, New Brunswick, New Jersey.

2. For purposes of this proceeding, respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ACQUIRED COMPANY

3. Cordis is a corporation organized and existing under and by virtue of the laws of Florida, with its principal executive offices located at 14201 N.W. 60th Avenue, Miami Lakes, Florida.

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

III. THE ACQUISITION

5. On or about November 12, 1995, Johnson & Johnson and Cordis agreed to a stock for stock merger valued at \$1.8 billion.

IV. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the acquisition is the manufacture and sale of neurological shunts. Neurological shunts are medical devices used to treat hydrocephalus, which is a brain disorder that primarily affects children.

7. For purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition on the neurological shunt market is the United States.

8. The relevant market set forth in paragraphs six and seven is highly concentrated whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios. The merger would result in an HHI of 4059, a two-firm concentration ratio of 85%, and a four-firm concentration ratio of 98%.

9. Entry into the neurological shunt market would not be timely, likely and sufficient to deter or counteract the adverse competitive

effects described in paragraph eleven because of the difficulty of developing competitive neurological shunt designs, establishing manufacturing facilities, organizing a sales and service network, receiving Food and Drug Administration approval, and gaining physician acceptance in the market.

10. Johnson & Johnson and Cordis are actual significant competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

11. The effects of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in the relevant market;
- b. By eliminating direct actual competition between Johnson & Johnson and Cordis;
- c. By increasing the likelihood that Johnson & Johnson would unilaterally exercise market power;
- d. By increasing the likelihood that consumers would be forced to pay higher prices for neurological shunts; and
- e. By increasing the likelihood that technological innovation in the neurological shunt market would be reduced.

VI. VIOLATIONS CHARGED

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

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

DECISION AND ORDER

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

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

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

1. Respondent Johnson & Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey with its principal executive offices located at One Johnson & Johnson Plaza, New Brunswick, New Jersey.

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

ORDER

I.

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

A. "*Respondent*" or "*Johnson & Johnson*" means Johnson & Johnson, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Johnson & Johnson, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

C. "*Cordis Innovative Systems*" means Cordis Innovative Systems Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Cordis Innovative Systems, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. "*Nobles-Lai*" means Nobles-Lai Engineering, Inc. (formerly known as Visioneering, Inc.), its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Nobles-Lai, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

F. "*Merger*" means the stock-for-stock merger of Johnson & Johnson and Cordis pursuant to the merger agreement dated November 12, 1995.

G. "*Assets and businesses*" means all assets, properties, business and goodwill, tangible and intangible, including, without limitation, the following:

1. All real property interests, including rights, title and interest in and to owned or leased property, together with all buildings, improvements, appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
4. Inventory, supplies and storage capacity;
5. All rights, title and interest in and to the contracts entered into in the ordinary course of business with Nobles-Lai, customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
6. All rights under warranties and guarantees, express or implied;
7. All books, records, and files; and
8. All items of prepaid expense.

H. "*Cordis Neuroscience Business*" means:

1. Cordis Innovative Systems and all of its assets and businesses; and
2. All of Cordis's rights, title, and interest, as of November 11, 1995, in all assets and businesses relating to the development, manufacture, distribution and sale of Neuroscience Products, including, but not limited to, all interest in Nobles-Lai.

I. "*Neuroscience products*" means:

1. Neurological shunts, including, but not limited to, the Orbis-Sigma and Hakim shunt products;
2. Neurological external drainage systems, including, but not limited to, External Drainage Systems ("EDS") and External Ventricular Drainage System Set ("EDVS") products; and

3. Neuroendoscopy products, including, but not limited to, the Vision 2020 neuroendoscope product and the Cordis Hawk Vision Neuroendoscopy System.

J. "*Neurological shunts*" means systems consisting of a ventricular catheter, a distal catheter, and a valve that are implanted in the brain to divert cerebrospinal fluid ("CSF") into the bloodstream of patients experiencing excessive intracranial pressure because of a surplus of CSF inside the skull.

K. "*Neurological external drainage systems*" means systems consisting of a ventricular catheter, a drainage bag, tubing, and a stopcock that are used for draining CSF to control intracranial pressure and for monitoring intracranial pressure.

L. "*Neuroendoscopy products*" means:

1. Neuroendoscopes, which are hand-held devices with an optical and light system that permit viewing of the neural cavity for use in neurosurgical procedures;

2. Neuroendoscopy systems, which are imaging systems used in conjunction with neuroendoscopes; and

3. Neuroendoscopy disposables and accessories, including, but not limited to, cannulas, irrigators, plugs, probes, forceps, scissors, graspers, aspirators, couplers, pumps, cameras and other products used in conjunction with neuroendoscopes and neuroendoscopy systems.

II.

It is further ordered, That:

A. Johnson & Johnson shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Cordis Neuroscience Business, and shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the Cordis Neuroscience Business.

B. Johnson & Johnson shall divest the Cordis Neuroscience Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the

continuation of the Cordis Neuroscience Business as an ongoing, viable operation, engaged in the same business in which the Cordis Neuroscience Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

C. Pending divestiture of the Cordis Neuroscience Business, Johnson & Johnson shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Cordis Neuroscience Business, and to prevent the destruction, removal, wasting, deterioration or impairment of the Cordis Neuroscience Business except for ordinary wear and tear.

D. If Johnson & Johnson is prevented from divesting the Cordis Neuroscience Business because of, or as a result of, the assertion by Nobles-Lai of any contractual rights, requirements or prohibitions, then for a period of five (5) years commencing on the date that this order is accepted by the Commission, Johnson & Johnson shall not:

1. Contract with Nobles-Lai for the research, development or manufacture of any neuroendoscopy product; or
2. Purchase any neuroendoscopy product from, or distribute any neuroendoscopy product for, Nobles-Lai.

III.

It is further ordered, That:

A. If Johnson & Johnson has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Cordis Neuroscience Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Cordis Neuroscience Business.

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

Commission Act, or any other statute enforced by the Commission, for any failure by Johnson & Johnson to comply with this order.

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

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

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Cordis Neuroscience Business.

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

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.C.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Cordis Neuroscience Business, or to any other relevant information, as the trustee may request. Johnson & Johnson shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Johnson & Johnson shall take no action to interfere

with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Johnson & Johnson shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Johnson & Johnson's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in paragraph II of this order, as appropriate; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Johnson & Johnson from among those approved by the Commission.

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

8. Johnson & Johnson shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result

from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

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

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

11. The trustee shall have no obligation or authority to operate or maintain the Cordis Neuroscience Business.

12. In the event that the trustee determines that he or she is unable to divest the Cordis Neuroscience Business in a manner consistent with the Commission's purpose as described in paragraph II, the trustee may divest additional ancillary assets of Johnson & Johnson and effect such arrangements as are necessary to satisfy the requirements of this order.

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

IV.

It is further ordered, That Johnson & Johnson shall comply with all terms of the Cordis Neuroscience Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Cordis Neuroscience Business Agreement to Hold Separate shall continue in effect until Johnson & Johnson has divested all of the Cordis Neuroscience Business.

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Johnson & Johnson has fully complied with paragraphs II, III, and IV of this order, Johnson & Johnson shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II, III, and

IV of this order. Johnson & Johnson shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, and IV, including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Johnson & Johnson shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. If Johnson & Johnson is precluded from purchasing from, contracting with, or distributing for Nobles-Lai pursuant to paragraph II.D. of this order, then one (1) year from the date this order becomes final, annually for the next (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraph II.D. of this order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, Johnson & Johnson shall permit any duly authorized representatives of the Commission:

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

B. Upon five (5) days' notice to Johnson & Johnson, and without restraint or interference from Johnson & Johnson, to interview officers, directors, or employees of Johnson & Johnson. Officers and employees of Johnson & Johnson whose places of employment are outside the United States shall be made available on reasonable notice.

VII.

It is further ordered, That Johnson & Johnson shall notify the Commission at least thirty (30) days prior to any proposed change in

the corporate Johnson & Johnson such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

APPENDIX I

CORDIS NEUROSCIENCE BUSINESS AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Johnson & Johnson, a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its office and principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, Johnson & Johnson and Cordis Corporation ("Cordis"), on November 12, 1995, entered into a stock-for-stock merger (hereinafter "Merger"); and

Whereas, Cordis, with its principal office and place of business located at 14201 N.W. 60th Avenue, Miami Lakes, Florida develops, manufactures and markets, among other things, neurological shunts; and

Whereas, Johnson & Johnson, with its principal office and place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey, through its subsidiary Johnson & Johnson Professional, Inc., develops, manufactures and markets, among other things, neurological shunts; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may

subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

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

Whereas, the Commission is concerned that if the Merger is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Cordis Neuroscience Business and the Commission's right to have the Cordis Neuroscience Business continue as a viable competitor; and

Whereas, the purposes of this Hold Separate and the Consent Agreement are:

A. To preserve the Cordis Neuroscience Business as a viable, competitive, and independent business pending divestiture of the Cordis Neuroscience Business, and

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

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

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

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

1. Johnson & Johnson agrees to execute and be bound by the Consent Agreement.

2. Johnson & Johnson agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a. - 2.b., it will comply with the provisions of paragraph 3. of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The time that divestiture of the Cordis Neuroscience Business as required by paragraph II of the Consent Agreement is completed.

3. To assure the complete independence and viability of the Cordis Neuroscience Business, and to assure that no material confidential information is exchanged between Johnson & Johnson and the Cordis Neuroscience Business, Johnson & Johnson shall hold the Cordis Neuroscience Business separate and apart on the following terms and conditions:

a. The Cordis Neuroscience Business, as defined in paragraph I.H. of the Consent Agreement, shall be held separate and apart and shall be managed and operated independently of Johnson & Johnson (meaning here and hereinafter, Johnson & Johnson excluding the Cordis Neuroscience Business and excluding all personnel connected with the Cordis Neuroscience Business as of the date this Agreement is signed, but including all other portions of Cordis), except to the extent that Johnson & Johnson must exercise direction and control over the Cordis Neuroscience Business to assure compliance with this Hold Separate or the Consent Agreement.

b. Johnson & Johnson shall maintain the marketability, viability, and competitiveness of the Cordis Neuroscience Business and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Cordis Neuroscience Business.

c. Johnson & Johnson shall appoint a knowledgeable person among the top management of the Cordis Neuroscience Business, as Manager to manage and maintain the Cordis Neuroscience Business on a day to day basis during the Hold Separate. The Manager shall

have exclusive management and control of the Cordis Neuroscience Business, and shall manage the Cordis Neuroscience Business independently of Johnson & Johnson's other businesses.

d. The Manager shall report exclusively to the Cordis Neuroscience Business Management Committee ("Management Committee"), which shall be appointed by Johnson & Johnson. The Committee shall consist of two knowledgeable persons from among the top management of the Cordis Neurological Products business; and a Johnson & Johnson financial officer or a comparable, knowledgeable person from Johnson & Johnson's financial office who has no direct involvement with Johnson & Johnson's Neurological Products Business ("Johnson & Johnson Management Committee Member"). The Manager shall be the Chairman of the Management Committee. Except for the Johnson & Johnson Management Committee Member serving on the Management Committee, Johnson & Johnson shall not permit any officer, employee, or agent of Johnson & Johnson also to be an officer, employee or agent of the Cordis Neuroscience Business. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Management Committee shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Management Committee during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by paragraph three hereof, shall be subject to a majority vote of the Management Committee.

f. Johnson & Johnson shall not exercise direction or control over, or influence directly or indirectly, the Cordis Neuroscience Business, the Management Committee, or the Manager of the Cordis Neuroscience Business, any of their operations, assets, or businesses; provided, however, that Johnson & Johnson may exercise only such direction and control over the Cordis Neuroscience Business as is necessary to assure compliance with this Hold Separate, the consent order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and

consummating the Merger, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the consent order or negotiating agreements to divest assets, Johnson & Johnson shall not receive or have access to, or the use of, any material confidential information of the Cordis Neuroscience Business or the activities of the Manager or Management Committee not in the public domain, nor shall the Cordis Neuroscience Business, Manager, or the Management Committee receive or have access to, or the use of, any material confidential information about Johnson & Johnson. Johnson & Johnson may receive on a regular basis from the Cordis Neuroscience Business aggregate financial information necessary and essential to allow Johnson & Johnson to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to:

1. Johnson & Johnson, with regard to the Cordis Neuroscience Business, from sources other than the Cordis Neuroscience Business or its employees or the Management Committee; or

2. The Management Committee or the Cordis Neuroscience Business or its employees, with regard to Johnson & Johnson, from sources other than Johnson & Johnson,

and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

- h. Except as is permitted by this Hold Separate, the Johnson & Johnson Management Committee Member shall not receive any Cordis Neuroscience Business material confidential information and shall not disclose any such information obtained through his or her involvement with the Cordis Neuroscience Business to Johnson & Johnson or use it to obtain any advantage for Johnson & Johnson. The Johnson & Johnson Management Committee Member shall participate in matters that come before the Management Committee only for the limited purpose of considering any capital investment of over \$250,000, approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in

subparagraph 3.e, and carrying out Johnson & Johnson's responsibilities under the Hold Separate and the Consent Agreement. Except as permitted by the Hold Separate, the Johnson & Johnson Management Committee Member shall not participate in any matter, or attempt to influence the votes of the other directors on the Management Committee with respect to matters that would involve a conflict of interest between Johnson & Johnson and the Cordis Neuroscience Business.

i. Johnson & Johnson shall not change the composition of the Management Committee unless a majority of the Management Committee consents. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to require Johnson & Johnson to appoint replacement members to the Management Committee in the same manner as provided in paragraph 3.d. of this Hold Separate. Johnson & Johnson shall not change the composition of the management of the Cordis Neuroscience Business; except that the Management Committee shall have the power to remove management employees for unsatisfactory performance or for cause.

j. If the Chairman of the Management Committee ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraphs 3.c. and 3.d.

k. Cordis personnel connected with the Cordis Neuroscience Business or providing support services to the Cordis Neuroscience Business as of the date this Hold Separate is signed shall continue, as employees of Johnson & Johnson, to provide such services as of the date of this Hold Separate. Such Johnson & Johnson personnel must retain and maintain all material confidential information relating to the Cordis Neuroscience Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Johnson & Johnson business.

Such Johnson & Johnson personnel shall also execute a confidentiality agreement prohibiting the disclosure of any material confidential Cordis Neuroscience Business or Johnson & Johnson information.

1. The Cordis Neuroscience Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Cordis Neuroscience Business, which employees shall be the Cordis Neuroscience Business's employees and may also be hired from sources other than Johnson & Johnson. Each management employee of the Cordis Neuroscience Business shall execute a confidentiality agreement prohibiting the disclosure of any Cordis Neuroscience Business confidential information.

m. Johnson & Johnson shall circulate to the management employees of the Cordis Neuroscience Business and appropriately display a notice of this Hold Separate and consent order in the form attached hereto as Attachment A.

n. Johnson & Johnson shall cause the Cordis Neuroscience Business to expend funds for research and development, quality control, manufacturing and marketing of Cordis Neuroscience Business products at a level not lower than that budgeted for either the 1994 or 1995 fiscal year, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. Within thirty (30) days of the date of this Hold Separate, the Chairman of the Management Committee shall develop a budget and operating plan for the 1996 fiscal year that complies with the provisions of this paragraph and present it to the Management Committee for approval. If necessary, Johnson & Johnson shall provide the Cordis Neuroscience Business with any funds to accomplish the foregoing. Johnson & Johnson shall provide to the Cordis Neuroscience Business such support services as provided by Cordis prior to the Merger.

o. Johnson & Johnson shall provide the Cordis Neuroscience Business with sufficient working capital to operate at a level not less than the rate of operation in effect during the twelve (12) months preceding the date of this Hold Separate.

p. The Management Committee shall serve at the cost and expense of Johnson & Johnson. Johnson & Johnson shall indemnify the Management Committee against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Management Committee members.

q. The Management Committee shall have access to and be informed about all companies who inquire about, seek or propose to buy the Cordis Neuroscience Business.

r. Notwithstanding the provisions of paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Cordis Neuroscience Business may be accompanied and assisted by the Johnson & Johnson Management Committee Member, in addition to appropriate Cordis Neuroscience Business employees selected by the Management Committee. The Johnson & Johnson Management Committee Member may delegate tasks relating to such due diligence to attorneys, accountants and/or other financial employees of Johnson & Johnson who are not directly engaged in the Johnson & Johnson Neurological Products Business; provided, however, that such Johnson & Johnson employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Cordis Neuroscience Business material confidential information.

4. Should the Federal Trade Commission seek in any proceeding to compel Johnson & Johnson to divest itself of the Cordis Neuroscience Business, or any additional assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief, Johnson & Johnson shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Merger. Johnson & Johnson shall also waive all rights to contest the validity of this Hold Separate.

5. To the extent that this Hold Separate requires Johnson & Johnson to take, or prohibits Johnson & Johnson from taking, certain actions that otherwise may be required or prohibited by contract, Johnson & Johnson shall abide by the terms of this Hold Separate or the Consent Agreement, and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Hold Separate or the Consent Agreement.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Johnson & Johnson made to its General Counsel, Johnson

& Johnson shall permit any duly authorized representative or representatives of the Commission:

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

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

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

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Johnson & Johnson and Cordis Corporation have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission ("Commission") relating to the divestiture of the Cordis Neuroscience Business. Until after the Commission's Order becomes final and the Cordis Neuroscience Business are divested, the Cordis Neuroscience Business must be managed and maintained as a separate, ongoing business, independent of all other Johnson & Johnson businesses. All competitive information relating to The Cordis Neuroscience Business must be retained and maintained by the persons involved in the Cordis Neuroscience Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Johnson & Johnson business. Similarly, all such persons involved in any other Johnson

& Johnson business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Cordis Neuroscience Business.

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

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

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

Docket C-3646. Complaint, March 21, 1996--Decision, March 21, 1996

This consent order permits Service Corporation International ("SCI"), the largest owner of funeral homes in North America, to acquire Gibraltar Mausoleum Corporation and requires SCI, among other things, to divest, within 12 months, a number of properties, including assets in Amarillo, Texas, and Brevard and Lee Counties, Florida, to Commission-approved acquirers. In addition, the consent order requires SCI, for 10 years, to notify the Commission before acquiring certain similar assets in any of these markets.

Appearances

For the Commission: *Harold Kirtz, Ann Schenof, Katharine Alphin, Daniel Ducore, Paul Davis and William Baer.*

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Service Corporation International ("SCI"), a corporation, through its wholly-owned subsidiary Rocky Acquisition Corp., a corporation, has entered into an agreement with Gibraltar Mausoleum Corporation ("Gibraltar") a corporation, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "*SCI*" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

b. "*Gibraltar*" means Gibraltar Mausoleum Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Gibraltar Mausoleum Corporation, their successors and assigns, and their directors, officers, employees, agents, and representatives.

c. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

d. "*Perpetual care cemetery services*" means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

e. "*Crematory services*" means the incineration of human remains.

f. "*Lee County*" means Lee County, Florida.

g. "*Brevard County*" means Brevard County, Florida.

h. "*Amarillo*" means the city of Amarillo, Texas and its immediate environs.

II. THE RESPONDENT

2. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway,

Houston, Texas. SCI, whose 1994 revenues were \$1,117,175,000, is the largest funeral home and cemetery company in North America.

III. THE ACQUIRED PARTY

3. Gibraltar is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 9102 N. Meridian Street, Indianapolis, Indiana. Gibraltar is a privately-owned corporation which owns both funeral homes and cemeteries.

IV. JURISDICTION

4. SCI and Gibraltar are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

V. THE PROPOSED ACQUISITION

5. On or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar, in which SCI, via its wholly-owned subsidiary Rocky Acquisition Corp., would acquire 100% of the voting securities of Gibraltar. At the time the voting securities of Gibraltar were valued at \$190 million. In exchange for the merger of Gibraltar into SCI, the shareholders of Gibraltar will receive an aggregate consideration of \$87,984,000 in cash and 3,286,759 shares of SCI common stock. Two of the stockholders will each receive in excess of \$15 million but less than 10% of that stock.

VI. THE RELEVANT MARKETS

6. The relevant lines of commerce in which to evaluate the effects of the acquisition are the provision of funerals, the provision of perpetual care cemetery services, and the provision of crematory services.

7. The three relevant sections of the country in which to evaluate the effects of the acquisition are Lee County, Brevard County, and Amarillo.

VII. MARKET STRUCTURE

8. SCI and Gibraltar both own and operate funeral homes and perpetual care cemeteries in Brevard County and compete in the provision of funerals and perpetual care cemetery services.

9. The markets for funerals and perpetual care cemetery services in Brevard County are highly concentrated, whether measured by the Herfindahl-Hirschmann Index or four firm concentration ratios. Gibraltar and SCI respectively are the first and second largest sellers of funerals and perpetual care cemetery services in the relevant area.

10. SCI and Gibraltar both own and operate funeral homes in Lee County and compete in the provision of funerals.

11. The market for funerals in Lee County is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by four-firm concentration ratios. SCI is the largest seller of funerals in the relevant area and Gibraltar is the third largest.

12. SCI and Gibraltar both own and operate funeral homes, perpetual care cemeteries and crematories in Amarillo and compete in the provision of funerals, perpetual care cemetery services and crematory services.

13. The markets for funerals, perpetual care cemetery services and crematory services in Amarillo are highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by four-firm concentration ratios. SCI is the largest seller of funerals in the relevant area and Gibraltar is the second largest. The two firms own two of the three perpetual care cemeteries in the area, and also own the only two crematories in the area.

VIII. ENTRY

14. Entry into the relevant markets is difficult because of the long period of time required to establish a reputation within a community. The funeral and cemetery industry has expanded slowly because of high entry costs and the long period of time required to establish a loyal family clientele.

15. State and local regulations in the relevant geographic areas of the provision of funerals and the building of new cemeteries and crematories may also inhibit timely entry into these lines of commerce.

IX. COMPETITIVE EFFECTS OF THE PROPOSED ACQUISITION

16. The effects of the proposed acquisition, if consummated, may be to substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between SCI and Gibraltar;
- b. By tending to create a dominant firm in certain of the relevant markets;
- c. By tending to increase the likelihood of coordinated interaction among the remaining firms in other relevant markets; and
- d. By eliminating effective competitors from each of the relevant markets.

X. VIOLATION CHARGED

17. The acquisition described in paragraph five violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of 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 Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure 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 Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

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

ORDER

I.

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

A. "*Respondent*" or "*SCI*" means Service Corporation International, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Service Corporation International, their successors and assigns, and their directors, officers, employees, agents, and representatives.

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

C. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony concerning the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and

viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. "*Funeral establishment*" means the assets and businesses of a facility that provides funerals.

E. "*Perpetual care cemetery services*" means the provision of plots of land, mausoleum spaces, and niches for, and the services associated with, including maintenance and upkeep, the final disposition of human remains.

F. "*Cemetery*" means the assets and businesses of a facility that provides perpetual care cemetery services.

G. "*Crematory services*" means the incineration of human remains.

H. "*Crematory*" means the assets and businesses of a facility that performs cremations.

I. "*Assets and businesses*" include all assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, cemetery or crematory, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All vendor lists, management information systems and software used on-site, and all catalogs, sales promotion literature and advertising materials, except that SCI may delete from such materials the SCI, Gibraltar or Schooler Gordon names, trademarks or other identification;
3. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
4. All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. All right, title and interest in the trade name of each funeral establishment, cemetery or crematory, but excluding the trade name "Schooler Gordon"; and
6. All right, title and interest in the books, records and files pertinent to any of the properties to be divested.

J. "*Properties to be divested*" means all of the assets and businesses of the following funeral establishments, cemeteries and crematories:

1. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home) 315 East Fifth Street Amarillo, Texas.
2. Blackburn-Shaw Funeral Home (now known as Schooler-Gordon Blackburn-Shaw Funeral Home) 1505 Martin Street Amarillo, Texas.
3. Memory Gardens of Amarillo & Crematory I-27 & McCormack Road Amarillo, Texas.
4. North Brevard Funeral Home 1450 Norwood Avenue Titusville, Florida.
5. Oaklawn Memorial Gardens & Mausoleum 2116 Garden Street Titusville, Florida.
6. Metz Funeral Home 1306 Lafayette Street Cape Coral, Florida.
7. Harvey-Englehardt Funeral Home 1600 Colonial Boulevard Ft. Myers, Florida.

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, the properties to be divested.

B. Respondent shall divest the properties to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the properties to be divested is to ensure the continued use of the properties to be divested in the same business in which the properties to be divested are engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the properties to be divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the properties to be divested and to prevent the

destruction, removal, wasting, deterioration, or impairment of any of the properties to be divested except for ordinary wear and tear.

D. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the properties to be divested as required by this order.

III.

It is further ordered, That:

A. If SCI has not divested, absolutely and in good faith and with the Commission's prior approval, the properties to be divested within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the properties to be divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, SCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

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

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

proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the properties to be divested.

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

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

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

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in paragraph II of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity

or entities selected by respondent from among those approved by the Commission.

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

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

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

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

11. The trustee shall have no obligation or authority to operate or maintain the properties to be divested.

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

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the sale of funerals, perpetual care cemetery services, or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) the sale of funerals, perpetual care cemetery services or crematory services within the city limits of, or the area extending ten (10) miles outward in any direction of the city limits of, Amarillo, Texas; the sale of funerals or perpetual care cemetery services in Brevard County, Florida; or the sale of funerals in Lee County, Florida.

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

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

This paragraph IV shall not apply to new facilities constructed or developed by respondent.

V.

It is further ordered, That:

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

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

VI.

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

of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII.

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

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

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

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive office located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, "Parties").

PREMISES

Whereas, on or about June 7, 1995, SCI entered into an Agreement and Plan of Merger with Gibraltar Mausoleum Corporation ("Gibraltar"), in which (1) Gibraltar would be merged into Rocky Acquisition Corp., a wholly-owned subsidiary of SCI, and

(2) Gibraltar shareholders would receive SCI common stock and other consideration specified therein ("Acquisition"); and

Whereas, both SCI and Gibraltar own interests in funeral establishments that provide funerals, cemeteries that provide perpetual care cemetery services, and crematories that provide cremations to consumers; and

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

Whereas, if the Commission accepts the Agreement Containing Consent Order ("SCI/Gibraltar Consent Agreement"), the Commission must place the SCI/Gibraltar Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and businesses of certain funeral establishments, cemeteries, and a crematory ("Hold Separate Assets") listed in Exhibit A attached hereto and made a part hereof until the divestitures contemplated by the SCI/Gibraltar Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Gibraltar Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments, cemeteries, and a crematory as specified in the SCI/Gibraltar Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

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

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

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and unless the Commission determines to reject the

SCI/Gibraltar Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Gibraltar Consent Agreement to which it is annexed and made a part, and the order, once it becomes final, and in the event that the required divestitures are not accomplished, to appoint a trustee to seek divestiture of the properties to be divested pursuant to the SCI/Gibraltar Consent Agreement, as follows:

1. SCI agrees to execute and be bound by the SCI/Gibraltar Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Gibraltar Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Gibraltar Consent Agreement are accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the consent order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability. During the term of this Agreement, SCI shall provide the Hold Separate Assets with the same or better quality of support services, including without limitation, payroll processing, accounting, management information systems, and computer support, as SCI or Gibraltar provided to the Hold Separate Assets prior to the acquisition.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for each funeral establishment, cemetery and crematory within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' material confidential information not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Gibraltar or itself, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

3. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Gibraltar stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Gibraltar that it may hold, or seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon

written request with reasonable notice to SCI made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

- a. Access, during office hours of SCI, and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement; and
- b. Upon five (5) days' notice to SCI and without restraint or interference therefrom, to interview officers or employees of SCI, who may have counsel present, regarding such matters.

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

EXHIBIT A

HOLD SEPARATE ASSETS

A. The following funeral establishment, cemetery, and crematory shall be held separate until the divestitures of the two Blackburn-Shaw Funeral Homes (now known as Schooler-Gordon Blackburn-Shaw Funeral Homes) and Memory Gardens of Amarillo & Crematory pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Memorial Park Funeral Home, 6969 I-40 East, Amarillo, Texas
2. Memorial Park Cemetery & Crematory, 6969 I-40 East, Amarillo, Texas

B. The following cemetery and funeral establishments shall be held separate until their divestiture pursuant to the order as is set forth in the SCI/Gibraltar Consent Agreement:

1. Oaklawn Memorial Gardens and Mausoleum, 2116 Garden Street, Titusville, Florida
2. North Brevard Funeral Home, 1450 Norwood Avenue, Titusville
3. Metz Funeral Home, 1306 Lafayette Street, Cape Coral, Florida
4. Harvey-Englehardt Funeral Home, 1600 Colonial Boulevard, Ft. Myers, Florida