

plan is available to all entities desiring to participate. The applicant will be in charge of informing prospective participants of the existence and terms of the plan and the applicant's contract with the advertisers will so covenant pursuant to Guide 13. The applicant will also undertake to verify the effectiveness of its notifications and will require the Wholesalers to distribute and certify such distribution made to the Retailers. These undertakings will be made by the applicant pursuant to Guide 13 and will be adequate to meet the standards of Guide 8. (See Proposed Plan for the details of notification.)

III. GENERAL

The proposed course of action described herein is not currently being followed by the applicant and is not the subject of a pending investigation or other proceeding by the Commission or any government agency.

The undersigned and the applicant undertake to amend and supplement the information described herein at your request prior to submission to the Commission for approval. Please be so kind as to contact the undersigned prior to submission to the Commission of any problems or disqualifications of the proposed plan herein described.

At this time I respectfully request that approval of this proposed plan be expedited to the extent that you are able in order to permit the applicant to embark upon its proposed plan at the earliest possible date.

I offer to you any assistance which I may be able to render in facilitating this matter.

Respectfully submitted,
Michael Miller

Tripartite promotional plan involving the placing of pictures of advertised products on shelves of retail stores. (File No. 703 7117)

Opinion Letter

August 7, 1970

Dear Mr. Gomon:

This reply is in response to your request for an advisory opinion in regard to the legality of the proposed promotional plan outlined in your letters of May 13 and June 11, 1970. The plan will involve the placing of pictures on shelves in retail stores handling the sale of those products.

The Commission has given careful consideration to your request and has concluded that it would interpose no objection thereto, provided the following three conditions are met:

1. Since the proposed plan calls for your performance of certain obligations which are normally performed by the supplier, Guide 13 of the "Guides for Advertising Allowances" (see enclosed copy) must be complied with by you and by all participating suppliers.

2. If the cooperatives referred to in your plan are retailer-owned cooperatives, you may compensate the headquarters of such cooperatives for the services they perform in connection with the plan. However, you may not compensate directly the retailers who own the cooperative because this would amount to double compensation and be discriminatory against those who purchase directly or through jobbers or wholesalers. (See example 2 of Guide 3.)

3. To avoid any possible misunderstanding, it is suggested that the free offer and option to pay actual costs of the pictures be clearly explained in all promotional literature so that the exact terms and conditions will be understood by all prospective participants of the plan. In this connection, please see Guide 6 (d) and Guide 10.

By direction of the Commission.

Supplemental Letter of Request

June 11, 1970

Dear Mr. Jamarik:

In reference to your letter of June 9, 1970 and our phone conversation of June 11, 1970 the following is a complete list of the methods by which Frank Gomon Associates intend to do business:

1. FGA will make a national offering, on an equal basis to all retailers by direct mail, of the free service which supplies pictures of those products which the retailer has authorized for display and sale on metal hooks and/or gondola shelving. This offer is ultimately for the retailers in the grocery, variety, drug, hardware, stationery, discount and department store fields.

2. Some retailers are afraid of "FREE" offers. For those we will make this service available on a cost basis to them. All who wish to pay will be charged on an equal basis, example:

a. Retailer "X" signs up for the free service—his bill—"NO CHARGE".

b. Retailer "Y" signs up for the service on a cost basis—his bill for 100 pictures at 5¢ each—\$5.00.

c. Retailer "Z" wants the same as "Y" except he takes 200 pictures at 5¢ each—his bill will be \$10.00.

3. Retailers will be notified that the major source of revenue comes from the suppliers.

4. Initially we may limit our marketing to each state, with national coverage our ultimate objective.

5. We intend to seek permission from the retailers to send these pictures by mail to each store and pay the retailer a fair and reasonable sum of money to install them. All retailers will be offered the same amount of money per picture they install, example:

a. Retailer accepts and installs 100 pictures. We send him a check for $\frac{1}{2}$ of 1¢ per picture or 50¢.

6. In return for making our offer known, on an equal basis, to all their accounts and forwarding all picture orders to us for ultimate distribution, each jobber, wholesaler, intermediary, voluntary and/or cooperative will be offered the same amount of money that we pay each account for the installation of our pictures. This payment is in return for securing the orders. Any and all offers of money to the above mentioned organizations will be on an equal basis.

Yours truly,
Frank Gomon

Letter of Request

May 13, 1970

Dear Mr. Helm:

This is an urgent request for an advisory opinion.

Mr. Rufus Wilson's advise to me, based on our long distance telephone conversation on Wednesday, May 13, 1970, was to stress the fact that time is of essence.

Frank Gomon Associates will offer to all retailers on an equal basis, the free service of installing pictures on only those products which are authorized for display and sale on metal pegs by the retailers.

To get this service for free, the retailers in the Grocery, Variety, Drug, Hardware, Department, Stationery, and Discount fields nationally will be asked to sign the enclosed agreement.

If the retailers wish, they may purchase this service.

All retailers will be charged equally, based on the number of products they wish represented, and the number of stores they have.

All testing in this area indicates that the retailer will accept this service if it is approved by the F. T. C. These retailers questioned indicated that they are afraid of any new program, in light of the recent problems with the F. T. C.

The retailers are also aware that the major source of revenue comes primarily from the suppliers of those products represented on the Metal Pegs only.

A rapid response will be greatly appreciated.

Very truly yours,
Frank Gomon, Associates

Distribution of weekly magazine through retail outlets in the New York metropolitan area. (File No. 703 7116)*

Opinion Letter

August 12, 1970

Dear Mr. McCann:

This is in further response to your letters of April 28 and May 5, 1970, relative to an advisory opinion with respect to the distribution of a weekly magazine through retail outlets in the New York metropolitan area.

The Commission has given careful consideration of this matter and is of the view that implementation of the proposed course of action in the manner described would be in violation of the statutes administered by it for the reason that the plan is not considered functionally available to all classes of customers competing in the distribution of the advertisers' goods.

By direction of the Commission.

Supplemental Letter of Request

May 5, 1970

Dear Mr. Helm:

On April 28, 1970, I filed with you, on behalf of the above reference Company, a request for an Advisory Opinion with respect to the business of the Company and its status under the Clayton Act, as amended by the Robinson-Patman Act.

As supplemental information to that request the Company has asked me to advise you that the magazine to be published by the Company will be made available to all retail grocery stores in the New York metropolitan area on the basis of one magazine per \$1,000 in annual retail sales. It is our understanding that the practice among distributors in the industry is not to break down a case of any product for particular retailers. Since the Company's magazines will be distributed in cases of not less than 250 magazines per case, it is likely that retailers with less than \$250,000 in annual sales will be unable to obtain the magazines from their distributors. For these retailers the Company will establish central distribution points from which magazines and appropriate allowances can be obtained by those retailers desiring to participate in the Company's program.

As stated in our letter of April 28, 1970, the Company will be unable to make this program available to all retailers in the New York metropolitan area until the beginning of the third quarter of its operation

*See 78 F.T.C. — for Opinion Letter of March 22, 1971, on revised plan submitted in letter of request dated January 15, 1971.

because of the scarcity of independent printing facilities in this area. Therefore, the commitment expressed in the preceding paragraph is qualified by this restriction.

Should you desire any further information or have any other questions, please feel free to call Mr. Arbour or myself at your convenience.

Very truly yours,
Joseph J. McCann, Jr.

Letter of Request

April 28, 1970

Dr. Mr. Helm:

I am counsel to a number of individuals who have formed a corporation under the name of In-Store Publications, Inc. to engage principally in the business of publishing a weekly magazine and in distributing it free to the consuming public through the distribution channels of large retail businesses, with the only source of income to the company coming from advertising revenues. The individuals promoting the business of the company have become concerned that the distribution of such a magazine may present possible violations of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. As you suggested in our telephone conversation, I am writing to request an Advisory Opinion with respect to the business of the company and its status under the Clayton Act.

The concept for the company ("the Company") is to take advantage of the vast patronage of several consumer-oriented retail establishments, selling the same or unrelated products, for the distribution of a popular, free magazine and to use this large potential audience to encourage consumer industries to advertise regularly and extensively in the magazine. The founders of the Company believe that such a concept on such a scale is novel in the publishing industry. Since the Company will receive no money for the distribution of the magazine, the success of the concept will depend entirely upon the consistency and size of advertising. The Company believes that its ability to insure an advertiser of a large distribution of the magazine will encourage potential advertisers to advertise in the magazine.

The Company's plan of operation, therefore, is initially to negotiate and enter into a series of agreements with wholesale distributors of grocery products and retail sellers of grocery products that act as their own wholesalers in the New York metropolitan area for the distribution of a television weekly magazine free to the consuming public. If the Company's business is successful, it will eventually expand its program to a national distribution. The Company has selected the retail grocery business and the New York metropolitan area as its initial market because it believes that this would be the area of its largest and

most consistent distribution. The agreements would contemplate the publishing and distributing by the Company to the wholesalers, at no charge, of a weekly television magazine containing a complete seven day television schedule, syndicated columns and feature articles and advertisements. Magazines would be distributed on the basis of one magazine per \$1000 of annual sales in the New York metropolitan area. This figure has been arrived at by allocating the estimated saturation point of four million magazines for the approximately eight million television homes in the New York metropolitan area among the total annual grocery sales in this area.

The magazine for all customers of the Company would be basically the same. However, because a wider, more economic distribution to the consuming public can be achieved through large volume retail customers, the Company intends to also offer those retail customers whose annual retail sales in the New York metropolitan area are in excess of \$75,000,000 their own individually stylized cover that identify the magazine as that of the customer (such as "A&P's T.V. Plus"), up to one-half of the contents page for advertisements or information that such customer might wish to insert, one full four-color page advertisement for one of the customer's private brand products, and the option of using four full center-fold sides in black and white for advertisements or other information that the customer may wish to insert or of receiving \$.0025 per copy of each issue of the magazine distributed by such customer. For retail customers with less than \$75,000,000 but more than \$50,000,000 in annual retail sales, the Company will provide a standard cover for the magazine with such customer's name stamped on it, will provide such customer with the option of using the four centerfold sides or of receiving \$.0025 per copy distributed, and, in lieu of the one-half of the contents page and the full page in color provided to retail customers with sales in excess of \$75,000,000, \$.000625 per copy distributed. Retail customers with less than \$50,000,000 in annual retail sales will receive a standard cover and magazine and, in lieu of the pages provided the larger retailers, \$.003125 for each copy distributed. Wholesalers who distribute magazines and appropriate allowances for the Company to independent retailers and who secure their agreements to distribute the magazines to the consuming public will receive \$.0005 per copy distributed to the independent retail customers. In addition, if a wholesaler distributing to independent retailers shall have annual sales in the New York metropolitan area to such retailers in excess of \$50,000,000, after deducting the sales of those retailers with sales in excess of \$50,000,000, he shall be entitled to use the four center sides of the magazines to be distributed to independents with less than \$50,000,000 or receive \$.0025 per copy distributed to such retailers. If such sales to such independents with less than \$50,000,000 in annual

sales in the New York metropolitan area are in excess of \$75,000,000, he shall also be entitled to use the one four-color page for an advertisement of one of his private brand labels in each of the copies to be distributed to such retailers or to receive \$.000625 for each such copy distributed. The stated annual sales figures have been determined on the basis of what approximate volume of magazines published in one format it becomes economically possible for the Company to change the format. The expense and time involved in changing pages within a particular issue mitigates against granting each customer certain pages for his exclusive use. In analyzing this cost, as against the possible revenues that might be able to be derived from these pages, the Company has determined that a run of 50,000 magazines is the approximate point at which certain pages can be stylized to suit a particular customer. At about 75,000 magazines, additional pages can be changed.

With the exceptional of the alternatives stated above, a customer of the Company will have no control over the content or stylization of the magazine. In return for publishing the magazine and distributing it to the wholesaler, the Company will obtain the wholesaler's agreement to (a) distribute copies of each issue free to his retail customers on the basis of one magazine per \$1000 of annual sales, (b) distribute to or credit in an appropriate manner his retail customers any allowances that may be due them under the Company's plan, (c) obtain the agreement of his retail customers to distribute one copy of each issue free to each of their customers, and (d) certify to the Company distribution figures of the magazine by the retailers and their appropriate allowances.

Based on its investigation of independent printing facilities available in the New York metropolitan area, the Company feels that the maximum possible distribution of its magazine for the first quarter of operation will be 2,000,000 copies per week. The Company, therefore, will not be able in the first quarter to offer the magazine to the estimated 4 million saturation point. It anticipates, however, that by the third quarter of its operation, it will be able to so extend the offer. For the first quarter (which is expected to commence with the beginning of the television season in September of 1970), the Company has offered the magazine to six grocery chains who are also their own wholesalers and to one grocery chain that acts as wholesaler for its own chain of retail stores and for a number of independent stores. The six chains that act as wholesalers only for themselves, will receive, if they accept the Company's offer, the additional benefits described above that accrue to a customer with annual sales in the New York metropolitan area in excess of \$75,000,000. The Company will treat the other chain as two distributors. The magazine with the individually stylized cover, etc. will be published for the distributor's own stores, since these stores have

annual retail sales in excess of \$75,000,000, while the independent stores purchasing from the distributor will receive the standard cover magazine and the allowances that accrue to retail stores with less than \$50,000,000 annual sales.

These particular distributors were selected because it was felt that they would present the easiest vehicle for introducing the magazine to a cross section of retail grocery stores and because of their reputation for flexibility in introducing new ideas.

While agreements are being negotiated with the grocery industry, the Company intends to offer advertising space in the magazine to consumer industries. The rate to be charged for space will be the same for all advertisers and will be comparable to that at which space is sold in magazines having a national distribution. It is expected that advertisers will consist not only of those whose products may be sold through food stores, but also of those whose products are not sold through grocer stores. Also, though the basic magazine may appear in a number of different grocery stores, it is possible that an advertiser's products may be sold exclusively through only one of the many grocery stores distributing the magazine. Except for their advertisements, advertisers will have no control over the contents or stylization of the magazine.

A proposed form of Agreement, a copy of which is enclosed for your assistance, has been submitted to those wholesalers in the New York metropolitan area that have their own retail stores and have annual sales in the New York metropolitan area in excess of \$75,000,000. It is expected that serious negotiations will begin with these companies shortly. Discussions have also been commenced with a number of potential advertisers. These later discussions have and will involve only Company personnel and at no time will a distributor of the magazines be permitted to take part in these negotiations. Potential advertisers will be informed, however, who the proposed distributors of the magazine will be.

The Company respectfully submits that its proposed plan of operation, as stated above, will not place it in danger of violating the provisions of Section 2 of the Clayton Act, as amended. Representatives of the Company will be pleased to discuss its proposed business with you or your representatives at your conveniences and are, of course, prepared to submit such further information as you may request.

Should you have any questions, please call collect the undersigned at 212-344-8900 or John G. Arbour, President of the Company, at 203-227-7291.

Very truly yours,
Joseph J. McCann, Jr.

Marking of origin of packaged ball bearings where only bearing races in unfinished form are imported from Japan with all other parts and components produced in the United States. (File No. 713 7001)

Opinion Letter

August 14, 1970

Dear Mr. Yamashige:

This is in reply to your request for an advisory opinion on behalf of NTN Bearing Corporation of America relative to the proper marking of the country of origin of packaged ball bearings where only the bearing races in unfinished form are imported from Japan with all other parts and components produced in the United States. In addition, all grinding, finishing and assembly of the packaged bearings will be done in the United States. You have supplied projected bearing production cost analyses indicating the race material and forming represents 22.5 percent of the production cost of the completed bearings.

The Commission has given careful consideration to this matter and is of the opinion that in accordance with the facts as outlined (a) the packaged bearings may not be marked as "Made in U.S.A." since such marking would constitute an affirmative representation that the finished product was made in its entirety in the United States, which is contrary to fact; and (b) in the absence of any affirmative representation that the bearings are made in the United States, or any other representation that might mislead the public as to the country or origin, and in the absence of any other facts indicating actual deception, the failure to mark the origin of these packaged bearings will not be regarded as deceptive.

By direction of the Commission.

Supplemental Letter Relative to Request

April 8, 1970

Dear Mr. Steinbach:

In reply to your letter of March 24, 1970, requesting more detail on the cost breakdown of the finished bearings to indicate the ratio of the cost borne in United States, we are still endeavoring to obtain this information at this time. Soon as we have more detailed information, we will furnish them for your consideration. Thank you.

Very truly yours,
George K. Yamashige

Letter of Request

January 9, 1970

Dear Sir

We respectfully request your opinion on marking the country of origin as "Made in U.S.A." on the ball bearings machined and assembled in United States with its unfinished component parts imported from Japan.

The processing from the time of importation to the final finished bearing is as follows:

1. Bearing races in unfinished form imported from Japan.
2. Steel balls, retainers (cage), seals and shields imported from Japan.
3. Bearing races to be ground and polished in United States with American labor.
4. Steel balls, retainers, U.S.-made grease, seals or shields and the inner and outer races to be assembled in United States with American Labor.
5. The finished bearing to be sold in the U.S. market and for export.

In other words, majority of the final finished cost will be borne in United States after computing the costs of machining process, labor, engineering, grease operational overhead, transportation, U.S. customs duty, etc.

Also, we want to stress that the steel ore itself used for the unfinished bearing races, steel balls, retainers and shields to be brought in from Japan were originally exported to Japan from the United States.

From the standpoint of the ratio in the manufacturing process itself, majority of the work to complete the bearing will be done in United States.

It is hereby respectfully requested that your approval be given to mark the country of origin as the United States for our proposed product for the reason stated above.

Very truly yours,
George K. Yamashige
Assistant to the President

**Tripartite promotional plan involving in-store audio advertising.
(File No. 703 7109)**

Opinion Letter

August 28, 1970

Dear Mr. Apperson:

This is in response to your request in behalf of Hall, King, Stanfill Agency, Inc., for an advisory opinion relative to a promotional plan involving in-store audio-advertising.

It is the Commission's understanding of this matter that Hall, King, Stanfill Agency, Inc., as promoter will promote to participating retail outlets in-store audio-advertising through the use of taped background music with intermittent commercial announcements regarding products of the advertising manufacturer or supplier found in the store. There is involved in this promotional plan a "basic plan" wherein compensation to each store will be a net cash sum computed on the basis of a formula based on a fixed sum per 1000 persons (customers) exposed to the promotional announcement, less a determinable portion of the expenses in producing the announcements. The scale of expenses is based upon a formula per thousand persons plus fixed expenses of monthly charges for audio equipment, servicing, tapes and music.

The promoters herein offer two alternative plans to retailers. The Alternate Plan #1 is designed to take care of those outlets already providing background music, or who want a different music system. Alternate Plan #2 is designed to make the plan functionally available to all competing retail outlets by providing them with in-store promotional material such as window banners, posters, handbills and shelf displays, as well as the assistance of merchandising specialists.

Under the various plans offered compensation to each store or retail outlet will be a net cash sum computed on the basis of a formula composed of a fixed sum for each 1,000 persons exposed to each promotional announcement, less a determinable portion of the expense for producing the promotional announcement or providing the merchandising aides. In addition, the provisions for making the plan, with alternates, functionally available to all competing retailers have been set forth in substantial detail.

The Commission has given full consideration to this matter. With the understanding that the complete details of the basic plan and the alternates have been fully and appropriately communicated to all competing retailers, the Commission is of the view that implementation of the proposed course of action in the manner described would not violate the laws administered by the Commission.

By direction of the Commission.

Letter of Request

May 5, 1970

Dear Mr. Helm:

By letter of April 28, 1970, addressed to Mr. Joseph W. Shea, we requested the opinion of the Federal Trade Commission as to the conformity of a proposed tripartite promotional plan with Sections 2(d) and 2(e) of the Robinson-Patman Act, on behalf of our client, Hall, King, Stanfill Agency, Inc. (Promoter) an advertising agency in Memphis, Tennessee.

Pursuant to a telephone conference this date with Mr. Henry N. Williams of your office, we submit herewith a revised request which we desire to be considered in lieu of the original letter request, which may be disregarded.

The proposed plan will include Promoter, various manufacturers and suppliers of retail grocery store type products, and the various participating retail outlets for such products. Promoter will contract with the manufacturers and suppliers, or their representatives, for the promotion of their products at the point of purchase, including audio and other types of promotion, merchandising aides to check and advise on shelf layout, position and consumer response.

Promoter will furnish to the participating retail outlets, in-store audio-advertising through the use of taped background music with intermittent commercial announcements regarding the manufacturer's and supplier's products found in the store, as well as the assistance of merchandising aides.

It is anticipated that the program as constituted will relate primarily to grocery store type products such as bread, milk, canned goods, soaps, cigarettes, etc.

Promoter is not at the present time following the plan, and to the best of Promoter's knowledge the same course of action is not under investigation and is not subject, and has not been the subject of a current proceeding, order or decree by the Commission.

BASIC PLAN

Promoter will contract with various retail outlets for the exclusive right to furnish all audio advertising in the outlet. The contract will be of indefinite duration, with the right of either party to cancel on 30 days notice. Pursuant to the contract. Promoter will install in the outlet a tape recorder and sufficient speakers to enable the contents of the tape to be heard throughout the entire shopping area of the outlet, or, if desired, only in that part of the store where the grocery type products are sold.

Promoter will supply the outlet weekly with a long playing tape containing instrumental background music for use on the tape recorder. The tape will be approximately four hours in length and capable of continuous play throughout the business hours of the outlet, without manual rewinding.

The tape will also contain spot promotional announcements or advertisements of various products sold in the store. The announcements will usually be no longer than 15 seconds in length and no more frequent than one announcement every two minutes.

The selections of products advertised on any particular tape may easily be altered so that normally a tape furnished to a particular store will not carry announcements pertaining to grocery store type products not sold by the store, but may carry other advertising.

The store will be required to play the tape continuously during all open hours.

The installation and maintenance of the tape recorders and speakers will be at no initial cost to the store owners.

The Basic Plan will be offered to all retail stores competing for the retail sale of any product handled by the Promoter.

Each store desiring the Basic Plan will be required to pay a fixed monthly charge of \$40.00 to defray the cost, installation and maintenance of the audio equipment and tapes, a monthly cost of \$1.00 for each speaker necessary in the store, and \$5.00 per month for the music.

It is anticipated that Promoter will handle the promotion of numerous products and that each product manufacturer, or advertiser, will compensate the Promoter on the basis of the number of persons exposed to the advertising message. The Promoter will in turn compensate the retail outlet for the privilege of advertising in the store on a similar basis.

Compensation to each store or retail outlet will be a net cash sum computed on the basis of a formula composed of a fixed sum for each one thousand persons exposed to each promotional announcement, less a determinable portion of the expense for producing the promotional announcement, providing the merchandising aides, etc. The amount of the expense charged against the gross compensation to each outlet will be based on the percentage of time used for promotional announcements in each store and the number of persons exposed to the announcements in the store. (Attached hereto as Exhibit "A" is a scale of expenses based upon the presently anticipated expense unit of \$5.00 per one thousand persons at a maximum use).

For example, it is anticipated at the present time that the Promoter will credit each retail outlet with the fixed sum of \$1.1475 per announcement, per one thousand people reached, based on the traffic count in the particular retail outlet. Charged against this sum would be the expense factor computed on the basis of Exhibit "A" and using the presently projected cost unit of \$5.00 per one thousand persons with 100% of the retail stores advertising time being utilized. Normally the fixed credit multiplied by the number of products advertised will be greater than the expense charge.

At no time would any store be required to pay advertising expense computed on the scale in excess of base remuneration credited. The only fixed expense to each outlet will be the fixed monthly charge equipment, servicing, tapes and music.

It is felt that both the base method of compensation to the retail outlet, based on store traffic, as well as the method of computing expenses, is fair and non-discriminatory for all outlets, large and small. Both factors are based upon traffic count and not dollar volume. Experience shows however, that smaller outlets usually having less traffic, normally have a smaller dollar amount of purchases per customer.

ADVISORY OPINIONS WITH

Based upon the expense scale (Exhibit "A") the outlets will also share expenses in proportion to store traffic, and therefore, both compensation and expenses are offered to all stores on a proportionally equal basis.

Attached hereto as Exhibit "B" is an example of the proportionate equality of the formula using two stores of varying volume of sales and traffic. It is apparent from the example that the smaller store having less than 1/6 of the dollar volume of the larger store but 3/5 of the traffic volume would receive about three-fifths as much from the Plan as the larger store. Attached as Exhibit "G" is a computation showing that, regardless of dollar volume, compensation at maximum advertising remains constant per one thousand persons.

Promoter will offer two alternate plans, either of which may be selected by any retail outlet.

ALTERNATE PLAN #1

In the event any competing outlet already provides background music or desires to select a different system of background music, the Promoter will offer an alternate plan functionally equivalent to the Basic Plan.

Under Alternate Plan #1 Promoter will provide the same electronic sound equipment to the outlet, and will provide tapes without background music, containing only intermittent promotional announcements similar to those on the tapes with music. The equipment will be capable of projecting the promotional announcements over the type of background music without otherwise interfering with the background music.

A retail outlet selecting the Alternate Plan will not be required to pay for the music, but all other expenses will be identical.

ALTERNATE PLAN #2

In order to make the Plan functionally available to all competing retail outlets the Promoter will offer a second Alternate Plan designed to provide retail outlets with in-store promotional material for the same products advertised on the tapes, without the necessity of using the audio system.

Such outlets will be furnished with promotional material such as window banners, posters, handbills and shelf displays, as well as the assistance of merchandising specialists.

Retail outlets using the second alternative plan will be compensated by Promoter on the basis of the store traffic using the same base compensation rate for each product promoted as is used for outlets selecting either of the two other plans for audio advertising. That is, two stores of comparable traffic volume, one using Alternate #1 and the other using Alternate #2 would each be credited with the same base compensation per product advertised.

There would of course be no charge for audio equipment, music or tapes to an outlet using the second alternate, however, there would be a fixed monthly service charge or cost to defray the cost of delivery equipment and personnel for the promotional material. This fixed cost is based on a reducing scale depending upon the volume of store traffic, starting with a minimum cost of \$4.00 per thousand persons. Attached hereto as Exhibit "C" is the proposed scale.

The base compensation to a store selecting the second alternate plan would also be reduced by a portion of the expense of producing and distributing the promotional material. The expense factor for Alternate Plan #2 will be computed on the same scale, Exhibit "A", as is used for the other two plans. Expenses

charged against base compensation under the second alternative will be accounted for separately however, and will be expanded only on promotional materials, etc., used for such plan.

It is anticipated that the net compensation to outlets using the second alternate plan will be approximately the equivalent of the net income received by an outlet of comparable size using the audio system. Attached hereto as Exhibit "D" is an example of two outlets using the second alternate, which may be compared to the examples on Exhibit "B".

Attached hereto as Exhibits "E" and "F" are examples showing the relative net income to one store computed under each Plan, and using different amounts of advertising time filled.

Promoter will offer the Plan to all customers competing in the distribution of each manufacturer's product handled by Promoter in selected trade areas.

It is felt that the proposed plan and the alternates will provide a system which will be functionally available on proportionally equal terms to all such competing retailers of grocery type products, including those retailers using vending machines. For example, should Promoter enter into an agreement with a cigarette or soft drink manufacturer to use Promoter's plan, the base plan would not be functionally available, however, under Alternate Plan #2 advertising and promotional material designed for display on vending machines could be furnished.

Promoter will require each manufacturer or supplier using the Plan to furnish Promoter with a list of all retailers of the manufacturer's product in the geographic area wherein the promotional plan is implemented, as well as retailers located on fringe areas and actually competing with those in the geographic area selected. Promoter will give notice to all such retailers that the promotional plan is available, either through direct mail, or through publication in newspapers and trade publications reasonably calculated to reach or notify every such retailer.

Promoter will also inform each supplier and each retailer using the plan that even though Promoter is acting as an intermediary in the plan, it remains the supplier's responsibility to take all necessary steps so that each of the supplier's customers who compete with one another is offered an opportunity to participate in the plan on proportionally equal terms through use of the basic plan or one of the alternate plans.

Promoter requests that you review the proposed plan and alternates and advise whether or not the plan conforms to the requirements of Section 2(d) and 2(e) of the Robinson-Patman Act.

In the event there is any question in regard to the proposed plan, any additional information needed, or in the event an adverse opinion is proposed, please notify the undersigned by collect telephone call, at Area Code 901, Number 525-5881.

Should it be determined that a conference with the Commission Staff would expedite an opinion on this matter, or be helpful in any manner, the undersigned will be available at the convenience of the Commission.

Sincerely,
MARTIN, TATE, MORROW & MARSTON
Lawson F. Apperson

EXHIBIT A

*Hall, King, Stanfill Agency, Inc.,
Expense scale for all plans*

Actual percent of advertising time used and paid for	Percent charged	Cost per 1,000=\$5 actual cost
100.....	100	\$5.00
95-100.....	99	4.95
90-95.....	98	4.90
85-90.....	96	4.80
80-85.....	94	4.70
75-80.....	91	4.55
70-75.....	88	4.40
65-70.....	85	4.25
60-65.....	82	4.10
55-60.....	79	3.95
50-55.....	76	3.80
45-50.....	73	3.65
40-45.....	70	3.50
35-40.....	65	3.25
30-35.....	60	3.00
25-30.....	55	2.75
20-25.....	50	2.50
15-20.....	45	2.25
10-15.....	40	2.00
5-10.....	35	1.75
0-5.....	30	1.50

Utilizing the maximum advertising time at one advertisement per 2 minutes, there are 30 announcements per hour or 300 spots in a 10 hour day.

In order to reach all persons using the store open 10 hours per day, an announcement must run once each 24 minutes or 25 times per 10 hour day.

Similarly, to reach one-half of the persons using the store, an announcement must run approximately one-half as many times.

Therefore, maximum advertising time would be 300 spots per day, ideally, with 12 products announced once every 24 minutes.

EXHIBIT B

Hall, King, Stanfill Agency, Inc., comparative examples, monthly basis

	Store A	Store B
Volume.....	\$1,000,000	\$150,000
Traffic:		
Per week.....	5,000	3,000
Per month.....	21,650	12,990
Total possible revenue ¹	298.08	178.92
Expense charge per scale.....	-108.25	-64.95
Music.....	189.83	113.97
\$1 per speaker (probably 10).....	-5.00	-5.00
	-10.00	² -4.00
Net compensation—Base plan.....	174.83	104.97
Add back music.....	5.00	5.00
Net compensation alternate No. 1.....	179.83	109.97

¹ \$1.1475 per 1,000 people reached per product advertised.

² Probably 4.

NOTE.—Fixed expense of \$40 per month is the same for all stores using electronic equipment and tapes.

EXHIBIT C

HALL, KING, STANFILL AGENCY, INC., FIXED CHARGE SCALE FOR ALTERNATE NO. 2
(NO AUDIO ADS)

Fixed charge for using P.O.P. ads program. This is a minimum charge for service, men, trucks, and special equipment to place and maintain point of purchase advertising material.

Traffic per month	Cost per 1,000	Cost per month
0-1,000	¹ \$4.00	\$4.
1-6,000	4.00	\$4 to \$24.
6-8,000	3.80	\$24 minimum to \$30.40.
8-10,000	3.65	\$30.40 minimum to \$36.50.
10-12,000	3.50	\$36.50 minimum to \$42.
12-14,000	3.25	\$42 minimum to \$45.50.
14-16,000	3.00	\$45.50 minimum to \$48.
16-18,000	2.75	\$48 minimum to \$49.50.
18-22,000	2.50	\$49.50 minimum to \$55.
22-30,000	2.25	\$55 minimum to \$67.50.
30,000 or over		\$67.50.

¹ Minimum.

EXHIBIT D

HALL, INC., STANFILL AGENCY, INC., COMPARATIVE EXAMPLE ALTERNATE #2
(NO AUDIO ADS)

Income or revenue credited will be based on same amount of money credited per 1,000 traffic count of each product as is credited to other stores using the base proposal or alternate #1. If these stores have enough product items in their stores, they can have 100 percent revenue coming in. This revenue will not be spent on music, spot advertisements, etc., but will be used for point of purchase advertising material and services.

	No. 1	No. 2
Volume	\$1,000,000	\$150,000
Traffic:		
Per week	5,000	3,000
Per month	21,650	12,990
Total possible revenue	\$298.08	\$178.92
Overhead—100 percent advertising filled	-108.25	-64.95
Total	189.83	113.97
	-54.13	-42.22
Total	135.70	71.75

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT E

Hall, King, Stanfill Agency, Inc., Comparative example

[Volume, \$100,000 approximately; traffic, 2,000 per week or 8,660 per month]

	Base proposal	Alternate No. 1	Alternate No. 2
Total possible revenue.....	\$119.24	\$119.24	\$119.24
Expense charge on 100 percent advertising filled.....	-43.30	-43.30	-43.30
Total.....	75.94	75.94	75.94
Equipment and tapes.....	-40.00	40.00	-----
Speakers (2).....	-2.00	2.00	-----
Music.....	-5.00	-----	-----
Fixed charge.....	-----	-----	-31.61
Total.....	28.94	33.94	44.33

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT F

Hall, King, Stanfill Agency, Inc., Comparative Example

[Volume, \$100,000 approximately; traffic, 2,000 per week or 8,660 per month]

	Base proposal	Alternate No. 1	Alternate No. 2
75 percent advertising time.....	\$89.43	\$89.43	\$89.43
Expense charge on 75 percent advertising filled.....	39.40	34.40	39.40
Total.....	50.03	50.03	50.03
Equipment and tapes.....	40.00	40.00	-----
Speakers (2).....	2.00	2.00	-----
Music.....	5.00	-----	-----
Fixed charge.....	-----	-----	31.60
Total.....	3.03	8.03	18.42

NOTE.—Total possible revenue: \$1.1475 per 1,000 people reached per product advertised.

EXHIBIT G

Hall, King, Stanfill Agency, Inc., Comparative Compensation on Volume and Traffic at Maximum Advertising Capacity

	\$1,000,000.00	\$150,000.00	\$100,000.00
Volume.....	\$189.83 ×12	\$113.97 ×12	\$75.94 ×12
Total.....	¹ 2,277.96	² 1,367.64	² 911.28
	21,650/month	12,990/month	8,660/month
Traffic.....	\$189.83=\$8.77/1,000	\$113.97=\$8.77/1,000	\$75.94=\$8.77/1,000

¹ 0.227 percent of volume.

² 0.9112 percent of volume.

**Marking of origin of music box toys containing musical units
imported from Switzerland and Japan. (File No. 713 7003)**

Opinion Letter

October 15, 1970

Dear Mr. Shaw:

This is in reply to your request for an advisory opinion on behalf of your client, Fisher-Price Toy Co., as to the proper marking of the country of origin of music box toys containing musical units imported from Switzerland and Japan.

According to the Commission's understanding of the facts, your client, in the manufacture of so-called "Swiss music boxes," utilizes musical units imported from Switzerland and later, from Japan as well as Switzerland. The manufacturer has been clearly indicating on each toy and on each carton for each toy, the origin for the particular music unit in that toy. Based on the experience of another toy manufacturer, not further identified as to the manufacturer or the toy, your client asks whether he can clearly mark both the toys and the cartons for these music boxes with the following notation: "Musical Movement Made in Switzerland or Japan"?

The Commission has given this matter careful consideration and is of the view that under the circumstances outlined above the dual designation of the origin of the musical unit of such toys would be confusing, misleading and may be deceptive.

By direction of the Commission.

Letter of Request

July 13, 1970

Gentlemen:

We have a client that makes toys utilizing what are commonly known as "Swiss music boxes". The actual musical movements were originally imported from Switzerland, and later have been imported from Japan as well as Switzerland. Great care is exercised to clearly indicate on each *toy* and on the *carton* for each toy the origin for the particular music unit in that toy.

It has recently come to our attention that another toy manufacturer marks its toys with the statement "Made in Hong Kong or Taiwan", and this has prompted us to inquire whether it would be permissible for our client to use a similar procedure for its toys using music units from Switzerland or Japan. Would it be acceptable if our client clearly marked both the toys and the cartons for the same with the following notation: "Musical Movement Made in Switzerland or Japan"? Our client guarantees the entire toy for one year, including the music unit, regardless of the country of origin thereof.

I would appreciate an advisory opinion on the above question. If I have not set forth the problem in the proper fashion or have not addressed my letter to the right department, please let me know. I will appreciate your help in obtaining an answer to this question.

Thank you for your consideration in this matter.

Cordially yours,
CUMPSTON, SHAW & STEPHENS
George W. Shaw

**Proposed promotional game of chance for food retailing and
gasoline industries. (File No. 703 7113)**

Opinion Letter

November 13, 1970

Dear Sirs:

This is in response to your request for an advisory opinion regarding a promotion proposed by your client, Marketing Action Group, Inc.

In the Commission's opinion, the game as presented would not comply with the Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries (16 CFR 419.1) since the game pieces would not be mixed "totally and solely on a random basis throughout the game program and throughout the geographic area covered by the game . . ." Since your present submittal did not include samples of proposed advertising, the Commission cannot, of course, pass upon the manner in which the game will be promoted, but it seems obvious that if the game is to be advertised over broad areas, perhaps on a corporate basis, the game pieces could not be said to have been mixed in accord with the clear requirement of the Rule if they are mixed and distributed in batches of five thousand.

However, the Commission believes that if certain adjustments are made the promotion can be brought into conformity with the requirements of the Rule. In a game such as the one proposed by Marketing Action, a key question is the extent of "the game program" and of "the geographic area covered by the game." You will note that paragraph 2 requires the disclosure of certain facts which tends to define these terms.

If in making the paragraph 2 disclosures Marketing Action clearly and conspicuously advertises the game on an outlet-by-outlet basis, the boundaries of the game for the purposes of the Rule will be each outlet. Since each outlet will be a separate game for the purpose of the Rule, all of the game pieces in each outlet must be mixed on a random

basis, *i.e.* all game pieces mixed together and at the same time. If Marketing Action truthfully advertises the game on an outlet-by-outlet basis and if it mixes together and at the same time all of the pieces to be used by each outlet, the Commission believes that the game of chance proposed by Marketing Action would then comply with the above Trade Regulation Rule.

By direction of the Commission.

Third Letter of Request

May 25, 1970

Dear Mr. Shea :

This letter is in lieu of our letters of May 11 and 21, 1970, requesting on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, an advisory opinion of the Federal Trade Commission in regard to proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum which was enclosed with the May 11th letter.

The proposed program of MAG is not currently being employed by MAG and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of May 19, 1970, it was submitted to the mailability division of the Post Office Department for its approval under the provisions of that Department.

If the proposed plan is approved by the Federal Trade Commission, thereafter, at such time as MAG concludes negotiations for, but prior to, its implementation, MAG will furnish the public, through an advertising program and the promotion rules, with data pertaining to (i) the geographic area to be covered by, and the total number of retail outlets to participate in, the promotion; (ii) the procedure to be followed to insure full disclosure of information pertaining to prizes and odds of winning; and (iii) the scheduled termination date.

If the Commission approves the proposed plan, MAG will maintain a record keeping system which would demonstrate that mixing, distribution, and dispersal were done totally and solely on a random basis.

Upon the conclusion of the promotion, MAG will furnish the Commission, and also post clearly and conspicuously in each retail outlet which participated, (i) a complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each; (ii) the total number of promotion pieces distributed; (iii) the total number of prizes in each category or denomination which were made available and (iv) the total number of prizes in each category or denomination which were awarded.

The termination date would be advertised in each participating outlet and, as set forth in the memorandum, final drawings to select prize winners would take place shortly after a date three weeks from the termination date. The rules would advise the public that each dealer must notify the sponsoring corporation's head office immediately after such termination date if all promotion pieces in a dealer's possession have not been distributed. The promotion would then continue only in such outlets until all promotion pieces have been distributed, at which time the dealers involved would notify the sponsoring corporation's head office of such fact. If a sponsoring corporation's head office were to receive notification that all promotion pieces had not been distributed, all final drawings would be postponed until at least three weeks from the day that the last dealer communicates the second notification to the head office, thus giving his customers three weeks from the date they received their numbered promotion pieces in which to submit potential winning numbers to the sponsoring corporation's head office for the final drawings.

We trust that the memorandum previously forwarded explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm, or in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Second Letter of Request

May 21, 1970

Dear Mr. Shea :

This letter is in lieu of our letter of May 11, 1970, requesting on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum which was enclosed with the May 11th letter.

The proposed program of MAG is not currently being employed by MAG and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of May 19, 1970, it was submitted to the mailability division of the Post Office Department for its approval under the provisions of that Department.

If the proposed plan is approved by the Federal Trade Commission, thereafter, at such time as MAG concludes negotiations for, but prior to, its implementation, the requesting party will furnish the Commission with data pertaining to (i) the geographic area to be covered by, and the total number of retail outlets to participate in, the promotion; (ii) the procedure to be followed to insure full disclosure of information pertaining to prizes and odds of winning (iii) the record keeping system which would demonstrate that mixing, distribution and dispersal were done totally and solely on a random basis; and (iv) the scheduled termination date.

Upon the conclusion of the promotion, MAG will furnish the Commission, and also post clearly and conspicuously in each retail outlet which participated, (i) a complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each; (ii) the total number of promotion pieces distributed; (iii) the total number of prizes in each category or denomination which were made available and (iv) the total number of prizes in each category or denomination which were awarded.

The termination date would be advertised in each participating outlet and, as set forth in the memorandum, final drawings to select prize winners would take place shortly after a date three weeks from the termination date. The rules would advise the public that each dealer must notify the sponsoring corporations' head office immediately after such termination date if all promotion pieces in a dealer's possession had not been distributed. The promotion would then continue only in such outlets until all promotion pieces have been distributed, at which time the dealers involved would notify the sponsoring corporation's head office of such fact. If a sponsoring corporation's head office were to receive notification that all promotion pieces had not been distributed, all final drawings would be postponed until at least three weeks from the day that the last dealer communicates the second notification to the head office, thus giving his customers three weeks from the date they receive their numbered promotion pieces in which to submit potential winning numbers to the sponsoring corporation's head office for the final drawings.

We trust that the memorandum previously forwarded explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm, or in his absence, to Robert B. Sims, Esq.

Very truly your,
Whitman & Ransom

First Letter of Request

May 11, 1970

Dear Mr. Shea :

Request is hereby made on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, for an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum enclosed herewith.

The proposed program of MAG is not currently being employed by the requesting party and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of April 21, 1970, it was submitted to the Mailability Division of the Post Office Department for its approval under the provisions of the Post Office Department.

We trust that the enclosed memorandum fully explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm or, in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Enclosure

The Enclosure

MARKETING ACTION GROUP, INC.

Retail Merchants' and Manufacturers' Merchandising and Promotional
Program

Marketing Action Group, Inc. (MAG) is engaged in offering patrons of retail merchants and manufacturers (i.e., sponsoring corporations) an opportunity to participate in a merchandising and promotional program to be promoted under a name such as "Winners In Every Outlet" with a predetermined period of duration (which, for the purposes of this memorandum, shall be twelve weeks).

Promotion Pieces

Under this program, on each visit to a participating outlet, a customer (or other member of the public, since no purchase is necessary) would receive a folded, sealed, perforated promotion piece (FPD) advertising the promotion, outlining the rules, and bearing a serial number, the name and address of that particular FPD distributing outlet, and space for the customer's name and address. The serial number of the FPDs would be impossible to determine until the seal is broken by the customer and all FPDs in each series would be mixed to insure that winning game pieces would be distributed in each outlet on a random basis.

The FPD promotion pieces would be consecutively numbered and would be distributed by the sponsoring corporation or its promotion coordinator to each

outlet in lots or series of equal size—the size to depend upon the commercial nature of the sponsor. (For the purposes of this memorandum, it will be assumed that the majority of a sponsor's outlets would need at least 5,000 promotion pieces to cover their volume and thus each lot delivered to participating outlets would contain 5,000 FPDs numbered one through five thousand and randomly mixed.) Although no two numbers would appear twice in the same lot, for any number that is selected as a possible winner, there may be as many potential claimants for a prize as there are series of 5,000 numbers.

Corporate Section

There would be both corporate and in-outlet sections to the promotion. The corporate section would be operated from a sponsoring corporation's head office, would advertise available prizes to be awarded at the end of the promotion period, and would have a judging corporation randomly draw each week of the twelve-week promotion-period one winning FPD number across all participating outlets which would be mailed weekly to each outlet for posting and would remain posted for the duration of the promotion. Customers would check the numbers on the FPDs they hold against the numbers that have been posted. If at any time during the promotion an FPD serial number held by a customer matched one of the posted numbers, such customer would become a potential winner of a prize. In order to qualify for the second drawing which would determine the winner, a holder of a drawn and posted FPD would have to fill in his name and address in the space provided on each FPD and submit it to a previously announced address within three weeks from the last day of the promotion. The actual prize winners would then be selected by name at the end of the promotion period in a second series of twelve random drawings, one drawing from among the holders of each FPD number previously drawn and posted. (Thus, if the promotion runs for twelve weeks, there would be twelve different winning numbers and a like number of winners selected from the holders of each winning number.)

In-Outlet Section

The other element of the promotion would be an in-outlet section, also operated from corporate headquarters but (a) having a judging corporation randomly draw once, at the end of the twelve-week promotion, one potential winning number across all, and to be posted in, participating outlets for a large in-outlet prize (or prizes, as hereinafter described) which would be awarded at the end of the twelve-week promotion in each outlet (and could vary in each outlet as posted therein), and (b) awarding lower-value instant winner prizes throughout the course of the promotion.

In-Outlet Large Prize

A unique aspect of the in-outlet large prize promotion is that each outlet can select its own tailored in-outlet prize structure depending upon its particular needs and the manager's and/or owner's preference. The FPDs would advertise that in-outlet large prizes may vary with each outlet and advise customers to check the posted list of available prizes at the outlet where they received their FPD. If only one series of 5,000 FPD promotion pieces were distributed by an outlet, there would be one such large prize worth about \$100-\$150, with the particular prize to be selected by each outlet. If \$10,000 promotion pieces were distributed, an outlet could award two prizes each worth \$100-\$150 or one prize worth \$200-\$300. Thus, the number of prizes available need not correspond to the aggregate number of series of FPDs distributed by the outlet, but would be dependent upon its preference.

In every participating outlet, the winning number would be posted and the customer with that number would win the outlet's large prize. If the in-outlet prize structure offers one prize for every series of FPDs distributed, each holder of a winning number would receive a prize. If, on the other hand, the number of prizes does not correspond to the aggregate number of series of FPDs distributed by the outlet (as where the particular outlet selects one grand prize covering several series of FPDs distributed), there would be a random drawing at the outlet to determine which claimant wins the one prize available, or, if several prizes of varying value are available, which wins a particular prize. All prizes in the previously announced prize structure would thus be awarded, and customers would have three weeks after the last day of the promotion in which to submit their claims.

If the exact winning number fails to appear, the nearest number would be awarded the prize. The rules of the promotion would advise customers that a holder of a number near the winning number should submit his name and address to the dealer from whom he received his FPD so that, should a holder of a winning number fail to appear to claim his prize, such "runner-up" could be notified to surrender his FPD in exchange for the outlet's large prize. Should more than one claimant appear as might occur if the holder of the exact winning number does not show up and the holders of the two closest numbers—one lower and one higher—appear to claim the prize, there would be a random drawing at the outlet to decide which claimant wins the prize.

In-Outlet Instant Winner

In every 5,000 FPDs there would be 100 "Instant Winners" which would be randomly selected by the judging corporation at the start of the promotion and a listing thereof would be posted in each outlet immediately. Such 100 Instant Winner numbers would be the same in every lot (and thus in every outlet) and would remain the same for the duration of the promotion. One or several series of 5,000 FPDs would be delivered to each outlet, depending upon its needs. Upon comparing his FPD number with the list of posted Instant Winners and discovering that he is such a winner, a customer would receive his lower-value prize immediately by surrendering his FPD to the dealer. All Instant Winner FPD numbers would then be precluded from being potential winning corporate or in-outlet large prize numbers.

Conclusion

The MAG program offers a new and unique approach to merchandising and promotional programs. It provides for (1) random selection of winning numbers and (2) actual prize winners and claimants to prizes in every participating outlet without seeding.

In distributing to every participating outlet at least one series of 5,000 FPD promotion pieces, the MAG program guarantees that every outlet which distributes at least one entire lot of 5,000 FPDs would have twelve potential winners of corporate prizes, one in-outlet large prize winner, and 100 Instant Winners. Although every participating outlet would have identical promotional pieces and winning numbers, there would be an assurance of random selection of winners since (1) winning numbers for corporate and in-outlet large prizes would be drawn after distribution of FPD promotional pieces to participating outlets and (2) Instant Winner numbers, even though they would necessarily have to be drawn prior to distribution of FPDs, would be sealed and mixed prior to distribution along with all other numbers in a series of 5,000. Thus, there would be no way (without obvious tampering) for anyone to determine a number before the FPD is in the possession of the customer.

The MAG program would create, in effect, a separate promotion in each participating outlet, with its own in-outlet prize winners and potential winners of corporate prizes.

Attached hereto are several pages bearing the contents of an FPD. Although there may be some alterations or modifications in the wording and design of the FPDs distributed during the promotion, the following example (not to scale) displays the basic concept.

Each FPD would be folded into thirds (see the three panels indicated on the diagrams) and sealed on all sides such that it would be impossible, in the absence of obvious tampering, to determine the serial number until the seal is broken by the customer.

Outside of Promotion Piece

Name of Sponsor Company

WINNERS IN EVERY OUTLET

3 OPPORTUNITIES TO WIN

SAVE YOUR NUMBER and COLLECT MORE NUMBERS

WATCH THE POSTED WINNERS LIST

No Purchase Necessary

Name and Address of Sponsor Company

Inside Promotion Piece

1st Panel

You May Be A Winner--

Your Number Offers You 3 Opportunities to Win

An immediate prize from this outlet

One of twelve company prizes

A prize from this outlet at the completion of this promotion

No Purchase Necessary

Number

2nd Panel

RULES: (See Attached)

Name—Address—State—Zip—City—Phone—

Number

Panel 2 Rules of the "Winners in Every Outlet" Promotion

1. Save this leaflet with your number shown in the lower right hand corner of panels one and three for the duration of the promotion until (date).

2. Instant winners are now posted at this outlet. If you have one of the instant winner numbers posted, surrender this leaflet to the manager and you will receive your prize now.

3. Each week of the promotion a new sponsor company prize number will be posted. There will be a total of (000) of these sponsor company prize numbers posted. If you have one or receive one of these numbers, fill in your name and

address in the space provided below and mail it to (address) no later than (date) (21 days after the final number is posted). Hold on to panel number one which also has your number. By (date) (28 days after the final number is posted) there will be (000) random drawings, one from each group of sponsor company prize numbers submitted. Only prize winners will be notified. For a list of winners, send a self-addressed envelope to (address).

4. At the completion of the promotion an Outlet Winner's number will be posted. If you have this number, fill in your name and address in the space below and submit it to the outlet manager by (date) (21 days after the number is posted). You are the winner of the outlet prize.

5. This promotion is open to all individuals/licensed drivers 18 years of age or above only, except employees of the sponsor company, its subsidiary outlets, manufacturers of promotion materials and families of the foregoing.

6. All entries are subject to verification. Entries are void and will be rejected if not obtained through legitimate channels or if illegible, mutilated, smeared or tampered with or contain printing or other errors. Void where restricted by law. Applicable taxes are the responsibility of winners.

(c) Copyright 1970 by the Marketing Action Group, Inc.

SAVE YOUR NUMBERS! COLLECT MORE NUMBERS!
NO PURCHASE NECESSARY!

Location of disclosure of country of origin on packages containing items of vinyl baby apparel imported from Taiwan. (File No. 713 7004)

Opinion Letter

November 23, 1970

Dear Mr. Spill:

This is in reply to your request for an advisory opinion on behalf of the Rand Rubber Co., as to the proper location of disclosure of the country or origin on packages containing items of vinyl baby apparel imported from Taiwan.

According to the Commission's understanding of the facts, your company will label the individual imported items "Made in Taiwan," and package them in clear poly bags in such a manner as to clearly and conspicuously disclose the country of foreign origin. The bags used in packaging will contain no writing, such as, "Made in U.S.A." and the label will be clearly visible through the bag.

The Commission has given this matter careful consideration, and is of the view that, based on the material and information available, failure to disclose the country of foreign origin on the clear poly bags would not be deceptive.

By direction of the Commission.

Letter of Request

August 13, 1970

Dear Mr. O'Brien:

Would you please be good enough to render or have rendered an opinion on our discussion of today August 13, 1970.

To wit, we are planning on packing three items made in Taiwan, labeled MADE IN TAIWAN on each individual item in a poly bag, with a header stating the name of the store and size of the item and retail price. There will be no printing on the bag, such as, made in U.S.A. etc.

As per our discussion, it was your opinion that we need not mention country of origin on the package itself, as long as the goods were clearly labeled and the labels visible through the poly bag.

Awaiting your reply.

Very truly yours,
RAND RUBBER COMPANY, INC.

/s/ Mort Spill
Director of Marketing and Sales

Disclosure of former title of monthly trade journal on issues carrying the new title. (File No. 713 7007)

Opinion Letter

November 23, 1970

Dear Mr. Gray:

This is in reply to your letter of September 23, 1970, requesting advice as to whether it will be necessary to disclose the former title of your magazine, Tourist Court Journal, on issues carrying the new title Motel/Motor Inn Journal.

As the Commission understands the facts, the change in title will be initiated as of the November 1970, issue.

The Commission has given your request careful consideration, and based on the information furnished, is of the view that failure to disclose the old title on issues containing the new title probably would not violate any of the laws administered by the Commission. This opinion in no way implies either approval or disapproval as to the propriety of your use of the title Motel/Motor Inn Journal.

By direction of the Commission.

Letter of Request

September 23, 1970

Dear Sir:

It is our understanding that according to a ruling of the Federal Trade Commission concerning the publishing of a new edition of a book with an entirely different title from that used in the original edition, the original title must appear wherever the new title is used—the cover, the title page, the jacket, etc. Although we are not primarily concerned with the publishing of a new edition of a book, our immediate problem is somewhat similar, and, we do need to know if this ruling applies to our circumstances; and if so, then the specifics of compliance so far as your Commission is concerned.

We publish a trade journal monthly under the title of TOURIST COURT JOURNAL, which is directed to those in, and related to, the motel industry. Beginning with the November, 1970 issue, it is our intention to change the title of this publication from TOURIST COURT JOURNAL to MOTEL/MOTOR INN JOURNAL . . . this will be the only change in the publication. Will you, therefore, advise us of any ruling of your commission pertaining to this situation, and, the requirements necessary on our part to effect compliance with any such ruling. Also, in the event of having to perform certain acts of compliance, would it be for one issue only, or, each monthly issue thereafter. And if so, for how long?

Your help and consideration in this matter will be greatly appreciated.

Courteously yours,
TOURIST COURT JOURNAL
/s/ James L. Gray

Brand name advertising of milk of a particular producer or handler as compared to promotion of milk or milk products generally. (File No. 713 7010)

Opinion Letter

December 23, 1970

Dear Mr. Anderson:

This is in reference to your letter of June 15, 1970, in which you requested an advisory opinion on behalf of your clients, a group of agricultural cooperative milk marketing organizations covered by Milk Marketing Order #50, for the central Illinois area, and administered by the Secretary of Agriculture (7 C.F.R. 1050). The course of business action proposed involves the establishment of a "Federal Order #50 Committee" to promote brand name advertising

of the milk of a particular producer or handler, as compared to the promotion of milk or milk products generally.

The information supplied indicates that there are five or six cooperative milk marketing associations, organized pursuant to the pertinent provisions of the Capper-Volstead Act, 7 U.S.C. 291, 292, operating within the area covered by the milk marketing order promulgated by the Secretary of Agriculture for central Illinois (7 C.F.R. 1050). These cooperative associations and their members plan to establish the "Federal Order #50 Committee," composed of representatives of the cooperating dairies and handlers who sell, package or deliver milk and milk products into the area regulated by Federal Order #50. The purpose of the organization is stated to be to receive funds from dairy farmers and/or dairy cooperatives and disburse such funds for the purpose of advertising, research and promotion of Class I milk and dairy products, particularly on a brand name basis. The proposal as submitted also details the manner in which the cooperative advertising program will be operated. It indicates substantial compliance with the requirements of Sections 2(d) and 2(e) of the Clayton Act, as amended, as provided in the Commission's "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated May 29, 1968.

The Commission has considered your submittal and is of the opinion, subject to the limitations indicated below, that formation of the "Federal Order #50 Committee" by the cooperative associations of milk producers, milk handlers and dairymen under the described conditions probably would not result in violation of Commission administered statutes. This action is restricted solely to the formation of the proposed joint advertising program to be administered by "Federal Order #50 Committee," and is not to be construed as approval for any practice which may be predatory in nature, may result in unlawful monopolization, may restrain commerce to the extent that milk prices are unduly enhanced thereby, or for conspiracies or combinations between the members of the milk cooperatives operating under the Central Illinois Milk Marketing Order (7 C.F.R. 1050) and persons or entities not in this category. It should be noted specifically that restrictions on price announcements as provided in item 2 of the "Sample Notification" and item 6 of the "Policy" statement cannot be approved. It is essential for such provisions to be revised so as to make it clear that reimbursement will be made for advertisements which meet the basic requirements regardless of the price at which the milk is offered. Likewise, the approval herein granted may be rescinded or revoked upon notice should subsequent facts indicate a failure on the part of the Committee to conform the advertising program with Sections 2(d) and 2(e) of the Clayton Act, as amended.

By direction of the Commission.

Letter of Request

June 15, 1970

Attention: Robert L. Camenish
Attorney in Charge

Dear Sirs:

For appropriate examination and report under Business Review Procedures of the Commission, we are enclosing a proposal for operation of a joint advertising program for milk in the Central Illinois area.

The parties concerned are a group of agricultural cooperative milk marketing organizations in the areas involved. The milk is subject to regulation primarily under the Marketing Order administered by the Secretary of Agriculture for the Central Illinois area 7 CFT 1050. Lesser amounts of milk sold in the area are sold by handlers regulated by Marketing Order No. 32 Southern Illinois area, Order No. 30 Chicago Regional area, Order No. 49 Quad-City area, Order No. 62 St. Louis area and Order No. 63 Indianapolis area.

The proposal is to emphasize brand name advertising and promotion in the name of a particular cooperating handler or buyer as compared with the promotion of milk or milk products generally. The program has not been instituted or placed in operation pending your examination and report.

Please let us have your response at your earliest convenient date. If further information is required, please contact the undersigned or Mr. L. K. Wallace, Secretary-Manager, Illinois Milk Producers' Association, 1701 Townanda Avenue, Bloomington, Illinois 61701, telephone 309-828-0021.

We are sending a copy of this letter and the enclosed outline of the proposal to the Chicago Midwest Office of the Anti-Trust Division, Department of Justice, attention Mr. Bertram M. Long, assistant chief.

Thank you for the review and report requested.

Very truly yours,
MERKER & ADLER
James L. Anderson
JLA/deh

Enclosure

cc: Mr. Bertram M. Long
Assistant Chief
Midwest Office of Anti-Trust Division
Suite 2634
219 South Dearborn Street
Chicago, Illinois

The Enclosure

ORGANIZATION STRUCTURE FOR CENTRAL ILLINOIS ADVERTISING COMMITTEE

Name

The name of this organization shall be the "Federal Order No. 50 Committee."

Purpose

The purpose of this organization shall be to receive funds from dairy farmers and/or dairy cooperatives and disburse and allocate funds to organizations and corporations for the purpose of advertising, research and promotion of Class I milk and dairy products.

Management

The management, control and operation shall be under the direction of a committee made up as follows: one dairy farmer member appointed by the Board of Directors of such cooperatives that shall qualify as members as hereinafter provided. Such producer-member may be represented by an employee of his cooperative who may vote on all matters of business in case of the dairy farmer member's absence.

Qualification of members

Any dairy cooperative who regularly sells milk either directly by its producer-members to handlers regulated by Order No. 50 or who sell packaged milk into the above marketing area, or who sell bulk milk to handlers who sell milk into the above area, but who are regulated by another order and who contribute funds in accordance with policies as determined from time to time by the committee.

Responsibilities of committee members

The committee shall determine policies pertaining to the allocation, terms and conditions of eligibility, collection and disbursement of funds. The committee shall also have the authority to select a person or organization as an agent to be responsible for maintaining proper records, receive and collect funds, and otherwise administer the program as directed by the committee. The committee shall have the authority to determine reasonable compensation for the services of the agents in performing his functions as provided herein. The agent so selected shall not divulge or otherwise make public Class I sales, production or other market information of any handler or cooperative of any individual member or handler which is customarily kept confidential and which comes into his possession in carrying out his functions.

Cooperation with other promotion agencies

The committee shall cooperate and work closely with the American Dairy Association, A-D-A of Illinois, National Dairy Council and Dairy Research, Inc. It shall seek to function in such a manner that will supplement and support the work they are currently carrying out.

It shall also utilize any material or personnel of the above organizations which may be available to them and which might be of assistance in their work and which will be of the greatest possible service to the dairy industry.

First Letter of Request

May 11, 1970

Dear Mr. Shea :

Request is hereby made on behalf of Marketing Action Group, Inc. (MAG), a Delaware corporation, for an advisory opinion of the Federal Trade Commission in regard to a proposed promotion plan of MAG. A detailed plan of the proposed program is set forth in the memorandum enclosed herewith.

The proposed program of MAG is not currently being employed by the requesting party and is not the subject of any pending investigation or other proceeding by the Federal Trade Commission, or by any other agency of the United States Government, or of any State or local government, except that under date of April 21, 1970, it was submitted to the Mailability Division of the Post Office Department for its approval under the provisions of the Post Office Department.

We trust that the enclosed memorandum fully explains the proposed program to the satisfaction of the Commission. However, we will be glad to answer any questions which the Commission may have in regard to the MAG program. Please direct any inquiries to F. Herbert Prem, Jr., Esq. of this firm or, in his absence, to Robert B. Sims, Esq.

Very truly yours,
Whitman & Ransom

Enclosure

The Enclosure

MARKETING ACTION GROUP, INC.

Retail Merchants' and Manufacturers' Merchandising and Promotional
Program

Marketing Action Group, Inc. (MAG) is engaged in offering patrons of retail merchants and manufacturers (i.e., sponsoring corporations) an opportunity to participate in a merchandising and promotional program to be promoted under a name such as "Winners In Every Outlet" with a predetermined period of duration (which, for the purposes of this memorandum, shall be twelve weeks).

Promotion Pieces

Under this program, on each visit to a participating outlet, a customer (or other member of the public, since no purchase is necessary) would receive a folded, sealed, perforated promotion piece (FPD) advertising the promotion, outlining the rules, and bearing a serial number, the name and address of that particular FPD distributing outlet, and space for the customer's name and address. The serial number of the FPDs would be impossible to determine until the seal is broken by the customer and all FPDs in each series would be mixed to insure that winning game pieces would be distributed in each outlet on a random basis.

The FPD promotion pieces would be consecutively numbered and would be distributed by the sponsoring corporation or its promotion coordinator to each

outlet in lots or series of equal size—the size to depend upon the commercial nature of the sponsor. (For the purposes of this memorandum, it will be assumed that the majority of a sponsor's outlets would need at least 5,000 promotion pieces to cover their volume and thus each lot delivered to participating outlets would contain 5,000 FPDs numbered one through five thousand and randomly mixed.) Although no two numbers would appear twice in the same lot, for any number that is selected as a possible winner, there may be as many potential claimants for a prize as there are series of 5,000 numbers.

Corporate Section

There would be both corporate and in-outlet sections to the promotion. The corporate section would be operated from a sponsoring corporation's head office, would advertise available prizes to be awarded at the end of the promotion period, and would have a judging corporation randomly draw each week of the twelve-week promotion-period one winning FPD number across all participating outlets which would be mailed weekly to each outlet for posting and would remain posted for the duration of the promotion. Customers would check the numbers on the FPDs they hold against the numbers that have been posted. If at any time during the promotion an FPD serial number held by a customer matched one of the posted numbers, such customer would become a potential winner of a prize. In order to qualify for the second drawing which would determine the winner, a holder of a drawn and posted FPD would have to fill in his name and address in the space provided on each FPD and submit it to a previously announced address within three weeks from the last day of the promotion. The actual prize winners would then be selected by name at the end of the promotion period in a second series of twelve random drawings, one drawing from among the holders of each FPD number previously drawn and posted. (Thus, if the promotion runs for twelve weeks, there would be twelve different winning numbers and a like number of winners selected from the holders of each winning number.)

In-Outlet Section

The other element of the promotion would be an in-outlet section, also operated from corporate headquarters but (a) having a judging corporation randomly draw once, at the end of the twelve-week promotion, one potential winning number across all, and to be posted in, participating outlets for a large in-outlet prize (or prizes, as hereinafter described) which would be awarded at the end of the twelve-week promotion in each outlet (and could vary in each outlet as posted therein), and (b) awarding lower-value instant winner prizes throughout the course of the promotion.

In-Outlet Large Prize

A unique aspect of the in-outlet large prize promotion is that each outlet can select its own tailored in-outlet prize structure depending upon its particular needs and the manager's and/or owner's preference. The FPDs would advertise that in-outlet large prizes may vary with each outlet and advise customers to check the posted list of available prizes at the outlet where they received their FPD. If only one series of 5,000 FPD promotion pieces were distributed by an outlet, there would be one such large prize worth about \$100-\$150, with the particular prize to be selected by each outlet. If 5,000 promotion pieces were distributed, an outlet could award two prizes each worth \$100-\$150 or one prize worth \$200-\$300. Thus, the number of prizes available need not correspond to the aggregate number of series of FPDs distributed by the outlet, but would be dependent upon its preference.

ADVISORY COMMITTEE REPORT

In every participating outlet, the winning number would be posted and the customer with that number would win the outlet's large prize. If the in-outlet prize structure offers one prize for every series of FPDs distributed, each holder of a winning number would receive a prize. If, on the other hand, the number of prizes does not correspond to the aggregate number of series of FPDs distributed by the outlet (as where the particular outlet selects one grand prize covering several series of FPDs distributed), there would be a random drawing at the outlet to determine which claimant wins the one prize available, or, if several prizes of varying value are available, which wins a particular prize. All prizes in the previously announced prize structure would thus be awarded, and customers would have three weeks after the last day of the promotion in which to submit their claims.

If the exact winning number fails to appear, the nearest number would be awarded the prize. The rules of the promotion would advise customers that a holder of a number near the winning number should submit his name and address to the dealer from whom he received his FPD so that, should a holder of a winning number fail to appear to claim his prize, such "runner-up" could be notified to surrender his FPD in exchange for the outlet's large prize. Should more than one claimant appear as might occur if the holder of the exact winning number does not show up and the holders of the two closest numbers—one lower and one higher—appear to claim the prize, there would be a random drawing at the outlet to decide which claimant wins the prize.

In-Outlet Instant Winner

In every 5,000 FPDs there would be 100 "Instant Winners" which would be randomly selected by the judging corporation at the start of the promotion and a listing thereof would be posted in each outlet immediately. Such 100 Instant Winner numbers would be the same in every lot (and thus in every outlet) and would remain the same for the duration of the promotion. One or several series of 5,000 FPDs would be delivered to each outlet, depending upon its needs. Upon comparing his FPD number with the list of posted Instant Winners and discovering that he is such a winner, a customer would receive his lower-value prize immediately by surrendering his FPD to the dealer. All Instant Winner FPD numbers would then be precluded from being potential winning corporate or in-outlet large prize numbers.

Conclusion

The MAG program offers a new and unique approach to merchandising and promotional programs. It provides for (1) random selection of winning numbers and (2) actual prize winners and claimants to prizes in every participating outlet without seeding.

In distributing to every participating outlet at least one series of 5,000 FPD promotion pieces, the MAG program guarantees that every outlet which distributes at least one entire lot of 5,000 FPDs would have twelve potential winners of corporate prizes, one in-outlet large prize winner, and 100 Instant Winners. Although every participating outlet would have identical promotional pieces and winning numbers, there would be an assurance of random selection of winners since (1) winning numbers for corporate and in-outlet large prizes would be drawn after distribution of FPD promotional pieces to participating outlets and (2) Instant Winner numbers, even though they would necessarily have to be drawn prior to distribution of FPDs, would be sealed and mixed prior to distribution along with all other numbers in a series of 5,000. Thus, there would be no way (without obvious tampering) for anyone to determine a number before the FPD is in the possession of the customer.

The MAG program would create, in effect, a separate promotion in each participating outlet, with its own in-outlet prize winners and potential winners of corporate prizes.

Attached hereto are several pages bearing the contents of an FPD. Although there may be some alterations or modifications in the wording and design of the FPDs distributed during the promotion, the following example (not to scale) displays the basic concept.

Each FPD would be folded into thirds (see the three panels indicated on the diagrams) and sealed on all sides such that it would be impossible, in the absence of obvious tampering, to determine the serial number until the seal is broken by the customer.

Outside of Promotion Piece

Name of Sponsor Company

WINNERS IN EVERY OUTLET

3 OPPORTUNITIES TO WIN

SAVE YOUR NUMBER and COLLECT MORE NUMBERS

WATCH THE POSTED WINNERS LIST

No Purchase Necessary

Name and Address of Sponsor Company

Inside Promotion Piece

1st Panel

You May Be A Winner--

Your Number Offers You 3 Opportunities to Win

An immediate prize from this outlet

One of twelve company prizes

A prize from this outlet at the completion of this promotion

No Purchase Necessary

Number

2nd Panel

RULES: (See Attached)

Name—Address—State—Zip—City—Phone—

Number

Panel 2 Rules of the "Winners in Every Outlet" Promotion

1. Save this leaflet with your number shown in the lower right hand corner of panels one and three for the duration of the promotion until (date).

2. Instant winners are now posted at this outlet. If you have one of the instant winner numbers posted, surrender this leaflet to the manager and you will receive your prize now.

3. Each week of the promotion a new sponsor company prize number will be posted. There will be a total of (000) of these sponsor company prize numbers posted. If you have one or receive one of these numbers, fill in your name and

address in the space provided below and mail it to (address) no later than (date) (21 days after the final number is posted). Hold on to panel number one which also has your number. By (date) (28 days after the final number is posted) there will be (000) random drawings, one from each group of sponsor company prize numbers submitted. Only prize winners will be notified. For a list of winners, send a self-addressed envelope to (address).

4. At the completion of the promotion an Outlet Winner's number will be posted. If you have this number, fill in your name and address in the space below and submit it to the outlet manager by (date) (21 days after the number is posted). You are the winner of the outlet prize.

5. This promotion is open to all individuals/licensed drivers 18 years of age or above only, except employees of the sponsor company, its subsidiary outlets, manufacturers of promotion materials and families of the foregoing.

6. All entries are subject to verification. Entries are void and will be rejected if not obtained through legitimate channels or if illegible, mutilated, smeared or tampered with or contain printing or other errors. Void where restricted by law. Applicable taxes are the responsibility of winners.

(c) Copyright 1970 by the Marketing Action Group, Inc.
SAVE YOUR NUMBERS! COLLECT MORE NUMBERS!
NO PURCHASE NECESSARY!

—

Location of disclosure of country of origin on packages containing items of vinyl baby apparel imported from Taiwan. (File No. 713 7004)

Opinion Letter

November 23, 1970

Dear Mr. Spill:

This is in reply to your request for an advisory opinion on behalf of the Rand Rubber Co., as to the proper location of disclosure of the country or origin on packages containing items of vinyl baby apparel imported from Taiwan.

According to the Commission's understanding of the facts, your company will label the individual imported items "Made in Taiwan," and package them in clear poly bags in such a manner as to clearly and conspicuously disclose the country of foreign origin. The bags used in packaging will contain no writing, such as, "Made in U.S.A." and the label will be clearly visible through the bag.

The Commission has given this matter careful consideration, and is of the view that, based on the material and information available, failure to disclose the country of foreign origin on the clear poly bags would not be deceptive.

By direction of the Commission.

Letter of Request

August 13, 1970

Dear Mr. O'Brien:

Would you please be good enough to render or have rendered an opinion on our discussion of today August 13, 1970.

To wit, we are planning on packing three items made in Taiwan, labeled MADE IN TAIWAN on each individual item in a poly bag, with a header stating the name of the store and size of the item and retail price. There will be no printing on the bag, such as, made in U.S.A. etc.

As per our discussion, it was your opinion that we need not mention country of origin on the package itself, as long as the goods were clearly labeled and the labels visible through the poly bag.

Awaiting your reply.

Very truly yours,
RAND RUBBER COMPANY, INC.

/s/ Mort Spill
Director of Marketing and Sales

Disclosure of former title of monthly trade journal on issues carrying the new title. (File No. 713 7007)

Opinion Letter

November 23, 1970

Dear Mr. Gray:

This is in reply to your letter of September 23, 1970, requesting advice as to whether it will be necessary to disclose the former title of your magazine, Tourist Court Journal, on issues carrying the new title Motel/Motor Inn Journal.

As the Commission understands the facts, the change in title will be initiated as of the November 1970, issue.

The Commission has given your request careful consideration, and based on the information furnished, is of the view that failure to disclose the old title on issues containing the new title probably would not violate any of the laws administered by the Commission. This opinion in no way implies either approval or disapproval as to the propriety of your use of the title Motel/Motor Inn Journal.

By direction of the Commission.

Letter of Request

September 23, 1970

Dear Sir:

It is our understanding that according to a ruling of the Federal Trade Commission concerning the publishing of a new edition of a book with an entirely different title from that used in the original edition, the original title must appear wherever the new title is used—the cover, the title page, the jacket, etc. Although we are not primarily concerned with the publishing of a new edition of a book, our immediate problem is somewhat similar, and, we do need to know if this ruling applies to our circumstances; and if so, then the specifics of compliance so far as your Commission is concerned.

We publish a trade journal monthly under the title of TOURIST COURT JOURNAL, which is directed to those in, and related to, the motel industry. Beginning with the November, 1970 issue, it is our intention to change the title of this publication from TOURIST COURT JOURNAL to MOTEL/MOTOR INN JOURNAL . . . this will be the only change in the publication. Will you, therefore, advise us of any ruling of your commission pertaining to this situation, and, the requirements necessary on our part to effect compliance with any such ruling. Also, in the event of having to perform certain acts of compliance, would it be for one issue only, or, each monthly issue thereafter. And if so, for how long?

Your help and consideration in this matter will be greatly appreciated.

Courteously yours,
TOURIST COURT JOURNAL
/s/ James L. Gray

Brand name advertising of milk of a particular producer or handler as compared to promotion of milk or milk products generally. (File No. 713 7010)

Opinion Letter

December 23, 1970

Dear Mr. Anderson:

This is in reference to your letter of June 15, 1970, in which you requested an advisory opinion on behalf of your clients, a group of agricultural cooperative milk marketing organizations covered by Milk Marketing Order #50, for the central Illinois area, and administered by the Secretary of Agriculture (7 C.F.R. 1050). The course of business action proposed involves the establishment of a "Federal Order #50 Committee" to promote brand name advertising

of the milk of a particular producer or handler, as compared to the promotion of milk or milk products generally.

The information supplied indicates that there are five or six cooperative milk marketing associations, organized pursuant to the pertinent provisions of the Capper-Volstead Act, 7 U.S.C. 291, 292, operating within the area covered by the milk marketing order promulgated by the Secretary of Agriculture for central Illinois (7 C.F.R. 1050). These cooperative associations and their members plan to establish the "Federal Order #50 Committee," composed of representatives of the cooperating dairies and handlers who sell, package or deliver milk and milk products into the area regulated by Federal Order #50. The purpose of the organization is stated to be to receive funds from dairy farmers and/or dairy cooperatives and disburse such funds for the purpose of advertising, research and promotion of Class I milk and dairy products, particularly on a brand name basis. The proposal as submitted also details the manner in which the cooperative advertising program will be operated. It indicates substantial compliance with the requirements of Sections 2(d) and 2(e) of the Clayton Act, as amended, as provided in the Commission's "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated May 29, 1968.

The Commission has considered your submittal and is of the opinion, subject to the limitations indicated below, that formation of the "Federal Order #50 Committee" by the cooperative associations of milk producers, milk handlers and dairymen under the described conditions probably would not result in violation of Commission administered statutes. This action is restricted solely to the formation of the proposed joint advertising program to be administered by "Federal Order #50 Committee," and is not to be construed as approval for any practice which may be predatory in nature, may result in unlawful monopolization, may restrain commerce to the extent that milk prices are unduly enhanced thereby, or for conspiracies or combinations between the members of the milk cooperatives operating under the Central Illinois Milk Marketing Order (7 C.F.R. 1050) and persons or entities not in this category. It should be noted specifically that restrictions on price announcements as provided in item 2 of the "Sample Notification" and item 6 of the "Policy" statement cannot be approved. It is essential for such provisions to be revised so as to make it clear that reimbursement will be made for advertisements which meet the basic requirements regardless of the price at which the milk is offered. Likewise, the approval herein granted may be rescinded or revoked upon notice should subsequent facts indicate a failure on the part of the Committee to conform the advertising program with Sections 2(d) and 2(e) of the Clayton Act, as amended.

By direction of the Commission.

Letter of Request

June 15, 1970

Attention: Robert L. Camenish
Attorney in Charge

Dear Sirs:

For appropriate examination and report under Business Review Procedures of the Commission, we are enclosing a proposal for operation of a joint advertising program for milk in the Central Illinois area.

The parties concerned are a group of agricultural cooperative milk marketing organizations in the areas involved. The milk is subject to regulation primarily under the Marketing Order administered by the Secretary of Agriculture for the Central Illinois area 7 CFT 1050. Lesser amounts of milk sold in the area are sold by handlers regulated by Marketing Order No. 32 Southern Illinois area, Order No. 30 Chicago Regional area, Order No. 49 Quad-City area, Order No. 62 St. Louis area and Order No. 63 Indianapolis area.

The proposal is to emphasize brand name advertising and promotion in the name of a particular cooperating handler or buyer as compared with the promotion of milk or milk products generally. The program has not been instituted or placed in operation pending your examination and report.

Please let us have your response at your earliest convenient date. If further information is required, please contact the undersigned or Mr. L. K. Wallace, Secretary-Manager, Illinois Milk Producers' Association, 1701 Townanda Avenue, Bloomington, Illinois 61701, telephone 309-828-0021.

We are sending a copy of this letter and the enclosed outline of the proposal to the Chicago Midwest Office of the Anti-Trust Division, Department of Justice, attention Mr. Bertram M. Long, assistant chief.

Thank you for the review and report requested.

Very truly yours,
MERKER & ADLER
James L. Anderson
JLA/deh

Enclosure

cc: Mr. Bertram M. Long
Assistant Chief
Midwest Office of Anti-Trust Division
Suite 2634
219 South Dearborn Street
Chicago, Illinois

The Enclosure

ORGANIZATION STRUCTURE FOR CENTRAL ILLINOIS ADVERTISING COMMITTEE

Name

The name of this organization shall be the "Federal Order No. 50 Committee."

Purpose

The purpose of this organization shall be to receive funds from dairy farmers and/or dairy cooperatives and disburse and allocate funds to organizations and corporations for the purpose of advertising, research and promotion of Class I milk and dairy products.

Management

The management, control and operation shall be under the direction of a committee made up as follows: one dairy farmer member appointed by the Board of Directors of such cooperatives that shall qualify as members as hereinafter provided. Such producer-member may be represented by an employee of his cooperative who may vote on all matters of business in case of the dairy farmer member's absence.

Qualification of members

Any dairy cooperative who regularly sells milk either directly by its producer-members to handlers regulated by Order No. 50 or who sell packaged milk into the above marketing area, or who sell bulk milk to handlers who sell milk into the above area, but who are regulated by another order and who contribute funds in accordance with policies as determined from time to time by the committee.

Responsibilities of committee members

The committee shall determine policies pertaining to the allocation, terms and conditions of eligibility, collection and disbursement of funds. The committee shall also have the authority to select a person or organization as an agent to be responsible for maintaining proper records, receive and collect funds, and otherwise administer the program as directed by the committee. The committee shall have the authority to determine reasonable compensation for the services of the agents in performing his functions as provided herein. The agent so selected shall not divulge or otherwise make public Class I sales, production or other market information of any handler or cooperative of any individual member or handler which is customarily kept confidential and which comes into his possession in carrying out his functions.

Cooperation with other promotion agencies

The committee shall cooperate and work closely with the American Dairy Association, A-D-A of Illinois, National Dairy Council and Dairy Research, Inc. It shall seek to function in such a manner that will supplement and support the work they are currently carrying out.

It shall also utilize any material or personnel of the above organizations which may be available to them and which might be of assistance in their work and which will be of the greatest possible service to the dairy industry.

Sample Notification

FEDERAL ORDER NO. 50 COMMITTEE COOPERATIVE ADVERTISING PLAN

Dear _____:

Effective — day of _____, 1970, the Federal Order No. 50 Committee will cooperate with the costs of your advertising on the following basis:

1. We will pay one half of your net advertising cost up to a total expenditure of \$_____; said sum has been determined based upon your volume of Class I sales within the Federal Order #50.

2. This agreement shall not apply to advertising which is derogatory to a competing brand, in conjunction with a special price announcement or used in conjunction with a loss leader promotion.

3. Advertising payments hereunder shall only be made for advertising Class I dairy products.

4. You may advertise Class I products in one or more of the following mediums: local newspapers of general circulation; college and university newspapers; magazines, radio, TV, catalogues or brochures, provided that said advertising is primarily directed to consumers within the Federal Order #50 marketing area

5. Within 30 days after the advertising, you shall submit to_____.

(a) invoice for our share of the cooperative advertising, together with proof of performance in the form of a full page tear sheet for newspaper and magazine advertising or the copy used and verified proof of time for radio or TV advertising or a copy of the full catalogue or brochure; and

(b) proof of actual net costs in the form of an invoice or paid bill from the medium.

6. In the event that you are processing Class I products under other brand names in competition with other brand name Class I products, you shall notify your customer as to the terms of this offer and he shall be entitled to participate in this program pursuant to the terms herein contained. This plan shall be effective from and after the — day of _____, 1970 to the — day of _____, 1971 and may be extended only at the option of the Committee.

Send advertising and tearsheets to: _____

MEMBERSHIP AGREEMENT

The undersigned by the execution of this agreement hereby agrees to become a member of the Central Illinois Advertising Committee known as the Federal Order #50 Committee.

The undersigned further agrees that it will abide by the policies of the Committee and specifically Paragraphs 5(a), 5(b) and 6 of the policies for contributing cooperative members. The undersigned hereby appoints _____

to serve as his common agent with other members and authorize him to receive funds for the Cooperative Advertising Program either from the Super Pool or directly from the undersigned pursuant to Paragraph 6 of the aforesaid policies, and the undersigned agrees to make such payments as provided therein.

POLICY FOR PROCESSORS AND HANDLERS TO BE ELIGIBLE TO RECEIVE FUNDS FROM
ADVERTISING FUND

1. Both private corporations and cooperatives who meet the necessary qualifications shall be eligible to participate, hereinafter referred to as participating handlers.

2. All conditions and terms shall be made applicable and available to handlers regulated by Order #50, as well as those regulated by other Orders who sell Class I products within the marketing area as defined by Order #50.

3. Funds shall be available for the advertising of "brand" name Class I milk products as defined by Order #50 *only*.

4. Each handler shall be eligible to receive funds based upon the following guidelines published by the Federal Trade Commission, "Guides for Advertising allowances . . ." promulgated May 29, 1969:

(A) The payments under this plan shall be available on proportionately equal terms to all competing handlers in the Central Illinois Marketing Area (Order #50).

(1) Sellers (co-ops) shall take action to inform all their competing customers of the existence of and essential features of the promotion plan in ample time for them to take full advantage of it.

(2) Alternatives that are functionally available shall be offered to customers which find the basic plan not functionally available (i.e., TV may not be available in specific areas).

(3) The seller shall take precautions to see that services (advertising and promotion, in this case) are being performed and that he is not overpaying for them.

(4) In informing customers of the plan, the seller should provide sufficient information to give clear understanding of the offer.

(5) At regular intervals (of at least 90 days) during the year a seller must make spot checks to verify the effectiveness of his notification procedures.

(Note: Guide 7 states that generally speaking the basis for treating customers on proportionately equal terms can be best done by basing payments on the quantity of goods purchased during a specified period. Thus the payments could be related to the quantity of Class I products disposed of within the marketing area. Our collections and disbursements could be related to these data.)

5. Each eligible handler shall provide 30 days in advance an advertising budget or statement of advertising expense for a period not to exceed six months for committee approval and for which he is assured matching funds will be made available by participating cooperatives, to the extent monies are allocated to the handler.

6. Handler may become eligible for reimbursement for any advertising purposes which are available for purchase and in use promoting Class I sales except as follows: ads or material shall not cast reflection or be derogatory towards a competing brand. Ad material shall not be used in conjunction with a price announcement in such a manner that the consumer is influenced towards one brand over another on the basis of price, or used in conjunction with a loss leader type of promotion. Ad material shall be directed for use in the Federal Order #50 area.

7. Handler shall provide copies of paid advertising invoices and such other proof of having entered into a contract with radio, TV, newspapers, etc., for such advertising and promotion of Class I products.

8. Each handler shall authorize the Market Administrator to release to the Administrator such Class I sales information for such periods necessary for determining eligibility.

POLICY FOR CONTRIBUTING COOPERATIVE MEMBERS

1. Make available and authorize the Order #50 Market Administrator to make available such sales and market information to proper designated person so payments due, sales, etc., can be properly determined.

2. Agree to pay or authorize Pooling Agent or other person to pay the amounts due to the person responsible for the collection and disbursement of funds under the direction of committee.

3. Agree to provide from super-pool funds or otherwise pay to committee the assessment agreed upon.

4. Agree to provide such funds for one year subject to the member giving written notice of his intention to cancel such agreement at least four months in advance to the committee.

5. The assessment shall be based upon the :

(a) Volume of producers milk pooled under Federal Order #50 at the rate of $4\frac{1}{2}\text{¢}$ per hundred weight. Two cents per hundred weight shall be dispersed to the State American Dairy Association for the Basic Program. The remainder shall be used for the advertising program hereinafter provided.

(b) In addition there shall be provided additional funds from cooperative members whose milk is sold within the Federal Order #50 area but priced pursuant to another Order based upon 4¢ per hundred weight for Class I sales within the Federal Order #50 area (the 4¢ per hundred weight on Class I sales approximates an assessment of $2\frac{1}{2}\text{¢}$ per hundred weight on all milk pooled under Federal Order #50).

6. Each member shall authorize the Pooling Agent to make distribution of funds in 5(a) and (b) herein to the agent selected by the committee. In the event of termination of the super pool, members shall pay the monies determined herein directly to the agent and shall continue such arrangement from year to year thereafter unless cancelled upon four months prior written notice. All payments required herein shall be remitted monthly.

Proposed direct mailing program for issuance of a "MoneyCard" to loan prospects whose names are obtained from chattel mortgage and credit bureau lists. (File No. 713 7015)

Opinion Letter

December 31, 1970

Dear Mr. Bramwell:

This is with further reference to your request for an advisory opinion regarding the proposed "MoneyCard" plan of Aetna Finance Company, a subsidiary of International Telephone and Telegraph Corporation.

It is the Commission's understanding that the "MoneyCard," in size and appearance, would be comparable to a credit card. It would bear a serial number and the name of the person to whom it was issued.

In fact, however, it would not be a credit card and would have printed on the bottom of the principal face:

This will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card.

The following language would be printed on the back:

This card is authorized for the exclusive use of the person named on the other side. It may be presented at any of the more than 300 affiliated Aetna offices where it will serve to introduce such person to an Aetna representative.

Aetna would attach the card to a flyer containing a loan application form. A form letter transmitting the card and flyer would indicate the card was to serve to introduce the addressee to an Aetna loan office where he could apply for a loan.

Addressees' names would be obtained from chattel mortgage lists. Lists of persons for whom credit had been approved, purchased from credit bureaus, also would be used. The letter also would invite the cardholder to phone an Aetna office or to mail the completed loan application, so that work could begin promptly on his application. The cardholder, however, would be treated the same as any other potential loan customer.

The Commission is of the opinion that implementation of the proposal would raise very serious questions under Section 5 of the Federal Trade Commission Act, both with respect to the possible deception of cardholders as to their eligibility for loans, and with respect to the possible misuse of the "MoneyCard" by cardholders to misrepresent their credit worthiness in transactions with third parties.

If the plan for use of the "MoneyCard" is put into effect, initiation of an investigation to ascertain whether such use constituted a violation of Section 5 of the Federal Trade Commission Act may be warranted.

By direction of the Commission.

Supplemental Letter Relative to Request

October 30, 1970

Dear Mr. Dufresne:

We have your letter of October 20, 1970.

The primary source of names and addresses of persons to whom the "MoneyCard" would be mailed are chattel mortgage lists and lists purchased from credit bureaus of persons for whom credit has been approved. Both sources provide names of persons who have previously obtained credit and who, experience shows, are likely to be good prospects for consumer finance loans and to be acceptable credit risks.

When a holder of a "MoneyCard" visits an Aetna office, he would be treated essentially the same as any other potential loan customer.

The purpose of a card of introduction is accomplished when it is presented. In this case, the card does not promise any more than is intended and specifically stated on the front of the card: "This card will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card." In view of this clear statement, it is difficult to see how any holder of the card could be misled, or to imagine any merchant extending credit or accepting a check in reliance on the card. Furthermore, in view of the fact that a merchant must have a contractual relationship with the issuer of a credit card in order for the merchant to receive payment from the issuer, the individual merchant and his employees must know what credit cards they may accept. Also, because of the detailed procedures for acceptance of credit cards by merchants which are required by the issuers, there is a high degree of sophistication among merchants and their employees concerning the handling of credit cards. Accordingly, the possibility of misuse seems rather slight.

We trust that this letter will answer your questions, but if you have any further questions or comments, we will be pleased to meet with you to discuss them.

Very truly yours,
/s/William M. Bramwell, Jr.
Assistant Secretary

Letter of Request

October 5, 1970

Dear Mr. Shea:

Aetna Finance Company (the name under which ITT Aetna Corporation's operating subsidiaries do business) proposes to undertake a direct mailing program to prospective loan applicants. The proposed direct mailing program will include a card of introduction, known as the Aetna "MoneyCard" (a registered service mark), which will be used for the sole purpose of introducing the holder to an Aetna office where he may apply for a loan.

We are aware that the Commission has recently adopted Trade Regulation Rule, Section 421.1 (hereinafter referred to as the "Rule"), which prohibits the mailing of unsolicited credit cards. Inasmuch as the Rule defines a "credit card" to mean any card, plate, coupon book, or other credit device employed for the purpose of establishing *identity and credit*, we respectfully request, pursuant to Sections 1.1 to 1.4 of the Commission's Procedure and Rules of Practice, an advisory opinion that the mailing by Aetna Finance Company of its proposed card, which merely serves to introduce the holder to an Aetna office but does not establish credit, will not violate the Rule.

The direct mailing will consist of only the following:

1. The proposed Aetna "MoneyCard".

2. Proposed flyer to which the card will be attached.
3. Proposed letter to loan prospect with which the card and flyer are to be enclosed.

Samples of each are attached for your information. (Only one sample of the card itself is being submitted since it was hand lettered by the art department of an outside agency and cost \$75.00. Additional samples would each cost the same. However, twelve xerox copies of all three items are being submitted, including the back as well as the front of the card and the flyer.)

The proposed direct mailing program is not currently being followed, and the program is not the subject of a pending investigation or other proceeding by the Commission or other governmental agency. Aetna previously had a program of direct mailing which was discontinued prior to the effective date of the Rule, and all of the materials have been substantially rewritten.

It is clear from its face that the Aetna card does no more than introduce the holder to an Aetna office where he may apply for a loan. A form of loan application is printed on the reverse of the flyer to which the card is attached. There is no promise, express or implied, in either the card itself, the flyer or the covering letter that the holder is guaranteed a loan. In fact, the card expressly states on its face that "It is not a credit card." The attached items, taken together or individually, are simply an invitation to apply for a loan. Thus, the card does not in any manner establish credit.

Since the card does not in fact establish the credit of the holder, the hazards which the Rule was designed to overcome are not present in the direct mailing of the Aetna card. The mailing of the card does not in any way establish an account for the recipient, would not expose the intended recipient to any risk of the card being misappropriated and fraudulently used by unknown parties, would result in no billings whatsoever to the intended recipient, and would not require the return of an unwanted card. The recipient of the card must take affirmative steps, other than the mere submission of the card, in order to establish an account and receive credit.

For the above reasons it is respectfully submitted that the direct mailing of the Aetna "MoneyCard" would not violate the aforementioned Trade Regulation Rule or any other law or regulation administered by the Federal Trade Commission, and it is respectfully requested that the Commission issue an advisory opinion so stating.

If you have any questions concerning this request, please call the undersigned collect at (212) 752-6000, extension 8872.

Very truly yours,
/s/ William M. Bramwell, Jr.
Assistant Secretary

Here's your personal

Aetna MoneyCard

It will introduce you to any Aetna office where you may apply for a loan.

"An exclusive servicework for consumer finance loans
(See other side)

Aetna Finance MoneyCard

012 089 069

JOHN Q. PROSPECT

This card will serve to introduce you to any Aetna office where you may apply for a loan. It is not a credit card.

"An exclusive servicemark for consumer finance loans
please detach and keep in your wallet or purse for ready availability. This MoneyCard is authorized for your exclusive use.

CONFIDENTIAL APPLICATION (for Loans up to \$5,000).
Fill out and bring or mail to your nearby local office or phone the manager, if you prefer.

I would like to reply for a loan in the amount of \$-----
 I would like the money on-----

Day Date

Convenient monthly payments. Indicate No. months desired:-----

Wife's

Name ----- Name -----

Address -----

City and State-----

Phones where I may be reached when money is ready :

Day----- Night-----

(It is understood this request is for your files only)

There's an AETNA office near you.

See list of Aetna offices on enclosed folder for location nearest you.

You may obtain cash promptly in 3 ways :

1. PHONE nearest office.
2. COME IN and present application to cashier.
3. MAIL your request. Address nearest office.

Loans to \$2000 made by AETNA FINANCE CO.

Loans over \$2000 made by AETNA CREDIT CO.

Under 2nd Mortgage Registration Act.

Loans made subject to usual credit requirements

(over)

AETNA : Aetna Finance Company, A Financial Service of ITT

DEAR FRIEND,

You will be pleased to receive the enclosed new Aetna MoneyCard. It is authorized for your exclusive use and will serve to introduce you to any Aetna office where you may apply for a loan—for back-to-school expenses, an unexpected bill for car or home repairs, or any worthwhile purpose.

You may also apply for a loan to pay off bills and debts. If you face some worrisome bills or high installment payments, our Consolidation Plan can combine monthly payments that you will like.

Whenever you need a loan, please bring your MoneyCard to your nearby Aetna office. If it is not convenient to come in, just phone and tell us that you are an Aetna MoneyCard holder so that we can begin work on your loan application. Or—mail your request on the enclosed form. We'll process your application promptly.

Remember, at Aetna, we're here to help *you*.

Sincerely yours,

ROBERT H. BENSON,
Treasurer's Office.

A National Finance System—Over 50 Years of Service

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*Prior to October 29, 1969, in conformity with the policy of the Commission, advisory opinions were confidential and available to the public only in digest form. Digests of advisory opinions were published in the Federal Register. The policy was changed on October 29, 1969, to provide for publication of advisory opinions and requests therefor, including names and details, when rendered, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest. The policy was again changed on December 22, 1971, to provide for the placement in the Commission's public record of advisory opinions and requests therefor, including names and details, immediately after the requesting party has received the Commission's advice, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest.

In the case of requests for advice concerning proposed mergers, the requests together with supporting materials are placed on the public record as soon after they are received as circumstances permit, except for information for which confidential classification has been requested, with a showing therefor, and which the Commission, with due regard to statutory restrictions, its rules, and the public interest, has determined should not be made public. Any advice given under Section 1.3 of the Commission's Rules of Practice concerning proposed mergers, together with a statement of supporting reasons, are published when given.

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