In the Matter of

PACIFIC RESOURCES, INC.

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

Docket 9211. Complaint, Nov. 25, 1987—Decision, Nov. 4, 1988

This consent order prohibits, among other things, Pacific Resources, Inc. ("PRI") from acquiring, without prior Commission approval, any substantial Hawaiian wholesale terminal from a competitor or from entering into any terminalling agreement for more than fifty percent of the capacity of such terminal.

Appearances

For the Commission: *Arthur J. Nolan.*

For the respondent: *John Herfort* and *Stuart D. Karle, Gibson, Dunn & Crutcher,* New York City and *Phillip H. Rudolph, Gibson, Dunn & Crutcher,* Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Pacific Resources, Inc. ("PRI"), a corporation subject to the jurisdiction of the Federal Trade Commission, has entered into an agreement with Shell Oil Company ("Shell"), described in paragraph 5 herein, that, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; that said agreement and the actions of the respondent to implement that agreement constitute violations of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. PACIFIC RESOURCES, INC.

1. Respondent PRI is a corporation organized and existing under the laws of the State of Hawaii, with its principal place of business at 733 Bishop Street, Honolulu, Hawaii.

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

II. SHELL OIL COMPANY

3. Shell is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at One Shell Plaza, Houston, Texas.

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

III. THE ACQUISITION

5. On or about March 17, 1987, PRI entered into a purchase agreement with Shell pursuant to which PRI agreed to purchase the petroleum terminalling and distribution assets and operations of Shell in the State of Hawaii. The total value of the proposed transaction is approximately $32 million. On November 6, the United States District Court for the Western District of Washington preliminarily enjoined the proposed transaction. On November 12, 1987, PRI and Shell terminated the acquisition agreement and withdrew their Hart-Scott-Rodino filing.

IV. TRADE AND COMMERCE

A. *Relevant Line of Commerce*

6. Two relevant lines of commerce in which to analyze PRI's acquisition of the Hawaiian assets of Shell Oil Company are the distribution of gasoline and diesel fuel from terminals.

B. *Relevant Section of the Country*

7. The relevant sections of the country are the individual islands of Oahu, Maui, Hawaii, and Kauai in the State of Hawaii.

V. MARKET STRUCTURE

8. Distribution of gasoline and diesel fuel from terminals in each relevant market is extremely concentrated, whether measured by

Herfindahl-Hirschmann Indices ("HHI") or by two-firm and four-firm concentration ratios.

VI. BARRIERS TO ENTRY

9. Entry into the relevant markets set out in paragraphs 6 and 7 herein, is very difficult.

VII. ACTUAL COMPETITION

10. PRI and Shell are actual competitors in the distribution of gasoline from terminals on the island of Oahu. PRI and Shell are actual and potential competitors in the distribution of diesel from terminals on the islands of Oahu and Hawaii.

VIII. POTENTIAL COMPETITION

11. PRI and Shell are potential competitors in the distribution of gasoline from terminals on the islands of Hawaii, Maui and Kauai. PRI and Shell are potential competitors in the distribution of diesel from terminals on the islands of Maui and Kauai.

IX. EFFECT

12. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the product markets in relevant sections of the country described above in paragraphs 6 and 7 in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

a. eliminating actual competition between Shell and PRI;
b. eliminating potential competition between Shell and PRI;
c. creating a dominant firm;
d. increasing the degree of vertical integration and thereby the difficulty of entry; and
e. facilitating anticompetitive interdependent conduct, nonrivalrous behavior, collusion, or parallel policies of mutual advantage.

All of the above increase the likelihood that firms in the market will increase prices and decrease the likelihood that they will decrease prices both in the near future and in the long term.

X. VIOLATION CHARGED

13. The acquisition agreement described in paragraph 5 herein

constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

14. The proposed acquisition described in paragraph 5 herein would, if consummated, violate Section 7 of the Clayton Act as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondent Pacific Resources, Inc. ("PRI") with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now, in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent PRI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Hawaii with principal offices at 733 Bishop Street, Honolulu, Hawaii.

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

ORDER

I.

As used in this order, the following definitions shall apply:

(a) *"Exchange agreement"* means any arrangement or transaction or series of arrangements or transactions, other than a terminalling agreement as defined in subparagraph (j) of this paragraph, in which two or more persons or firms reciprocally transfer to each other or their respective consignees or assignees, quantities of petroleum products, without collecting a monetary price, except possibly some monetary accounting or settlement for the difference for differentials between quantity, transportation, storage, or handling of the exchanged products. An exchange agreement also includes a buy-sell arrangement or a purchase-and-sale transaction or any series of transactions or arrangements in which two or more firms or persons, at or about the same time, reciprocally agree to sell to and purchase from each other at some price but pursuant to mutual understanding, that one party's sale to the other is dependent or contingent upon the latter's reciprocal sale to the former.

(b) *"Gasoline station"* means a facility at which retail marketing is or has been conducted. "Gasoline station" does not include a facility that is closed and has not been used to sell gasoline to the public for a year or more.

(c) *"Petroleum products"* means any grade of leaded or unleaded gasoline and diesel fuel #2.

(d) *"Refining"* means converting crude oil into various refined petroleum products such as gasoline, diesel fuel and jet fuel.

(e) *"Refinery"* means a facility that converts crude oil into various refined petroleum products such as gasoline, diesel fuel and jet fuel.

(f) *"Respondent"* means Pacific Resources, Inc. ("PRI"), its predecessors, parent companies, subsidiaries, divisions, groups and affiliates controlled by respondent, and all their respective directors, officers, employees, agents and representatives and all their respective successors and assigns.

(g) *"Retail marketing"* means selling gasoline to the public.

(h) *"Terminal"* means any petroleum product facility in the State of Hawaii, not owned or operated by respondent on the date this order becomes final, that has a total petroleum products storage capacity exceeding 10,000 barrels (42 U.S. gallons per barrel) and that has or

had in the past two (2) years equipment to dispense smaller quantities from the storage tanks into tank trucks. "Terminal" does not include (i) an entire facility that has been closed and has not been used to store petroleum products for at least two (2) years prior to its proposed acquisition by respondent or (ii) any part of a facility that is used and has been used for the last two (2) years exclusively for the storage of products other than petroleum products.

(i) *"Terminalling"* means storing petroleum products at a terminal. A party is "engaged in terminalling" if it stores petroleum product at a facility that it owns or operates in whole or in part.

(j) *"Terminalling agreement"* means any arrangement whereby respondent (i) purchases or leases any part of a terminal, (ii) becomes the operator of any part of a terminal, or (iii) contracts for the use of any part of a terminal.

(k) *"Throughput agreement"* means any arrangement, other than a terminalling agreement as defined in subparagraph (j) of this paragraph, for receipt, storage and dispensing of petroleum products at a terminal owned or operated by another person or firm.

II.

It is ordered, That for a period commencing on the date this order becomes final and continuing through March 31, 1997, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without prior approval of the Federal Trade Commission, any part of the stock or share capital of any person or firm engaged in terminalling, refining, or retail marketing in the State of Hawaii, or any assets of, or interest in a refinery, terminal or gasoline station in the State of Hawaii.

It is further ordered, That for a period commencing on the date this order becomes final respondent shall cease and desist from entering into, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any terminalling agreement in the State of Hawaii that takes effect before March 31, 1997.

Provided, however, That nothing in paragraph II of this order shall require prior approval of the Federal Trade Commission for, or prohibit respondent from:

(a) acquiring in a transaction (not part of a series of transactions involving the acquisition for $375,000 or more of all or part of a

terminal) a terminal the acquisition price of which is not more than $375,000;

(b) acquiring any gasoline stations from any party who neither owns nor operates all or part of a terminal on the island of the State of Hawaii where such gasoline station or stations are located and has neither owned nor operated a terminal on that island within two (2) years of the time of the proposed acquisition;

(c) acquiring from any one party any of the following: (i) not more than ten (10) gasoline stations on the Island of Oahu; (ii) not more than four (4) gasoline stations on the Island of Maui; (iii) not more than three (3) gasoline stations on the Island of Hawaii; (iv) not more than two (2) gasoline stations on the Island of Kauai; (v) not more than one (1) gasoline station on the Island of Molokai;

(d) leasing or contracting for the use of the petroleum products capacity of a terminal, provided that the lease or contract does not have the effect of excluding others from the use of 50 percent of the petroleum products capacity of the terminal;

(e) making any lease or contract for the use of a terminal where neither the owner nor operator of that terminal has owned within two (2) years of the lease or contract any gasoline stations located on the same island as the terminal; or

(f) making any lease or contract for the use of a terminal where the owner and the operator retains ownership of at least the same number of gasoline stations that it owns on the same island as the terminal for at least five (5) years after the lease or contract is consummated.

III.

One (1) year from the date this order becomes final and annually thereafter, respondent shall file with the Commission a verified written report of its compliance with this order, as well as a summary of the date, parties, location, volumes, duration and terms of each agreement respondent entered during the year concerning (i) any acquisition or lease from another party of a gasoline station in the state of Hawaii, (ii) any acquisition of a terminal in the state of Hawaii, and (iii) any arrangement that provides respondent with petroleum product storage at a terminal in the state of Hawaii not owned or operated by respondent, including exchange agreements, throughput agreements, leases or similar arrangements.

IV.

Nothing in this order shall apply to, require Federal Trade Commission prior approval for the exercise of, or otherwise limit the respondent's rights under any terminalling or other agreement in effect prior to the date this order becomes final, or to any extension of these rights if the assets, capacity, and throughput (as appropriate) available to respondent do not increase as a result of such extension.

V.

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent made to its principal offices, respondent shall permit any duly authorized representatives of the Commission:

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

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

VI.

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

CONCURRING STATEMENT OF CHAIRMAN DANIEL OLIVER

In October 1987 the Commission filed an application for injunctive relief to prevent Pacific Resources, Inc. from acquiring any of the Hawaiian Petroleum distribution and marketing assets of Shell Oil Company. I supported the Commission decision to authorize that application. In November 1987 a federal district court enjoined consummation of the acquisition, and the parties subsequently announced that they had terminated their acquisition agreements.

Later in November 1987 the Commission voted to issue an administrative complaint against Pacific Resources. I dissented from that decision because Pacific Resources had abandoned its acquisition effort, and I felt that additional litigation to secure additional relief was not warranted. Fortunately, counsel for the complaint and for Pacific Resources have been able to negotiate an order that represents a good settlement, and that is far preferable to the prospect of additional litigation. I have therefore voted for final approval of the proposed order.

IN THE MATTER OF

NEW YORK STATE CHIROPRACTIC ASSOCIATION

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

Docket 9210. Complaint, Sept. 9, 1987—Decision, Nov. 11, 1988

This consent order prohibits, among other things, the New York State Chiropractic Association from conspiring to coerce higher payments for chiropractors from Group Health Inc., a third-party payer of health care benefits, through mass departicipation.

Appearances

For the Commission: *Jonathan B. Banks.*

For the respondent: *Lillian R. Villanova,* White Plains, N.Y. and *Tom M. Schaumberg, Howrey & Simon,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the New York State Chiropractic Association has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent New York State Chiropractic Association ("respondent") is a corporation formed pursuant to the laws of the State of New York. Respondent is a voluntary association of approximately 1800 chiropractors, who comprise a majority of the chiropractors licensed to practice in New York. Its principal business office is located at 215 Park Avenue South, Room 1813, New York, New York.

PAR. 2. Respondent's members are generally engaged in the business of providing chiropractic services to patients for a fee. Except to the extent that competition has been restrained as herein alleged, respondent's members have been and are now in competition among

themselves, and with other chiropractors and other health care providers.

PAR. 3. Respondent is organized for the purpose, among others, of guarding and fostering its members' economic interests, and it engages in substantial activities that further its members' pecuniary interests. As a result of such purpose and activities, respondent is a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the conduct of their businesses of providing chiropractic services, respondent's members treat patients from states other than New York, use supplies and equipment that are shipped across state lines, and receive for their services substantial sums of money that flow across state lines. Some fees for chiropractic services rendered by respondent's members are paid by patients or third-party payers from states other than New York, and some are paid by patients or third-party payers in New York State with funds collected from third-party payers, employers or employees in states other than New York. The general business practices of respondent's members, and the acts and practices described below, affect the interstate movement of patients, the interstate purchase of chiropractic supplies and products, and the interstate flow of funds, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 5. Fees that chiropractors charge their patients are often covered by health benefit programs that are sold by third-party payers. Among the third-party payers offering health benefits programs to persons employed within the State of New York is Group Health, Inc. ("GHI").

PAR. 6. GHI invites health care providers, including chiropractors, to enter into participation agreements, which establish the terms and conditions of the relationship between the providers and GHI. When a chiropractor and GHI enter into a participation agreement, they agree that when the chiropractor renders services to a patient who is insured under GHI's health benefit plan, GHI will pay the participating chiropractor directly and the chiropractor will accept the amount received from GHI as payment in full. Thus, under the GHI participation agreement, in exchange for contractual benefits that may be advantageous to the chiropractor, including direct payment from GHI for services provided to its subscribers, the chiropractor

agrees not to require any payment from the patient (except for the small co-payment GHI requires the patient to make under some contracts).

PAR. 7. GHI competes with many other persons offering health benefit programs. This competition involves prices (*i.e.*, premiums), services covered and many other factors of concern to individuals seeking health insurance. Therefore, GHI seeks to minimize its costs, while also securing participation agreements with sufficient health care providers, in terms of quantity, quality and other relevant factors, to attract subscribers to the GHI health benefit programs. Accordingly, GHI offers to chiropractors participation agreements with the terms and conditions that GHI believes will minimize its costs while still attracting enough chiropractors to make GHI health benefit programs attractive to consumers. Absent collusion between or among chiropractors, each chiropractor would decide individually whether to enter into a participation agreement with GHI, and GHI and its subscribers would enjoy the benefits of competition among the chiropractors.

PAR. 8. In deciding the terms and conditions to offer chiropractors in participation agreements, GHI has attempted to keep down the price it pays for chiropractic services provided to its subscribers in at least two ways. First, it has limited the dollar amount it will pay for each diagnostic x-ray, initial consultation session and actual treatment session. Second, it has limited the number of treatment sessions for which it will provide payment, absent a specific showing by the chiropractor that additional treatments are or were necessary and appropriate.

PAR. 9. In 1984 respondent agreed with some of its members, and some of its members agreed among themselves, that they would not compete with each other, but would act as a united front to coerce an increase in payments to participating chiropractors. Pursuant to that agreement, respondent, acting as a combination of at least some of its members, or in conspiracy with some of them or others, engaged in the following specific actions, among others:

A. In December 1984 respondent threatened GHI with collective action by its members if GHI did not accede to respondent's demand for increased payment levels for chiropractic services.

B. In January 1985 respondent took a survey of its members to determine, among other things, whether those who participated in GHI's program would support a concerted departicipation effort. The

results showed that a substantial majority of respondent's members who completed and returned the survey were willing to departicipate from GHI's program as part of a concerted campaign if requested to do so by respondent.

C. In May 1985, after GHI refused to meet the terms and conditions demanded by respondent, respondent began soliciting its members to resign from participation in GHI's program and to send their letters of resignation to respondent, which would present them collectively and directly to GHI. Respondent sent two solicitation letters to its members, each bearing the heading, "URGENT—MEMBER ACTION REQUESTED."

D. In May and June 1985, in response to respondent's solicitation efforts, many of respondent's members submitted the requested resignation letters to respondent, which in turn submitted them to GHI.

E. In July 1985 GHI agreed to reconsider its position with respect to the limits it placed on payments for chiropractic services, and respondent ceased soliciting letters of resignation from its members. On August 1, 1985, for many diagnosis, GHI increased the number of treatments for which it would pay without requiring additional information from the chiropractor.

F. Shortly after an increase in GHI's payment levels for chiropractic services became effective on July 1, 1986, respondent requested that GHI return the resignation letters that respondent had sent to GHI.

PAR. 10. Respondent's action described in paragraph nine have had, or have the tendency and capacity to have, the following effects, among others:

A. Restraining price and service competition among chiropractors in the State of New York.

B. Increasing the prices that chiropractors in the State of New York are paid for their services.

C. Depriving GHI and its insureds of the benefits of competition among chiropractors in the State of New York.

PAR. 11. Respondent's acts and practices described in paragraph nine constitute a conspiracy to fix prices and to conduct a boycott, and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Respondent's combination or conspiracy, or the effects thereof, is continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with §3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent New York State Chiropractic Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 215 Park Avenue South, in the City of New York, State of New York.

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

ORDER

I.

It is ordered, That for purposes of this order the following definitions shall apply:

A. *"NYSCA"* means New York State Chiropractic Association and

its Board of Directors, House of Delegates, districts, committees, officers, representatives, agents, employees, successors and assigns.

B. *"Third-party payer"* means any person or entity that reimburses for, purchases, or pays for health care services provided to any other person, and includes, but is not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

C. *"Chiropractor"* means a person licensed to engage in the practice of chiropractic.

D. *"Participation agreement"* means any existing or proposed agreement in which a third-party payer agrees to pay a chiropractor directly for the provision of chiropractic services, and the chiropractor agrees in advance to accept such payment from the third-party payer for the provision of such chiropractic services during the term of the agreement.

II.

It is further ordered, That NYSCA, directly, indirectly, or through any corporate or other device, in connection with the provision of chiropractic services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, implementing, or continuing any agreement or understanding, express or implied, with any NYSCA member or among any NYSCA members, to deal with any third-party payer on collectively determined terms by, for example:

1. acting on behalf of any NYSCA member or members to negotiate with any third-party payer; or

2. communicating that NYSCA members will refuse to enter into or withdraw from any participation agreement, actual or proposed, if any term or condition is not acceptable to NYSCA or to NYSCA members collectively.

B. For a period of eight (8) years after the date the order is served,

providing advice to any NYSCA member on the desirability or appropriateness of any participation agreement or of any term of any participation agreement, actual or proposed, including, but not limited to, comments on the desirability or appropriateness of any such agreement or term, or advice that any NYSCA member refuse to enter into or withdraw from any participation agreement, actual or proposed.

III.

It is further ordered, That NYSCA:

A. Mail a copy of this order to each of its members within thirty (30) days of the date the order is served.

B. Publish this order in an issue of *NYSCA Newsletter* published no later than sixty (60) days after the date the order is served in the same type size normally used for articles which are published in *NYSCA Newsletter.*

C. For a period of five (5) years after the date the order is served, provide each new NYSCA member with a copy of this order at the time the member is accepted into membership.

IV.

It is further ordered, That NYSCA:

A. Shall file a written report with the Commission within ninety (90) days of the date the order is served, and annually for five (5) years on the anniversary of the date the order was served, and at such other times as the Commission may by written notice to NYSCA require, setting forth in detail the manner and form in which it has complied and is complying with the order.

B. For a period of five (5) years after the date the order is served, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including, but not limited to, all documents generated by NYSCA or that come into NYSCA's possession, custody, or control, regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement.

V.

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

IN THE MATTER OF

EUGENE M. ADDISON, M.D., ET AL.

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

Docket C-3243. Complaint, Nov. 15, 1988—Decision, Nov. 15, 1988

This consent order prohibits, among other things, certain physicians in Huntsville, Texas from engaging in anticompetitive activities to prevent or impair the operation of health maintenance organizations (HMOs).

Appearances

For the Commission: *Raymond L. Randall.*

For the respondents: *James Foster Andrews,* Houston, Tx., *Davis, Durham, Park & Schulze,* Huntsville, Tx. and *Haney & Kraemer,* Huntsville, Tx.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the individuals named above (hereinafter "respondents") have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. For the purposes of this complaint, the term *"Huntsville area"* means the city of Huntsville, Texas, and the rest of Walker County, Texas, the county within which Huntsville is located.

PAR. 2. The respondents are:

a. Eugene M. Addison, M.D., a board-certified family practitioner, 1909 22nd Street, Huntsville, Texas.

b. B. Jack Atkins, M.D., a board-certified obstetrician-gynecologist, 2135 I-45, Suite A, Huntsville, Texas.

c. Michael C. deBerardinis, M.D., a board-certified urologist, 2950 I-45, Suite 9, Huntsville, Texas.

d. Alvin Gebert, M.D., a board-certified obstetrician-gynecologist, 2135 I-45, Suite B, Huntsville, Texas.

e. James M. Hanna, M.D., a board-certified dermatologist, 2950 I-45, Suite 3, Huntsville, Texas.

f. J. Stan Hines, M.D., a board-certified internist, 2950 I-45, Suite 2, Huntsville, Texas.

g. Michael Koehl, M.D., a board-certified pathologist, 2950 I-45, Suite 7, Huntsville, Texas.

h. J. Darrel Martin, M.D., a board-certified orthopaedic surgeon, 2950 I-45, Suite 5, Huntsville, Texas.

i. Charles W. Monday, Jr., M.D., a board-certified general surgeon, 2950 I-45, Suite 6, Huntsville, Texas.

j. William L. Nix, M.D., a board-certified pediatrician, 2135 I-45, Suite C, Huntsville, Texas.

k. Glen Oliver, M.D., a board-certified ophthalmologist, 2950 I-45, Suite 10, Huntsville, Texas.

l. Howell Towler, M.D., a board-certified otolaryngologist, 2950 I-45, Suite 1, Huntsville, Texas.

m. Paul Vilardi, M.D., a board-certified orthopaedic surgeon, 2950 I-45, Suite 5, Huntsville, Texas.

n. Gene Wilson, M.D., a board-certified general surgeon, 2950 I-45, Suite 6, Huntsville, Texas.

PAR. 3. Respondents are physicians licensed by the State of Texas and practice medicine in Texas as sole practitioners at the addresses shown in paragraph two. The respondents are engaged in the business of providing medical and surgical services to patients for a fee. Except to the extent that competition has been restrained as alleged herein, each respondent has been and is now in competition with the other respondents and/or with other physicians.

PAR. 4. Each respondent's general business practices, and the acts and practices described below, are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 5. The city of Huntsville, Texas, the county seat of Walker County, is the county's only significant population center, containing approximately 30,000 of the county's approximately 45,000 persons. It is located approximately 70 miles northwest of Houston, on the major interstate highway running between Houston and Dallas.

PAR. 6. Huntsville Memorial Hospital ("the Hospital") is a 140-bed hospital in Huntsville, Texas, located at 3000 I-45, Huntsville, Texas. It is the only hospital in the Huntsville area. The next closest hospital is in Montgomery County in the city of Conroe, which has two

hospitals and is located about 30 miles southeast of Huntsville. There is also a hospital located in Madisonville, which is approximately 32 miles northwest of Huntsville in Madison County. In 1984, about 67 percent of Huntsville Memorial Hospital's inpatient census was made up of Huntsville area residents.

PAR. 7. In January 1985, there were 35 physicians in Huntsville with active privileges on the medical staff of the Hospital, including the 14 respondents. Of the 21 who are not respondents, approximately 11 were either general practitioners or family practice specialists, while the others were practicing in other medical and surgical specialties. Thirteen nonrespondents were sole practitioners, while the other eight were members of a group practice, the Family Practice & Surgery Clinic, Inc. ("the Clinic").

PAR. 8. The Clinic is a group practice that has been in existence since at least 1982. It consisted solely of board-certified family practice physicians until approximately July 1984, when a board-certified obstetrician-gynecologist ("OB-GYN") joined the group. The composition of the Clinic's membership has changed from time to time. From July 1984 until May 1986, when the OB-GYN left the Clinic, there were eight physicians at the Clinic. In August 1986, one of the family practice physicians left the Clinic. In September 1986, a general surgeon joined the Clinic.

PAR. 9. Prior to January 1985, there were no health maintenance organizations ("HMOs") operating in the Huntsville area, and virtually all services provided by Huntsville area physicians were provided on a fee-for-service basis. Few residents of the Huntsville area were members of an HMO, although some may have become affiliated with an HMO operating in Conroe.

PAR. 10. In late 1984, Sanus Texas Health Plan, Inc. ("Sanus"), an HMO, decided to enter the Huntsville area market. Sanus is a "gate-keeper" plan, under which a panel of primary-care physicians serve as the "gate-keepers" for health care services for all the enrollees. Each person enrolled in the HMO must initially go to one of the primary-care "gate-keeper" physicians when medical treatment is needed. If the primary care physician determines that the enrollee needs to see a specialist, he or she refers the enrollee to the appropriate specialist. Ordinarily, the primary care physician refers enrollees to specialists who have agreed to participate with the HMO, "participating specialists." Except in case of emergencies, the HMO is not obligated to pay for health care services other than those provided or referred by the primary care physician who serves as the "gate-keeper."

PAR. 11. By early 1985, Sanus had entered into a contract with the Clinic physicians, and it hoped within the next year to obtain contracts with specialists in Huntsville. Under Texas laws governing the operation of HMOs, an HMO cannot begin actual delivery of medical services to the public in a new geographic service area until one year after it has signed contracts with some local medical providers in that new area.

PAR. 12. On January 10, 1985, the Clinic physicians organized a meeting to introduce the Sanus program to the rest of the Huntsville medical community. At that meeting, the respondents and other Huntsville physicians learned that Sanus employed the "gate-keeper" system and that it was planning to begin operations in the Huntsville area. They also learned that Sanus had entered into a contract with the Clinic to provide gate-keeper physicians. Within the next few days, some or all of the respondents agreed among themselves that they would seek to deter development of Sanus.

PAR. 13. As set forth in more detail in paragraphs fourteen through twenty, since January 1985, each of the respondents has combined or conspired with at least some of the other respondents to restrain the growth and development of HMOs in the Huntsville area, and to restrict competition from the Clinic or any other physicians who might become affiliated with such HMOs. In furtherance of their conspiracy, respondents, among other things, have:

a. acted collectively in negotiations with HMOs to attempt to obtain more advantageous terms of participation;

b. engaged in a collective refusal to participate with HMOs seeking to operate in the Huntsville area; and

c. engaged in a collective effort to restrict or eliminate the hospital privileges of physicians affiliated with an HMO.

PAR. 14. By letter dated January 15, 1985, all the respondents urged the Hospital not to enter into a participation contract with Sanus. The Hospital's Board of Trustees has a policy of deferring to the Hospital's medical staff in "medical" matters. Having determined that the question of HMO participation was such a matter, the Board of Trustees decided not to enter into an agreement with Sanus absent a consensus of its medical staff.

PAR. 15. On or before January 27, 1985, the respondents and other physicians formed an unincorporated association that they named the "Health Care Research Committee in Huntsville" (hereinafter "the

Committee"). The Committee served as a vehicle for the respondents' activities to thwart the development of HMOs in the Huntsville area.

PAR. 16. Beginning in January 1985, during the one year before it could begin operating, Sanus sought to convince at least some of the specialists in Huntsville to become participating specialists with its plan. Throughout 1985, there were sporadic contacts between Sanus and the Committee, and between Sanus and some of the Committee's individual members. In December 1985, just before Sanus would become eligible to begin operations in the Huntsville area, the Medical Director of Sanus met with representatives of the Committee to discuss the possible participation by the respondents. He attempted to negotiate terms of participation, either formal or informal, that would be acceptable to both Sanus and the specialists as a group. These negotiations were unsuccessful, and in early February 1986 the respondents, through a spokesman, notified Sanus' Medical Director by letter that the physicians on the Committee had "met and . . . decided to not participate with Sanus at this time."

PAR. 17. By March 1986, the Clinic had entered into a contract to serve as the primary care physicians and "gate-keeper" for another HMO, Maxicare Texas, Inc. ("Maxicare"), that wished to begin operating in the Huntsville area.

PAR. 18. When respondents became aware that the Clinic had entered into the agreement with Maxicare, some or all of the respondents agreed that they would deal concertedly with Maxicare and that they would jointly refuse to participate in it.

PAR. 19. Respondents attempted to restrict competition from the HMO-affiliated Clinic and any physicians that the Clinic might recruit by proposing revisions in the Hospital medical staff bylaws. On September 16, 1986, respondents proposed extensive revisions in the bylaws of the Hospital medical staff that would have, among other things:

a. disqualified from eligibility for membership on the medical staff at the Hospital any physician who was a member of a "multi-specialty group practice," the definition of which included the Clinic, thereby making Clinic physicians ineligible for medical staff membership and the right to use the Hospital;

b. severely limited the influence of Clinic physicians in Hospital affairs, such as the granting of medical staff privileges to new applicants and the discipline and reconsideration of the medical staff privileges of existing medical staff members, by excluding family

practice specialists from the specialists who were eligible to be heads of departments or "service chiefs" at the Hospital; and

c. given the respondents the power to control access to the Hospital by new physicians coming into the Huntsville area by creating a "Community Development Committee," composed solely of the service chiefs, whose function would be to determine whether there was a "need" for the services of any physician who applied for medical staff privileges at the Hospital. If in the opinion of the Committee there was no "need" for the applicant, the applicant would not obtain privileges regardless of his or her education, skill, and experience.

PAR. 20. The revisions proposed by respondents were approved by a majority of the medical staff and, as required by medical staff bylaws, forwarded to the medical staff's Executive Committee for review. While the proposals were pending before the Executive Committee, the Hospital itself intervened and retained special counsel to review the proposals. The special counsel recommended numerous changes, including the deletion of the proposal listed in paragraph nineteen "c" above, indicating that "it is clear that the doctors would like to deny privileges for illegal, anticompetitive reasons." Many of the other proposed revisions were deleted by the Executive Committee upon the recommendation of the special counsel, and of the three proposals mentioned in paragraph nineteen above, only proposal "b" was actually adopted.

PAR. 21. Respondents' conspiracy and acts taken in furtherance thereof, have injured, or have the tendency to injure, consumers by, among other ways:

a. lessening or restraining competition among physicians in the Huntsville area;

b. lessening or restraining competition between HMOs and other third-party payers for subscribers in the Huntsville area by:

i. imposing on Sanus and Maxicare higher costs for medical services than might have been available in a freely competitive market; and

ii. restraining the HMOs from expanding their geographic service areas to the northern portion of the Huntsville area and beyond because of the state regulatory requirement that an HMO provide hospital services within a specified number of miles from the enrollee's residence; and

c. causing the cost to consumers of plans offered by third-party payers to be higher than it would be in a fully competitive situation by:

i. increasing premiums paid by consumers to third-party payers by imposing higher operating costs on the HMOs; and

ii. increasing the costs to consumers of obtaining specialty medical services by often requiring patients who have enrolled in HMOs to seek care outside the Huntsville area.

PAR. 22. Respondents' conspiracy and the acts taken in furtherance thereof constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violations, or the effects thereof, are continuing and will continue in the absence of the relief requested.

DECISION AND ORDER

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

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

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

1. Respondents are physicians licensed and doing business under and by virtue of the laws of the State of Texas, with their offices and principal places of business located at the addresses listed below:

a. Eugene M. Addison, M.D., 1909 22nd Street, Huntsville, Texas;
b. B. Jack Atkins, M.D., 2135 I-45, Suite A, Huntsville, Texas;
c. Michael C. deBerardinis, M.D., 2950 I-45, Suite 9, Huntsville, Texas;
d. Alvin Gebert, M.D., 2135 I-45, Suite B, Huntsville, Texas;
e. James M. Hanna, M.D., 2950 I-45, Suite 3, Huntsville, Texas;
f. J. Stan Hines, M.D., 2950 I-45, Suite 2, Huntsville, Texas;
g. Michael Koehl, M.D., 2950 I-45, Suite 7, Huntsville, Texas;
h. J. Darrel Martin, M.D., 2950 I-45, Suite 5, Huntsville, Texas;
i. Charles W. Monday, Jr., M.D., 2950 I-45, Suite 6, Huntsville, Texas;
j. William L. Nix, M.D., 2135 I-45, Suite C, Huntsville, Texas;
k. Glen Oliver, M.D., 2950 I-45, Suite 10, Huntsville, Texas;
l. Howell Towler, M.D., 2950 I-45, Suite 1, Huntsville, Texas;
m. Paul Vilardi, M.D., 2950 I-45, Suite 5, Huntsville, Texas;
n. Gene Wilson, M.D., 2950 I-45, Suite 6, Huntsville, Texas.

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

ORDER

I.

For purposes of this order the following definitions shall apply:

A. *"Third-party payer"* means any person or entity that engages in the process of reimbursing, purchasing, or paying for health care services provided to any other person. Third-party payers include, but are not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations ("HMOs"); preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

B. *"Respondent"* means each person named as a respondent in the caption hereof, his employees, agents and representatives.

II.

It is ordered. That each respondent, directly, indirectly, or through

any corporate or other device, in connection with his activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, do forthwith cease and desist from organizing, entering into, continuing, cooperating in, or carrying out, any agreement or understanding, either express or implied, with any physician:

A. To deal on collectively determined terms with any HMO or health plan or program offered by any third-party payer;

B. To boycott or threaten to boycott, to refuse or threaten to refuse to deal with, to withdraw or threaten to withdraw from participation in, or not to participate or threaten not to participate in, any HMO or health plan or program offered by any third-party payer;

C. To exclude, deny, or delay any applicant from appointment to the medical staff of Huntsville Memorial Hospital ("the Hospital") for the reason, either in whole or in part, that such applicant practices to any extent, or is associated in any way, with any HMO or other health plan or program offered by any third-party payer; or

D. To change, or attempt to change, the bylaws of the medical staff of the Hospital or the rules and regulations of the Hospital in such a way as to reduce or eliminate the participation of any physician on the medical staff of the Hospital in the governance of the medical staff or Hospital or from holding any leadership position on the medical staff of the Hospital, for the reason either in whole or in part that such physician practices to any extent, or is associated in any way, with any HMO or other health plan or program offered by any third-party payer.

Provided, however, that nothing in this order shall prohibit any respondent from entering into any agreement with any physician with whom the respondent practices medicine in partnership or in a professional corporation, or who is employed by the same person as the respondent.

III.

A. *It is further ordered,* That each respondent file a written report with the Commission within ninety days of the date the order is served, and annually for five years on the anniversary of the date the order was served, and at such other times as the Commission may by written notice to the respondent require, setting forth in detail the

manner and form in which the respondent has complied and is complying with the order.

B. *It is further ordered,* That each respondent, for a period of five years after the date the order is served, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities prohibited by Part II of this order, including, but not limited to, all communications generated by the respondent or that come into the respondent's possession, custody, or control, from the Hospital, other physicians, or any third-party payer, that mention, discuss or refer to any HMO or any other program that operates in whole or in part on other than a fee-for-service basis offered by any third-party payer that is considering, attempting, or actually doing business in the Huntsville area, or any health care facility or provider in any way associated with such HMO or program.

IN THE MATTER OF

WEST POINT-PEPPERELL, INC., ET AL.

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

Docket C-3244. Complaint, Dec. 14, 1988—Decision, Dec. 14, 1988

This consent order requires, among other things, West Point-Pepperell to divest certain towel and sheet making facilities to The Bibb Co., and NTC subsidiary, and prohibits West Point from making certain acquisitions in the towel and sheet industries without prior Commission approval.

Appearances

For the Commission: *Ernest A. Nagata.*

For the respondents: *John Izard, King & Spaulding,* Atlanta, Ga. *Abbott B. Lipsky, Jr., King & Spaulding,* Washington, D.C. and *Steven A. Stack, Jr., Dechert, Price & Rhoads,* Philadelphia, Pa.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, West Point-Pepperell, Inc. and The NTC Group, Inc., corporations, and Magnolia Partners, L.P., a partnership, subject to the jurisdiction of the Commission, have entered into an agreement, described in Paragraph 12 herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement and the actions of respondents to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

a. *"West Point"* means West Point-Pepperell, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by West Point and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

b. *"J.P. Stevens"* means J.P. Stevens & Co., Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by J.P. Stevens and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

c. *"NTC"* means The NTC Group, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by NTC, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

d. *"Magnolia"* means Magnolia Partners, L.P., its predecessors, divisions, groups and affiliates controlled by Magnolia, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

e. *"Acquisition"* means the transaction described, in whole or in part, in paragraph 12 of this complaint.

f. *"Terry fabric"* means cloth woven on terry looms.

g. *"Towel"* means finished terry fabric used for wiping or drying.

h. *"Broadwoven fabric"* means cloth woven on looms of a width 92 inches or greater.

i. *"Sheet"* means finished broadwoven fabric used as an article of bedding, including pillowcases.

II. West Point-Pepperell, Inc.

2. West Point is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at 400 W. 10th Street, P.O. Box 71, West Point, Georgia.

3. West Point is one of the largest producers of towels and sheets in the United States.

4. West Point had sales of approximately $1.7 billion in 1987.

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

III. The NTC Group, Inc.

6. NTC is a corporation organized and existing under the laws of

the State of Delaware, with its principal executive offices and place of business located at 111 W. 40th Street, New York, New York. NTC is a holding company for The Bibb Company ("Bibb"), a corporation organized and existing under the laws of the State of Georgia, with its principal executive offices located in Macon, Georgia.

7. NTC, through Bibb, manufacturers and sells sheets, pillowcases, bedspreads and comforters in the United States.

8. NTC's net sales were approximately $202.7 million in 1987. Bibb's 1987 net sales were approximately $158 million in 1987.

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

IV. Magnolia Partners, L.P.

10. Magnolia is a Delaware limited partnership of which the general partner is STN Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of West Point, and of which the limited partner is Bibb Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of NTC.

11. Magnolia was formed to make a cash tender offer to acquire all of the outstanding voting securities of J.P. Stevens.

V. The Acquisition

12. On March 25, 1988, Magnolia commenced a cash tender offer for the voting securities of J.P. Stevens. Pursuant to an agreement, dated March 24, 1988, and amended and restated on March 31, 1988, between West Point and NTC, Magnolia, upon taking control of J.P. Stevens' voting securities, will form a holding company for the purpose of transferring certain J.P. Stevens assets to NTC. If the acquisition is consummated as contemplated by the March 24, 1988 agreement, as amended and restated on March 31, 1988, the total value of the tender offer transaction will be approximately $1.1 billion.

VI. Trade and Commerce

13. For purposes of this complaint, relevant lines of commerce in which to evaluate the effects of the acquisition are:

a. The manufacture, distribution, and sale of towels; and

b. The manufacture, distribution, and sale of sheets.

14. For purposes of this complaint, the relevant section of the country in which to evaluate the effects of the acqusition with respect to each of the relevant lines of commerce is the United States as a whole.

VII. Market Structure

15. In 1987, approximately $1.2 billion in towels were sold in the United States. The towel market is highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by four-firm and eight-firm concentration ratios.

16. In 1987, approximately $1.2 billion in sheets were sold in the United States. The sheet market is highly concentrated, whether measured by the HHI or by four-firm and eight-firm concentration ratios.

VIII. Entry Conditions

17. It is difficult to enter into the manufacture, distribution, and sale of towels or of sheets.

IX. Actual Competition

18. West Point and J. P. Stevens are actual competitors in the manufacture, distribution, and sale of towels.

19. West Point, J. P. Stevens and NTC are actual competitors in the manufacture, distribution, and sale of sheets.

X. Effects

20. The aforesaid acquisition of the voting securities of J. P. Stevens, if consummated, will significantly increase the levels of concentration in the relevant markets.

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

a. It will eliminate actual competition between West Point and J. P. Stevens in the relevant markets; and

b. It will significantly enhance the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets.

XI. Violations Charged

22. In the absence of an adequate divestiture of certain J. P. Stevens assets to NTC, the acquisition of J. P. Stevens voting securities by Magnolia would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

23. The aforesaid acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Decision and Order

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act; and

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

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

1. Respondent West Point-Pepperell, Inc. is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located 400 W. 10th Street, P.O. Box 71, West Point, Georgia.

NTC is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices and place of business at 111 W. 40th Street, New York, New York. NTC is a holding company for The Bibb Company ("Bibb"), a corporation organized and existing under the laws of the State of Georgia, with its principal executive offices located in Macon, Georgia.

Magnolia is a Delaware limited partnership of which the general partner is STN Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of West Point-Pepperell, and of which the limited partner is Bibb Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of NTC.

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

ORDER

I.

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

(A) *"West Point"* means West Point-Pepperell, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by West Point, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(B) *"J.P. Stevens"* means J.P. Stevens & Co. Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by J.P. Stevens, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(C) *"NTC"* means The NTC Group, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by NTC, and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(D) *"Magnolia"* means Magnolia Partners, L.P., a limited partnership in which STN Holdings, Inc., a subsidiary of West Point, is a general partner, and Bibb Sub, Inc., a company controlled by NTC, is a limited partner. Magnolia is organized under the laws of Delaware

and it has its principal place of business located at 400 W. 10th Street, West Point, Georgia.

(E) *"Bibb Sub"* means Bibb Sub, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Bibb Sub, their respective directors, officers, employees, agents and representatives, and their successors and assigns.

(F) *"Sheet and Towel Assets"* means

(1)(a) The Roanoke Plants Nos. 1 and 2, Patterson Plant, Rosemary Plant and Delta Finishing Plant No. 4, all of which are towel manufacturing facilities located in Roanoke Rapids, North Carolina (the "Roanoke Facilities"); Whitehorse Plants Nos. 1 and 2, which are sheet manufacturing facilities located in Greenville, South Carolina; Brookneal Finishing and Cut and Sew Plant, which is a sheet finishing plant located in Brookneal, Virginia; and (b) the assets described in paragraph (2) of this definition F.

(2) All of J.P. Stevens' assets, properties, business and goodwill, tangible and intangible, (i) located at the facilities described in paragraph (1) of this definition F, (ii) primarily utilized (*i.e.*, more than 50% as determined in good faith by West Point and NTC) in the manufacture and sale of sheets and towels are intended to be included within the scope of the sheet and towel assets, whether or not reflected on the balance sheet accounts of J.P. Stevens, including, without limitation, the following:

(a) All machinery, fixtures, equipment, vehicles, furniture, tools and all other tangible personal property;

(b) All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research material, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(c) Inventory;

(d) Accounts and notes receivable;

(e) Intellectual property rights, trademarks and trade names, other than trademarks and trade names including the "J.P. Stevens" name;

(f) All right, title and interest in and to owned or leased real property together with appurtenances, licenses and permits;

(g) All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representa-

tives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(h) All rights under warranties and guarantees, express or implied;

(i) All books, records and files;

(j) All items of prepaid expense; and

(k) All known and unknown, liquidated or unliquidated, contingent or fixed, rights or causes of action which J.P. Stevens has or may have against any third party and all such rights which J.P. Stevens has or may have in or to any asset or property relating primarily to the sheet and towel assets, excluding, however, all known or unknown, liquidated or unliquidated, contingent or fixed, causes of action which J.P. Stevens has or may have to the extent they arise out of or are related to any liability, obligation or claim not to be assumed by NTC.

With respect to a class of similar assets (such as trucks), a fraction of the use of which has been devoted to the sheet and towel assets, such fraction of such class (or as close an approximation to such fraction as can be separately transferred) shall be included within the sheet and towel assets.

(G) *"Eligible Person"* means (1) any person or persons approved in advance by the Commission or (2) Bibb Sub or another subsidiary of NTC, *provided,* however, that Bibb Sub or such other NTC subsidiary acquires the sheet and towel assets pursuant to the agreement between West Point and NTC dated March 24, 1988, as amended and restated on March 31, 1988 or any amendment thereof that has the prior approval of the Commission, *provided* further that such prior Commission approval shall not be required unless the amendment provides for (1) the sale of less than all the sheet and towel assets, (2) any additional conditions of closing, (3) any additional financing arrangements between West Point and NTC, or (4) deletion or modification of any covenant in paragraph 11 of such agreement.

(H) *"Commission"* means the Federal Trade Commission.

II.

It is ordered, That:

(A) If respondents, individually or collectively, acquire a majority (more than 50%) of the outstanding voting shares of J.P. Stevens, respondents West Point and Magnolia shall, within nine (9) months from the date this order becomes final, divest, absolutely and in good faith, the sheet and towel assets to an eligible person. The Agreement

to Hold Separate shall continue in effect until such time as the sheet and towel assets, and any additional assets ordered to be divested pursuant to Part VII of this order ("Part VII assets"), have been divested, and respondents West Point and Magnolia shall comply with all terms of said agreement. The purpose of the divestiture of the sheet and towel assets and the Part VII assets is to ensure their continuation as ongoing, viable assets and enterprises engaged in the same business in which they are presently employed and to remedy the lessening of competition alleged in the Commission's complaint.

(B) If respondents collectively acquire less than a majority (50% or less) of the outstanding voting shares of J.P. Stevens, respondents shall divest on the New York Stock Exchange absolutely and in good faith all their interest in such shares within six (6) months from the date this order becomes final. Pending such divestiture, respondents shall not, directly or indirectly, (i) exercise dominion or control over, or otherwise seek to influence, the management, direction, or supervision of the business of J.P. Stevens, (ii) seek or obtain representation of the Board of Directors of J.P. Stevens, (iii) exercise any voting rights attached to the shares, (iv) seek or obtain access to any confidential or proprietary information of J.P. Stevens, or (v) take any action or omit to take any action in a manner that would be incompatible with the status of West Point as a passive investor in J.P. Stevens.

III.

It is further ordered, That, pending divestiture, respondents West Point and Magnolia shall not make or permit any deterioration in the value of the sheet and towel assets or any other assets ordered to be divested pursuant to Part VII herein which may impair their present capacity or marketability.

IV.

It is further ordered, That the sheet and towel assets shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of West Point or anyone who is not an eligible person.

V.

It is further ordered, That:

(A) If respondents West Point and Magnolia have not divested the sheet and towel assets within the nine month period, respondents shall consent to the appointment by the Commission of a trustee to divest the sheet and towel assets. In the event that the Commission brings an action pursuant to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by West Point to comply with Parts II through XII of this order.

(B) If a trustee is appointed by a court or the Commission pursuant to Part V(A) of this order, respondents shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of West Point, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the sheet and towel assets that have not been divested by respondents West Point and Magnolia within the time period for divestiture in Part II. The trustee shall have nine (9) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the nine-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee; *provided,* however, that the Commission, or the court for a court-appointed trustee, may only extend the divestiture period two (2) times.

(3) The trustee shall have full and complete access to the personnel, books, records and facilities of Magnolia, West Point, J.P. Stevens, and the sheet and towel assets. Respondents West Point and Magnolia shall develop such financial or other information as such trustee may

reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(4) The power and authority of the trustee to divest shall be at the most favorable price and terms available, but at no minimum price, consistent with the order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in Part II.

(5) The trustee shall serve at the cost and expense of respondents West Point and Magnolia on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Magnolia and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the sheet and towel assets.

(6) Within sixty (60) days after appointment of the trustee and subject to the approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court, respondents West Point and Magnolia shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(7) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

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

VI.

It is further ordered, That in the event that the Magnolia partnership agreement requires NTC to consent to any action in order to enable West Point to comply with its obligations under this order, NTC shall consent to such action.

VII.

It is further ordered, That, within ninety (90) days after this order

becomes final, the Commission may order West Point, pursuant to the terms of this order:

(A) (1) To divest such additional assets, as the Commission determines will ensure the divestiture of the sheet and towel assets as ongoing, viable enterprises, engaged in the businesses in which these sheet and towel assets are presently employed. Such additional J.P. Stevens assets may include textile machinery, finishing equipment, cutting and sewing equipment and product names, designer names, trademarks and licenses therefor; and

(2) To sell yarn needed to balance the production from the sheet and towel assets; to provide on a commission basis finishing and cut and sew services to the extent that the Commission determines the facilities included in the sheet and towel assets are insufficient for that purpose; and to continue the availability of J.P. Stevens' computer programs. All such sales shall be made and all such services shall be provided for such term, not to exceed one (1) year after this divestiture is complete, as the Commission may see fit; *provided* that if NTC or its subsidiary has purchased the sheet and towel assets, no divestiture of additional assets or provision of services pursuant to Parts VII (A)(1) or VII (A)(2) will be required without the agreement of NTC.

(B) (1) To divest the J.P. Stevens Hanna-Pickett sheeting mill in Rockingham, North Carolina, and, if the Commission determines it necessary to make the Hanna-Pickett sheeting mill a viable and salable economic unit, the J.P. Stevens Abbeville yarn plant in Abbeville, South Carolina; and

(2) To divest any one (1), two (2) or three (3) of the following trademarks and designer licenses:

(i) Carlin trademark,
(ii) the Ralph Lauren license,
(iii) the Gloria Vanderbilt license,
(iv) the Eileen West license,
(v) the Perry Ellis license, and
(vi) the Collier-Campbell license,

provided, however, that the commercial value of trademarks and licenses ordered to be divested pursuant to this Part VII (B) plus the commercial value of product names, designer names, trademarks and licenses therefor ordered to be divested under Part VII (A) shall not exceed the combined commercial value of the three most valuable

trademarks and licenses listed in Part VII (B); for purposes of this provision, relative "commercial value" shall be based on the sales of sheet and towel products under each trademark, product name or designer license during the fiscal year preceding the date on which this order becomes final.

Divestitures under Part VII shall be made within nine (9) months of the Commission's determination that such divestiture is necessary and shall be made only to an acquirer or acquirers, and only in the manner, that shall receive the prior approval of the Commission. The purpose of the divestiture of the Hanna-Pickett sheeting mill, and if so ordered, the Abbeville yarn plant, is to ensure the continuation of the Hanna-Pickett sheeting mill as an ongoing, viable enterprise engaged in the same business in which it is presently employed and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint. The purpose of the divestiture of product names, designer names, trademarks and licenses therefor is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

If the Part VII (B) assets have not been divested within the nine-month period, respondents West Point and Magnolia shall consent to the appointment of a trustee pursuant to the provisions contained in Part V. The trustee shall have all of the powers and duties and shall act in all respects in accordance with the terms and conditions contained in Part V.

VIII.

It is further ordered, That any assets ordered to be divested pursuant to Part VII shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of West Point or anyone who is not an eligible person.

IX.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, West Point shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, assets, any interest in or any interest of, any

concern, corporate or non-corporate, engaged in the United States in the business of manufacturing terry cloth, terry towels, sheets or pillowcases; *provided,* however, that these prohibitions shall not relate (i) to the construction of new facilities, (ii) to the acquisition of assets outside of the United States, (iii) to the acquisition of any interest in, or the whole or part of the stock or share capital of, any company engaged in the manufacture, distribution or sale of sheets or towels outside of the United States if such company has annual sales in the United States of less than one percent of the then current respective total United States annual sales of sheets or towels, or (iv) to the acquisition of used assets that West Point intends to relocate to existing or new facilities for use in production of sheets and towels if such used assets have production capacity of less than one percent of the United States' then current respective capacity for the production of sheets or towels. Beginning one (1) year from the date this order becomes final and annually thereafter for nine (9) more years, West Point shall file with the Commission verified written reports of its compliance with this part.

X.

It is further ordered, That, within sixty (60) days from the date this order becomes final and every sixty (60) days thereafter until it has fully complied with Parts II and VII of this order, respondents West Point and Magnolia shall file reports in writing to the Commission setting forth in detail the manner and form in which they intend to comply, are complying or have complied therewith.

All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by such respondents to make public their desire to divest the sheet and towel assets and the Part VII (B) assets, (b) a list of all persons or organizations contacted about the sheet and towel assets and the Part VII (B) assets, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all reports, internal memoranda, offers, counteroffers, communications and correspondence concerning such divestiture.

XI.

It is further ordered, That, for the purpose of determining or

securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to West Point made to its principal office, West Point shall permit any duly authorized representative or representatives of the Commission:

Access during the office hours of West Point and J.P. Stevens, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of West Point or J.P. Stevens relating to compliance with this order;

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

Any information or documents furnished to or obtained by the Commission from West Point or J.P. Stevens shall be accorded such confidential treatment as is available pursuant to Sections 6(f) and 21 of the Federal Trade Commission Act, as amended.

XII.

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

IN THE MATTER OF

MONTGOMERY WARD & CO., INC.

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

Docket C-3245. Complaint, Dec. 21, 1988—Decision, Dec. 21, 1988

This consent order prohibits, among other things, a Chicago, Ill. retailer from misrepresenting service contract coverage and products' need for maintenance, adjustment, or servicing. The order also prohibits respondent from making any claims about the durability of any product for which it sells service contracts, unless it has competent and reliable evidence that substantiates its claims.

Appearances

For the Commission: *Lawrence Hodapp.*

For the respondent: *Dovetta M. Rollins,* in-house counsel, Chicago, Ill.

COMPLAINT

The Federal Trade Commission, having reason to believe that Montgomery Ward & Co., Inc., a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.,* and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Montgomery Ward & Co., Inc. ("Montgomery Ward") is an Illinois corporation. Montgomery Ward has its principal office or place of business located at One Montgomery Ward Plaza, Chicago, Illinois.

PAR. 2. Respondent is now and for some time past has been engaged in the distribution, marketing, and sale of a variety of consumer products.

PAR. 3. Respondent is now and for some time past has been engaged in the marketing and sale of service contracts for certain consumer products, including, but not limited to, appliances, electronic equipment, heating and air conditioning equipment, lawn and garden equipment, and outboard motors.

PAR. 4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 5. In the course and conduct of its business, respondent has disseminated or caused to be disseminated to members of its sales staff sales scripts, objection response pamphlets, and training materials pertaining to the sale and marketing of service contracts. In the course and conduct of its business, respondent has required its sales staff to incorporate in sales presentations to consumers the statements contained in such sales scripts, objection response pamphlets, and training materials.

PAR. 6. In the course and conduct of their employment with respondent, sales staff employed by respondent have incorporated in their sales presentations to consumers the statements contained in the sales scripts, objections response pamphlets, and training materials referred to in paragraph five above.

PART I

PAR. 7. Typical and illustrative of the statements referred to in paragraphs five and six above, but not necessarily all-inclusive thereof, are the statements set forth below:

(a) "[J]ust like a car needs routine adjustments, your (*product*) needs cleaning and adjustments, too. ... This contract puts the responsibility on us to keep it working for you."

(b) "[A]ll complex equipment requires maintenance, adjustments or repair from time to time. ... No matter what brand of (*product*), it is a fact that periodic services is required to keep it working properly."

(c) "*Consumer Reports* recommends service contracts to all appliance owners."

PAR. 8. By such statements, respondent has represented, directly or by implication, that:

(a) Each product for which the statement was made required routine cleaning and adjustments by trained service personnel.

(b) Each product for which the statement was made required periodic maintenance, adjustments, repair or servicing by trained service personnel.

(c) *Consumer Reports* recommended service contracts to all appliance owners.

PAR. 9. In truth and in fact, contrary to the above representations:

(a) Each product for which the statement was made did not require routine cleaning and adjustments by trained service personnel.

(b) Each product for which the statement was made did not require periodic maintenance, adjustments, repair or servicing by trained service personnel.

(c) *Consumer Reports* did not recommend service contracts to all appliance owners.

Therefore, the representations quoted in paragraph eight above were false and misleading.

PAR. 10. The use by respondent of the aforesaid false and misleading representations and the dissemination of such representations by respondent to consumers were likely to mislead consumers into the erroneous belief that said representations were true and complete, thereby inducing consumers to purchase respondent's service contracts.

PAR. 11. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

PART II

PAR. 12. Typical and illustrative of the statements referred to in paragraphs five and six above, but not necessarily all-inclusive thereof, are the statements set forth below:

(a) "Our low cost Service Contract [on lawn and garden equipment] provides routine maintenance which is not covered by your guarantee. ... [including] adjustments to carburetor, replacement of ignition parts and spark plugs [tune-ups] ... [and] repairs necessary from improper use. ..."

(b) "The guarantee [on sewing machines], of course, doesn't cover the day-to-day adjustments and the regular maintenance your machine will need. ... [O]ur service contract [on sewing machines] ... expands your guarantee to cover ... all the regular maintenance your machine might need."

PAR. 13. By such statements, respondent has represented, directly or by implication, that:

(a) The service contract for lawn and garden equipment provided routine maintenance including adjustments to the carburetor, replacement of ignition parts and spark plugs, tune-ups, and repairs necessary from improper use.

(b) The service contract for sewing machines provided day-to-day adjustments and all the regular maintenance the machine might need.

PAR. 14. In truth and in fact, contrary to the above representations:

(a) The service contract for each lawn and garden product for which the statement was made did not provide routine maintenance including adjustments to the carburetor, replacement of ignition parts and spark plugs, tune-ups, and repairs necessary from improper use.

(b) The service contract for each sewing machine for which the statement was made did not provide day-to-day adjustments and all the regular maintenance the machine might need.

Therefore, the representations quoted in paragraph twelve above were false and misleading.

PAR. 15. The use by respondent of the aforesaid false and misleading representations and the dissemination of such representations by respondent to consumers were likely to mislead consumers into the erroneous belief that said representations were true and complete, thereby inducing consumers to purchase respondent's service contracts.

PAR. 16. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

PART III

PAR. 17. Typical and illustrative of the statements referred to in paragraphs five and six above, but not necessarily all-inclusive thereof, are the statements set forth below:

(a) "Let's take a close look at today's ranges compared to the ones built 10 or 15 years ago. Although we pride ourselves on the reliability of our ranges, because of the added features, service can be more often needed now than then."

(b) "Let's take a close look at today's (appliance) compared to the ones built 10 years ago. Although we pride ourselves on the reliability of our (appliance), because of the added features, service can be as necessary today as on the (appliance) that were [sic] built back then."

PAR. 18. By such statements, respondent has represented, directly or by implication, that:

(a) Current models of ranges required more servicing than the models built 10 or 15 years earlier.

(b) Current models of the appliance about which such statement was made required as much servicing as predecessor models built 10 years earlier.

PAR. 19. Through the use of the statements referred to in

paragraph seventeen, and other statements not specifically set forth herein, respondent has represented, directly or by implication, that at the time of the initial dissemination of the statements and of each subsequent dissemination, it possessed and relied upon a reasonable basis for the representations set forth in paragraph eighteen.

PAR. 20. In truth and in fact, at the time of the initial dissemination of the statements and of each subsequent dissemination, respondent has not possessed and relied upon a reasonable basis for making the representations set forth in paragraph eighteen. Therefore, respondent's representations as set forth in paragraph nineteen were, and are, false and misleading.

PAR. 21. The acts and practices of respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent, Montgomery Ward & Co., Inc., and the respondent having been furnished thereafter with a copy of a complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons

pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

(1) Montgomery Ward & Co., Inc. ("Montgomery Ward") is a corporation organized, existing and doing business under and by virtue of the laws of the state of Illinois, with its principal office and place of business located at One Montgomery Ward Plaza, Chicago, Illinois.

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

ORDER

I.

It is ordered, That respondent Montgomery Ward & Co., Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing or sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(1) The necessity of maintenance, adjustments or servicing of any product for which any service contract is sold or offered for sale;

(2) That any person or organization has endorsed the use, purchase, desirability, or necessity of any service contract; or

(3) The coverage by any service contract of routine maintenance, repairs occasioned by improper use of the product by any person, day-to-day servicing, cleaning, or adjustments.

For the purposes of this order, the term "service contract" shall mean a contract in writing to perform, over a fixed period of time or for a specified duration, any service relating to the maintenance or repair (or both) of a product, which contract is sold to consumers for separate consideration than the insured product.

II.

It is further ordered, That respondent Montgomery Ward & Co.,

Inc., its successors and assigns, and its officers, representatives, agents, and employees, acting directly or through any corporation, subsidiary, division, or other device, in connection with the marketing and sale of any service contract, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about the durability or reliability of, the incidence of malfunctions or defects in, or the incidence of repairs or servicing of, any product for which any service contract is sold or offered for sale, unless at the time of such representation respondent possesses and relies upon competent and reliable evidence that substantiates such representation. Evidence in the forms of tests, experiments, analyses, research studies, or other evaluations shall be competent and reliable only if they are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions to yield accurate, reliable, and reproducible results.

III.

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

1. Copies of all materials relied upon by each representation subject to this order; and
2. Copies of all materials relating to any tests, experiments, analyses, research, studies, surveys, or expert opinions in the possession of the respondent that may contradict, qualify, or call into question any representation subject to this order.

IV.

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

V.

It is further ordered, That respondent, within thirty (30) days of the date of service of this order, shall distribute a copy of this order to each of respondent's corporate and territorial operating divisions' officers or agents of respondent at store manager level or greater with supervisory responsibility in connection with the marketing or sale of any service contract and shall obtain from each such person a signed statement acknowledging receipt of a copy of the order.

VI.

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

Commissioner Machol not participating.

IN THE MATTER OF

RONBY CORPORATION, ET AL.

Docket 8560. Show Cause Order, January 26, 1989

SHOW CAUSE ORDER

Whereas, Federal Trade Commission ("the Commission") on March 12, 1964, issued its order to cease and desist ("1964 order") against, *inter alia,* Fred Astaire Dance Studios Corporation,[1] a national licensor of Fred Astaire Dance Studios, and

Whereas, the order requires Fred Astaire Dance Studios Corporation, its agents, representatives and employees, directly or through any corporate or other device, to cease and desist from using certain acts and practices to mislead, coerce or otherwise induce by unfair or deceptive means the purchase of dancing instruction, and

Whereas, Chester F. Casanave and Charles L. Casanave were at all relevant times the corporate officers and principal stockholders of Fred Astaire Dance Studios Corporation, and are now the corporate officers and principal stockholders of Ronby Corporation, and

Whereas, Ronby Corporation, with its principal place of business located at 11945 Southwest 140th Terrace, Miami, Florida, is in the business of licensing or franchising of the operation of dance studios under the trade name Fred Astaire Dance Studios, and

Whereas, counsel for the Federal Trade Commission allege that Ronby Corporation is the successor or assign of Fred Astaire Dance Studios Corporation, and Ronby Corporation, Chester F. Casanave and Charles L. Casanave neither admit not deny the allegation, and

Whereas, the staff of the Commission has negotiated with Ronby Corporation, Chester F. Casanave and Charles L. Casanave certain additional measures for the protection of the consumers who become students of Fred Astaire Dance Studios and Ronby Corporation, Chester F. Casanave and Charles L. Casanave have agreed to the modifications of the Commission's 1964 order to include such additional measures, and

[1] Five other respondents, one corporation and four individuals, are also named in the 1964 order. The corporation, Fred Astaire Dance Studio, Washington, D.C., Inc., is no longer in existence. The four individuals, Patrick W. Arabia, Eugene T. Valentine, Lea W. Peclet and George J. Strombos, are not parties to this proceeding. Therefore, the modifications to the order proposed in this order to show cause are not applicable to them.

Whereas, it is now the opinion of the Commission that the public interest requires it to reopen and alter the 1964 order, in part,

Now, therefore, *it is hereby ordered,* pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 3.72(b) of the Commission's Procedures and Rules of Practice, 16 C F R 3.72(b) (1988), that on or before the 30th day after service of this notice upon them, respondents show cause, if any there be, why the public interest does not require the Commission to reopen this proceeding and alter the 1964 order, in part, as follows:

(1) By joining Ronby Corporation, a corporation; Chester F. Casanave and Charles L. Casanave as respondents herein;

(2) By restyling this matter hereinafter as the matter of Ronby Corporation, et al.;

(3) By inserting a Roman numeral one (I) before the *It is ordered* preamble of the 1964 order;

(4) By substituting revised language in the *It is ordered* preamble of the 1964 order, as provided below;

(5) By substituting revised language in numbered paragraphs 1., 4., 5., 6., 7. and 9. of the newly designated Part I of the order, as provided below;

(6) By deleting paragraphs 3. and 8. thereof;

(7) By renumbering paragraphs 4., 5., 6., 7. and 9. thereof as paragraphs 3., 4., 5., 6. and 7., respectively; and

(8) By adding new Parts II, III, IV, V, VI and VII, so that thusly modified order will read as follows:

MODIFIED ORDER

I.

It is ordered, That respondents Ronby Corporation, a corporation, and Chester F. Casanave and Charles L. Casanave, individually, and as officers of said corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any area franchisor, franchisee, or licensee, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a course of dancing instruction or a specified number of dancing lessons, or a dance instruction service or any other service or thing of value, will be furnished, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented;

2. Refusing to honor the terms and provisions of any offer or promise;

3. Requesting any student or prospective student to sign an uncompleted contract or agreement, or misrepresenting to any student or prospective student what is or will be due or payable;

4. Using in any single day "relay salesmanship," that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction;

5. Representing in any manner that a dancing instructor job is obtainable at a studio where the purpose of such a representation is to induce an applicant to purchase a course of instruction, or misrepresenting what such an instructor will be paid;

6. Falsely assuring or representing to any student or prospective student that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency;

7. Using any technique or practice similar to those set out in paragraphs 3 through 6 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction or dance instruction service.

II.

It is further ordered, That respondents Ronby Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any area franchisor, franchisee, or licensee, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to disclose, clearly and conspicuously, in each dance instruction contract or dance instruction service contract, the following statement:

DEFINITIONS

For purposes of this contract the following definitions apply:

"*Total contract price*" shall mean the total cash price paid or to be paid by the student or prospective student for the dance instruction or dance instruction service which is the subject of the contract or written agreement.

"*Notice of cancellation*" shall be deemed to have been provided by a student or prospective student by mailing or delivering to the studio a written notification cancelling the contract or written agreement.

"*Reasonable and fair service fee*" shall mean no more than 10% of the total contract price for contracts of up to $1,000. For contracts over $1,000, "reasonable and fair service fee" shall mean no more than $100 plus an amount equal to 5% of the contract price over $1,000. "Reasonable and fair service fee" shall not exceed $250 in total.

"*Dance instruction service*" shall mean any service or a thing of value, including a contest or a competition, other than dance instruction, sold, organized, sponsored or promoted by any dance studio, or by its employee or agent, including any person or organization associated or affiliated with the franchise operation, franchisee, employee or agent.

STUDENT CANCELLATION AND REFUND RIGHT

You, the student, have the right to cancel this contract at any time by a notice in writing mailed or delivered to the studio. If the studio refuses or fails to give you the refund, or the studio closes, you should mail a copy of the cancellation notice to the area franchisor whose full name and address are

_____

_____

and to Ronby Corporation, the national licensor of the trade name Fred Astaire Dance Studios, at 11945 Southwest 140th Terrace, Miami, Florida 33186. No special format or notarization is necessary.

THIS CONTRACT IS INVALID IF THE FULL NAME AND ADDRESS OF THE AREA FRANCHISOR ARE NOT PROVIDED.

If this agreement is cancelled within three business days, the studio will refund within not more than (30) days all payments made under the agreement. After three business days, the studio will only charge you for the dance instruction and dance instruction service received under the agreement, or prearranged but not attended before the day you cancel, plus a reasonable and fair service fee, as defined above, and refund balance in three (3) equal monthly installments, within not more than ninety (90) days.

Provided, however, that a departure from this exact language to afford a greater right to a student than any right under this order, or to correctly provide the name and address of the national licensor or its equivalent, shall not be deemed a violation of this requirement of the order.

2.a. Entering into a contract or other written agreement for any dance instruction or dance instruction service unless the contract or other written agreement contains the definitions, terms and conditions recited in paragraph 1., above, in the exact language mandated by said paragraph and unless the contract or written agreement discloses clearly and conspicuously the rate charged per lesson for each type of dance instruction selected and the length of each lesson;

b. Failing to refund a student or prospective student who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed all payments made by the student or prospective student. Such refunds shall be provided, and any evidence of indebtedness cancelled and returned, within 30 days after receiving notice of cancellation.

c. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a student or prospective student cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement; and failing to refund the balance in three (3) equal monthly installments, within not more than ninety (90) days after receiving notice of cancellation, or failing to cancel that portion of the student's or prospective student's indebtedness that exceeds the amount due;

The pro rata portion shall be calculated in the following manner:

(1) For the time period preceding notice of cancellation, total the number of hours or lessons of dance instruction that were received, or prearranged but not attended, by the student pursuant to the contract written agreement,

(2) Divide this number by the total number of hours or lessons of dance instruction which are the subject of the contract or written agreement,

(3) Apply the resulting percentage against the total contract price.

(4) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion;

Provided, however, that this modified order does not create any

private right of action against Ronby Corporation, Chester F. Casanave or Charles L. Casanave, by any student under any student contract.

d. Misrepresenting in any manner to any student or prospective student any of the provisions of this consent order.

3. Failing to subject any promissory note, instrument or evidence of indebtedness, given by a student pursuant to any contract for dance instruction or dance instruction services, to the student's cancellation and refund rights provided in paragraph 2. above, in such a manner that such student rights are legally binding on any third person who may acquire any right under any such note, instrument or evidence or indebtedness.

4. Attempting to obtain or obtaining from a student a waiver of the student's cancellation or refund right.

5. Failing to discontinue dealing with or terminate the use or engagement of any area franchisor who (1) continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order, or (2) fails to discontinue dealing with or terminate the use of engagement of any franchisee or licensee who continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order;

Provided, however, that Ronby Corporation and area franchisors may effect such termination in accordance with applicable law.

6. Failing to implement, within one hundred twenty (120) days from the date of service of this order, a program of surveillance adequate to reveal whether the business operation of each licensee or area franchisor conforms to the requirements of the modified order, and failing to maintain records of such surveillance program which shall be made available for inspection and copying to the Commission, upon reasonable notice and at reasonable times.

7.a. Failing to deliver a copy of this modified order to each present and future area franchisor and franchisee, with directions that each such person promulgate and enforce the terms of the modified order in the operations of each studio, including the sales efforts of any independent contractor engaged by the studio for the selling of dance instruction or dance instruction service;

b. Failing to obtain from each person described in subsection 7.a. above, a signed statement setting forth his or her intention to conform his or her business practices to the requirements of this modified order;

c. Failing to notify the Commission of the name and address of any person from whom respondent is unable to obtain such a signed statement; and

d. Failing to keep each such agreement for a period of five (5) years after the termination of any such relationship; and failing to transmit to the Commission or its designated staff complete and legible copies of the same within fourteen (14) business days of receiving a request for copies thereof;

III.

It is further ordered, That respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, shall report the discontinuance of their present business or their affiliation with any other business offering any dance instruction or service, such notice to include a description of respondent's new business or employment; and should either Chester F. Casanave or Charles L. Casanave create or become affiliated in any way with any corporation, partnership or other venture or business offering any dance instruction or service, such a corporation, partnership, venture or business shall be bound by the provisions of this modified order.

IV.

It is further ordered, That respondent Ronby Corporation shall notify the Commission at least thirty (30) days prior to any proposed or contemplated reorganization, dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creating or dissolution of a subsidiary or any other change in the corporate structure of such corporate respondent that may affect compliance obligations arising out of this order.

V.

It is further ordered, That respondents Chester F. Casanave and Charles L. Casanave each shall be relieved from any further obligation under Parts I and III of this order upon completely ceasing his involvement with any dance instruction, or dance instruction service, including licensing or franchising of the same, until such time as he resumes such activity in the future.

VI.

It is further ordered, That respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, within one hundred twenty (120) days after the date of service upon each of them of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

VII.

It is further ordered, That respondent Ronby Corporation shall file or cause to be filed one (1) year after the date of service of this order a further detailed report on measures undertaken to protect the prepaid moneys of students.

Commissioner Strenio dissenting.

IN THE MATTER OF

SEEKONK FREEZER MEATS, INC., ET AL.

Docket 8880, Show Cause Order, January 31, 1989

SHOW CAUSE ORDER

Whereas, the Federal Trade Commission on March 15, 1973, made a determination against Seekonk Freezer Meats, Inc. *et al.* in Docket No. 8880, which found that respondents had stated the number or period of installment payments and the amount of installment payments in a consumer credit advertisement without stating the other credit terms required to be disclosed by Regulation Z, 12 C F R Part 226, and the Truth in Lending Act (TILA), Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*, in violation of the credit advertising requirements of Regulation Z and the TILA, and

Whereas, the Federal Trade Commission on March 15, 1973, issued an order to cease and desist against Seekonk Freezer Meats, Inc. *et al.* in Docket No. 8880 which prohibited respondents from stating one or more of the credit terms specified by Regulation Z (such as the number or period of payments and the amount of the payments) without including all the terms required to be disclosed by Regulation Z in a consumer credit advertisement, and prohibited them from making any disclosure not in accordance with the credit advertising requirements of Regulation Z, and

Whereas, the decision and order were served on respondents Seekonk Freezer Meats, Inc. and Lawrence Fontes on March 29, 1973, and

Whereas, the decision states (82 FTC 1025, 1051-52):

3. In such advertising respondents have represented the amount of an installment payment and the number of installments and the period of repayment, but have failed to disclose, as required by the [Truth in Lending] Act and regulation, (1) the cash price, (2) the amount of the downpayment required or that no downpayment is required, (3) the amount of the finance charge expressed as an annual percentage rate, and (4) the deferred payment price.[1]

[1] The revised Regulation no longer requires disclosure of the cash price or deferred payment price or that no downpayment is required. *See* 12 CFR Part 226.24(c). Pursuant to the Commission's Enforcement Policy Statement of March 30, 1982 (47 Fed. Reg. 13322), all Truth in Lending requirements of existing FTC orders are interpreted and enforced so as to impose no greater or different disclosure obligations on creditors under order than are required of creditors generally under the Truth in Lending Simplification and Reform Act of

(footnote continued)

4. Having failed to make the required disclosures, respondents' advertising practices violated the Truth in Lending Act and pursuant to Section 108 thereof respondents thereby violated the Federal Trade Commission Act.

Whereas, the order states (82 FTC 1025, 1059):

It is further ordered, That respondents Seekonk Freezer Meats, Inc., a corporation, . . . and Lawrence Fontes, individually and as an officer of said corporation . . . do forthwith cease and desist from:

1. Stating in any advertisement the amount of the down payment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless there is also stated, in terminology prescribed under . . . Regulation Z, . . .all of the following items —(i) the cash price; (ii) the amount of the downpayment required or that no downpayment is required, as applicable; (iii) the number, amount, and due dates or period of repayments scheduled to repay the indebtedness if the credit is extended; (iv) the annual percentage rate; and (v) the deferred payment price.[2]

2. Making any disclosure not in accordance with the requirements of Section 226.10 of Regulation.[3]

Whereas, pursuant to Section 103(y) of the TILA, the violation of any provision of Regulation Z constitutes a violation of the TILA;

Whereas, pursuant to Section 108(c) of the TILA, the violation of any provision of that Act constitutes a violation of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45;

Whereas, in enacting the credit advertising requirements, Congress sought to prohibit misleading, deceptive and unfair advertising practices (*See* Section 102 of the TILA);

Whereas, the decision against Seekonk Freezer Meats *et al.* dated March 15, 1973 does not state expressly that disclosing one or more credit terms identified by Regulation Z (such as the number of or period of installment payments and the amount of installment payments) without including all the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the TILA, constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act;

Whereas, The Commission has nonetheless held and publicized its longstanding view that advertising one or more credit terms identified

1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 168) and revised Regulation Z (12 CFR Part 226), 46 Fed. Reg. 20848, April 1, 1981).

[2] Under revised Regulation Z, the fact that there is no charge for credit, no longer requires disclosure. *See* 12 CFR Section 226.24(c). *See also supra* note 1.

[3] This provision is now Section 226.24 of Regulation Z, 12 CFR Part 226.24.

by Regulation Z without including all the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the TILA, is an unfair or deceptive act of practice in violation of Section 5(a) of the FTC Act;

Whereas, the Eighth Circuit Court of Appeals has ruled in *United States v. Hopkins Dodge, Inc.,* 849 F.2d 311 (8th Cir. 1988), that the failure of the Commission in its *Seekonk* determination to state expressly that credit advertising violations of Regulation Z and the TILA are unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act precludes use of the determination for purposes of civil penalty enforcement actions pursuant to Section 5(m)(1)(B) of the FTC Act;

Whereas, it is now the opinion of the Commission that the public interest requires it to reopen this matter and consider altering its opinion and order so as to clarify its determination to reflect its longstanding view that stating one or more of the credit terms identified by Regulation Z without stating all of the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the TILA, constitutes an unfair or deceptive act or practice in violation of Section 5(a) of the FTC Act.

Now, therefore, *it is hereby ordered,* pursuant to Section 5(b) of the FTC Act, and Section 3.72(b) of the Commission's Procedures and Rules of Practice, that on or before the 30th day after service of this notice upon it, respondent Seekonk Freezer Meats, Inc., and respondent Lawrence Fontes, individually and as officer of the said corporation, shall show cause, if any there be, why the public interest does not require the Commission to reopen this proceeding and consider altering its decision of 1973, to determine that stating one or more of the credit terms identified by Regulation Z without stating all the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the TILA, constitutes either an unfair act or practice or an unfair and deceptive act or practice, in violation of Section 5(a) of the FTC Act, in a manner such as follows:

(1) By deleting the second paragraph after the caption "Final Order," 82 FTC 1025, 1059–60, and substituting language such as one of the following alternative paragraphs:

The Commission having determined that this matter should not be placed on its own docket for review and that the initial decision should become effective as provided in

Section 3.51(a) of the Commission's Rules of Practice, but having also determined that advertising one or more of the credit terms identified by Regulation Z without stating all the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the Truth in Lending Act, constitutes an unfair act or practice in violation of Section 5(a) of the Federal Trade Commission Act,

The Commission having determined that this matter should not be placed on its own docket for review and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, but having also determined that advertising one or more of the credit terms identified by Regulation Z without stating all the credit terms required by Regulation Z in a consumer credit advertisement, in violation of Regulation Z and the Truth in Lending Act, constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act,

IN THE MATTER OF

RELIABLE MORTGAGE CORPORATION, ET AL.

Docket 8956, Show Cause Order, January 31, 1989

SHOW CAUSE ORDER

Whereas, the Federal Trade Commission on January 8, 1975, made a determination against Reliable Mortgage Corporation *et al.* in Docket No. 8956 which found that respondents had stated an interest rate without stating the annual percentage rate in a consumer credit advertisement, in violation of the credit advertising requirements of Regulation Z, 12 CFR 226, and the Truth in Lending Act (TILA), Pub. L. 90-321, 15 U.S.C. 1601 *et seq.,* and

Whereas, the Federal Trade Commission on January 8, 1975, issued an order to cease and desist against Reliable Mortgage Corporation *et al* in Docket No. 8956 which prohibited respondents from stating the rate of a finance charge in a consumer credit advertisement unless said rate is expressed as an annual percentage rate, as defined in Regulation Z, and prohibited them from failing in any advertisement to make all disclosures required by Regulation Z, and

Whereas, the decision and order were served on respondents Reliable Mortgage Corporation and Edward Siegel on January 23, 1975, and

Whereas, the decision states (85 FTC 21, 25):

> It is clear that here respondents advertised a finance charge of 8-1/2 percent interest without specifying the annual percentage rate. Such ads were, therefore, violative of Regulation Z.

Whereas, the order states (85 FTC 21, 26):

> *It is further ordered,* That respondents Reliable Mortgage Corporation, a corporation . . . and Edward Siegel, individually and as an officer of said corporation . . . do forthwith cease and desist from:
>
> 1. Stating the rate of a finance charge unless said rate is expressed as an annual percentage rate, using the term 'annual percentage rate,' as 'finance charge' and 'annual percentage rate' are defined in Section 226.2 of Regulation Z, as prescribed by Section 226.10(d)(1) of Regulation Z[1]

[1] This provision is now codified at 12 CFR 226.24(b) of revised Regulation Z. Pursuant to the Commission's Enforcement Policy Statement of March 30, 1982 (47 Fed. Reg. 13322), all Truth in Lending requirements of

(footnote continued)

* * * * *

3. Failing, in any advertisement, to make all the disclosures as required by Section 226.10 of Regulation Z and in the manner prescribed therein.[2]

Whereas, pursuant to Section 103(y) of the TILA, the violation of any provision of Regulation Z constitutes a violation of the TILA;

Whereas, pursuant to Section 108(c) of the TILA, the violation of any provision of that Act constitutes a violation of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45;

Whereas, in enacting the credit advertising requirements, Congress sought to prohibit misleading, deceptive and unfair advertising practices (*See* Section 102 of the TILA);

Whereas, the decision against Reliable Mortgage Corporation *et al.* dated January 8, 1975 does not state expressly that advertising an interest rate in a consumer credit advertisement without specifying the correlative annual percentage rate, in violation of Regulation Z and the TILA, constitutes a deceptive and unfair act or practice in violation of Section 5(a) of the FTC Act;

Whereas, the Commission has nonetheless held and publicized its longstanding view that stating an interest rate in a consumer credit advertisement without specifying the correlative annual percentage rate for the financing, in violation of Regulation Z and the TILA, is an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act;

Whereas, the Eighth Circuit Court of Appeals has ruled in *United States v. Hopkins Dodge, Inc.,* 849 F.2d 311 (8th Cir. 1988), that the failure of the Commission in its *Reliable* determination to state expressly that credit advertising violations of Regulation Z and the TILA are unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act precludes use of the determination for purposes of civil penalty enforcement actions pursuant to Section 5(m)(1)(B) of the FTC Act;

Whereas, it is now the opinion of the Commission that the public interest requires it to reopen this matter and consider altering its said decision so as to clarify its determination to reflect its longstanding view that stating an interest rate in a consumer credit advertisement without stating the annual percentage rate, in violation of Regulation

existing FTC orders are interpreted and enforced so as to impose no greater or different disclosure obligations on creditors under order than are required of creditors generally under the Truth in Lending Simplification and Reform Act of 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 168) and revised Regulation Z (12 CFR Part 226, 46 Fed. Reg. 20848, April 1, 1981).

[2] This provision is now Section 226.24 of Regulation Z, 12 CFR Part 226.24.

Z and the TILA, also constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act.

Now, therefore, *it is hereby ordered,* pursuant to Section 5(b) of the FTC Act, and Section 3.72(b) of the Commission's Procedures and Rules of Practice, that on or before the 30th day after service of this notice upon it, respondent Reliable Mortgage Corporation, and respondent Edward Siegel, individually and as officer of the said corporation, shall show cause, if any there be, why the public interest does not require the Commission to reopen this proceeding and consider altering its decision of 1975, to determine that stating an interest rate in a consumer credit advertisement without stating the annual percentage rate, in violation of current Section 226.24(b) of Regulation Z and the TILA, is an unfair and deceptive act or practice in violation of Section 5(a) of the FTC Act, in a manner such as follows:

(1) By deleting the second paragraph after the caption "Final Order," 85 FTC 21, 26–27, and substituting language such as the following:

The Commission having determined that this matter should not be placed on its own docket for review and that the initial decision should become effective as provided in Section 3.51(a) of the Commission's Rules of Practice, but having also determined that advertising an interest rate without stating the annual percentage rate in a consumer credit advertisement, in violation of Regulation Z and the Truth in Lending Act, constitutes an unfair and deceptive act or practice in violation of Section 5(a) of the Federal Trade Commission Act,

IN THE MATTER OF

GENERAL NUTRITION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9175, Complaint, Mar. 20, 1984—Decision, Feb. 2, 1989*

This consent order requires, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, to pay a total of $600,000 for research, and prohibits respondent from making false and unsubstantiated claims for products. The order also requires respondent to divide the $600,000 equally among certain organizations for research in nutrition, obesity, or physical fitness.

Appearances

For the Commission: *Robert C. Cheeks.*

For the respondent: *Robert V. Dunn,* in-house counsel, Pittsburgh, Pa. and *Robert Ullman, Bass, Ullman & Lustigman,* New York City.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that General Nutrition Incorporated, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 921 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacturer, offering for sale, and sale of various nutritional supplements, such as "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino

*An amended complaint was issued by the Commission March 14, 1988.

Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine," and "L-Ornithine."

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promotional material, including, but not limited to, the advertising and promotional materials attached hereto as Attachments A through P, to promote the sale of "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine," "L-Ornithine" and other nutritional supplements.

PAR. 4. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements for nutritional supplements, including "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine," and "L-Ornithine," which are "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, by various means in or affecting commerce, including *inter alia* national magazines and newspapers distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Attachments A through P. Specifically, the aforesaid advertisements and promotional materials contain the following statements:

A. In regard to "Healthy Greens":

(1) "What do these vegetables have to do with cancer? They may help reduce the risk of developing it, says the National Research Council."

(2) "The hedge against cancer."

(3) "And judging from the NRC study for the National Cancer Institute ... just possibly your best hedge against cancer."

(4) "By taking Healthy Greens you may reduce your changes of getting cancer."

(5) "...[F]ortified by vitamins A, C, and E ... Research is now under way to

determine the full benefits of these nutritional factors. Although the final results are not in, early reports indicate they play important roles in reducing the risk of cancer."

(6) "Can these 60 tablets with 6 vegetables and 5 nutrients help reduce the risk of cancer?"

(7) "The National Cancer Institute asked the National Research Council (NRC) to study the question of diet and cancer .... The committee ... recommended that we increase the amounts of fruits, whole grain cereals and vegetables, especially vegetables rich in beta-carotenes like cabbage, brussel sprouts, cauliflower, and broccoli .... HEALTY GREENS combines cabbage, spinach, brussel sprouts, carrots, cauliflower, and broccoli .... Healthy Greens is not a cancer cure, but there is good sense in decreasing risks."

(8) "[T]he evidence is coming in, and it all points to Healthy Greens as being an important ingredient to your well-being, and that of your family and friends."

(9) "[M]illions of people can now help safeguard their well-being with the greens that the National Research Council recommends we eat more of."

(10) "Vitally Important Government Study. Diet, Nutrition, and Cancer point the way for you to reduce cancer.... Diet, Nutrition and Cancer, Committee on Diet, Nutrition, and Cancer, Assembly of Life Sciences, National Research Council. National Academy Press, Washington, D.C. 1982."

B. In regard to "Challenge Growth and Training Vita-Pak" or "Challenge Free Form Amino Acids":

(1) "STEROID FREE! Natural Plan To Help YOU Achieve Maximum Muscle Mass & Body Size!"

(2) "Challenge Is For All Serious Athletes Who Want A Steroid Alternative."

(3) "[The] ornithine and arginine [components are] ... often called Growth Hormone Releasers; important to the creation of anabolic activity in the body."

(4) "[A] scientific plan for all serious athletes who are looking for a sensible alternative to the danger of steroids."

(5) "[A]dult formulation of nutritional supplements constructed to help the athlete get maximum muscle mass and body size."

(6) "The bigger you want to get, the faster you want to run, the better the fuel you need. And when you're serious, you'll seriously consider Challenge Growth and Training Vita-Pak."

(7) "All the strengths of steroid—none of the weaknesses."

C. In regard to "Life Expander Growth Hormone Releaser":

(1) "Weight Control & Reduction Without Dieting! ... Burn Fat Away!" "Because Growth Hormone Releaser works by attacking the fat in your body, it's a totally different, revolutionary method of weight control and reduction. You can eat normally! You don't have to worry about special foods, calorie counting, fad diets or starving yourself. Growth Hormone Releaser does the work for you!" "Certain amino acids—L-Ornithine, L-Arginine, and L-Tryptophane—have the ability to stimulate body production of the Growth Hormone. By taking Growth Hormone Releaser, you supplement your body's intake of these three important amino acids. Together they form a potent combination of ingredients which have been known to stimulate the release of Growth Hormone that directs your body to burn fat for needed energy. Obviously, a very desirable factor when you're trying to lose weight!"

(2) "Growth hormone is also important in building muscle tissue—very important in the healing process or for those interested in body building."

(3) "Growth Hormone Releaser," is part of the name of the product."

D. In regard to the "24 Hour Diet Plan";

(1) "Lose Weight Even As You Sleep." "Amino FB burns away fat while you sleep. These amino acid tablets taken before bedtime have been known to stimulate the production of growth hormones which direct your system to burn fat for energy instead of protein or carbohydrates—a reversal of the usual process. This action is continuously effective, even during sleep."

(2) "The 24 Hour Diet Plan Pack contains directions and 42 easy-to-use packets that make weight control a physical science, not a challenge for your will power."

(3) "The GNC Research Staff had a difficult assignment ... to develop a weight loss program that puts its demands on science rather than human will power. They screened all the most effective plans and aids now known, and combined the best of the best. Although nobody expected a miracle, a lot of people are describing this three-part program as just that."

E. In regard to "L-Ornithine" and "L-Arginine":

(1) "L-Ornithine and L-Arginine stimulate the body's production of growth hormone and growth hormone has some pretty amazing functions in the body.

Growth Hormone Directs
Body To Burn Fat!

Growth hormone moves large amounts of fatty acids out of storage in fat tissue. This fat is then burned by the body as the main source of energy for body cells. Therefore, body fat is burned saving valuable muscle protein and stored carbohydrate.

Growth Hormone Helps
Carbohydrate Energy Storage

Many athletes know that glycogen, the storage form of carbohydrate energy, is valuable for endurance type activities. Growth hormone, by directing the body to burn fat, 'spares' the breakdown of glycogen."

(2) "Arginine is one of the nutritionally essential amino acids that is a 'building block' of protein. But even more important is the scientific discovery that it can stimulate the release of growth hormone! Growth hormone is important in the healing process—a process of obvious importance to long life."

F. In regard to arginine/ornithine-based nutrient supplements in GNC's "Life Expander" series ["Life Expander Arginine Powder" and "Life Expander Growth Hormone Releaser"]:

(1) "A totally new, healthful and exciting product series designed to take advantage of scientific discoveries that could add quality years to your life!"

(2) "The Life Expander Series is a specific program that provides a revolutionary approach to the preservation and expansion of human life. It is a total program for anyone truly interested in doing something for themselves to promote a quality, maximum, healthful long life."

PAR. 7. Through the use, *inter alia*, of the statements referred to in paragraph six, and other representations contained in advertisements

or promotional materials not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

A. The findings of the National Research Council's *Diet, Nutrition and Cancer* Report support the claim that use of "Healthy Greens," or food supplements of dehydrated vegetables such as "Healthy Greens," is associated with a reduction in the incidence of certain cancers in humans.

B. Research indicates that Vitamin E plays an important role in reducing the risk of cancer.

C. The use of "Healthy Greens" is associated with a reduction in the incidence of certain cancers in humans.

D. Vitamin E plays an important role in reducing the risk of cancer.

E. Ornithine, arginine or trypotophane, taken by mouth in the dosages found in respondent's products, will stimulate the body to produce or release significantly greater amounts of human growth hormone in users than in non-users.

F. Users of the "24 Hour Diet Plan" will experience greater weight loss during sleep than non-users.

G. Users of "Life Expander Growth Hormone Releaser" will have a greater release of human growth hormone in the body than non-users.

H. Those "Life Expander" series nutritional supplements or other foods containing ornithine, arginine, or tryptophane can extend or prolong life or retard aging.

I. Users of the "Challenge Growth and Training Vita-Pak" and "Challenge Free Form Amino Acids" will achieve results similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids. *i.e.,* rapid or substantial muscular development.

PAR. 8. In truth and in fact:

A. The representation referred to in paragraph seven A is false for the reason, *inter alia,* that the findings of the *Diet, Nutrition and Cancer* Report do not support the claim that the use of "Healthy Greens" or food supplements of dehydrated vegetables such as "Healthy Greens" is associated with a reduction in the incidence of certain cancers in humans.

B. The representation referred to in paragraph seven B is false for the reason, *inter alia,* that no research indicates that Vitamin E plays an important role in reducing the risk of cancer.

C. The representation referred to in paragraph seven E is false for

the reason, *inter alia,* that ornithine, arginine or trypotophane, taken by mouth in the dosages found in respondent's products will not stimulate the body to produce or release significantly greater amounts of human growth hormone in users than in non-users.

D. The representation referred to in paragraph seven F is false for the reason, *inter alia,* that users of the "24 Hour Diet Plan" will not experience greater weight loss during sleep than non-users.

E. The representation referred to in paragraph seven G is false for the reason, *inter alia,* that users of "Life Expander Growth Hormone Releaser" will not have a greater release of human growth hormone in the body than non-users.

F. The representation referred to in paragraph seven H is false for the reason, *inter alia,* that those "Life Expander" series nutritional supplement/foods containing ornithine, arginine, or tryptophane cannot extend or prolong life or retard aging.

G. The representation referred to in paragraph seven I is false for the reason, *inter alia,* that users of the "Challenge Growth and Training Vita-Pak" and "Challenge Free Form Amino Acids" will not achieve results similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, *i.e.,* rapid or substantial muscular development.

PAR. 9. Through the use, *inter alia,* of the statements referred to in paragraph six, and other representations contained in advertisements or promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in paragraph seven C through seven I, at the time the initial dissemination of the representations and each subsequent dissemination.

PAR. 10. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. The use by respondent of the aforesaid statements, representations, acts, and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers into the erroneous and

mistaken belief that said statements and representations were and are true and complete and to induce such persons to purchase "Healthy Greens," "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," "24 Hour Diet Plan," "L-Arginine" and "L-Ornithine," by reason of said erroneous and mistaken belief.

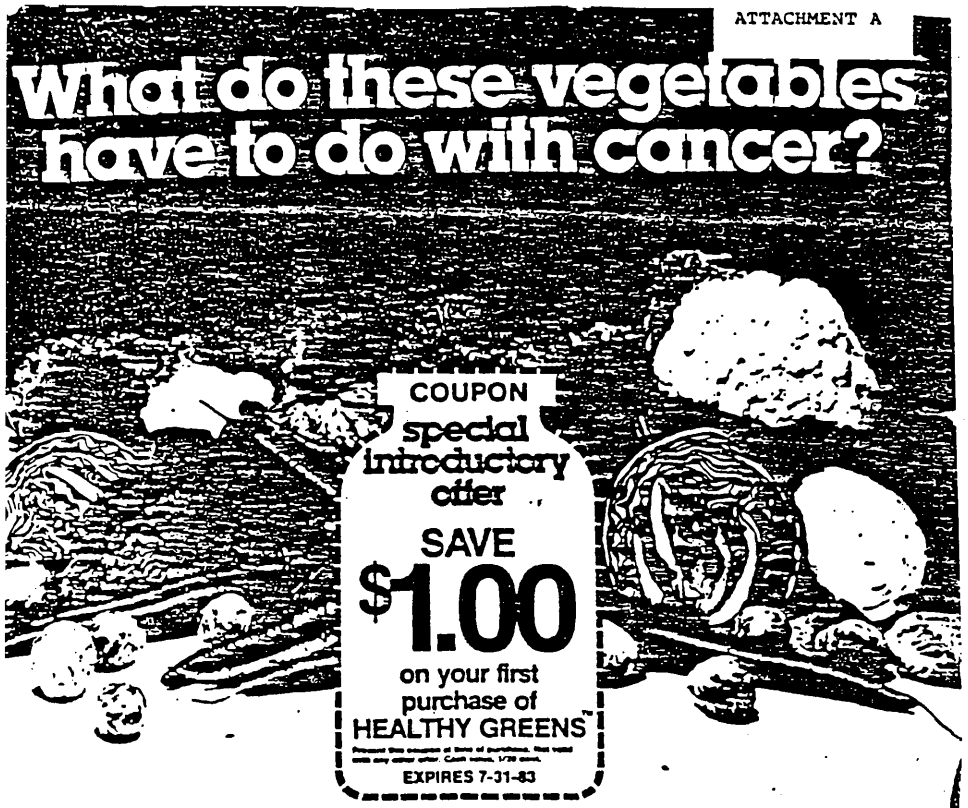
PAR. 12. The aforesaid acts or practices of respondent, herein alleged as deceptive, were and are to the prejudice and injury of the public and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of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

Commissioners Oliver and Azcuenaga were recorded as voting in the negative.

ATTACHMENT A

ATTACHMENT A

What do these vegetables have to do with cancer?



They may help reduce your risk of developing it, says the National Research Council. Their report on diet, nutrition and cancer, written by request of the American Cancer Society states "It should be made clear that the weight of evidence suggests that what we eat during our lifetime strongly influences the possibility of developing certain types of cancer."

The committee's dietary recommendations include increasing the amounts of green cruciferous vegetables (broccoli, brussels sprouts, cabbage, cauliflower) and those rich in beta-carotene (spinach and carrots) among other food items. These vegetables seem to contain nutritional factors that encourage and enhance our natural defenses against cancer.

Additionally, research is continuing into the benefits of reducing cancer risk with regular use of vitamins A, C, E, and selenium, with which Healthy Greens™ are fortified.

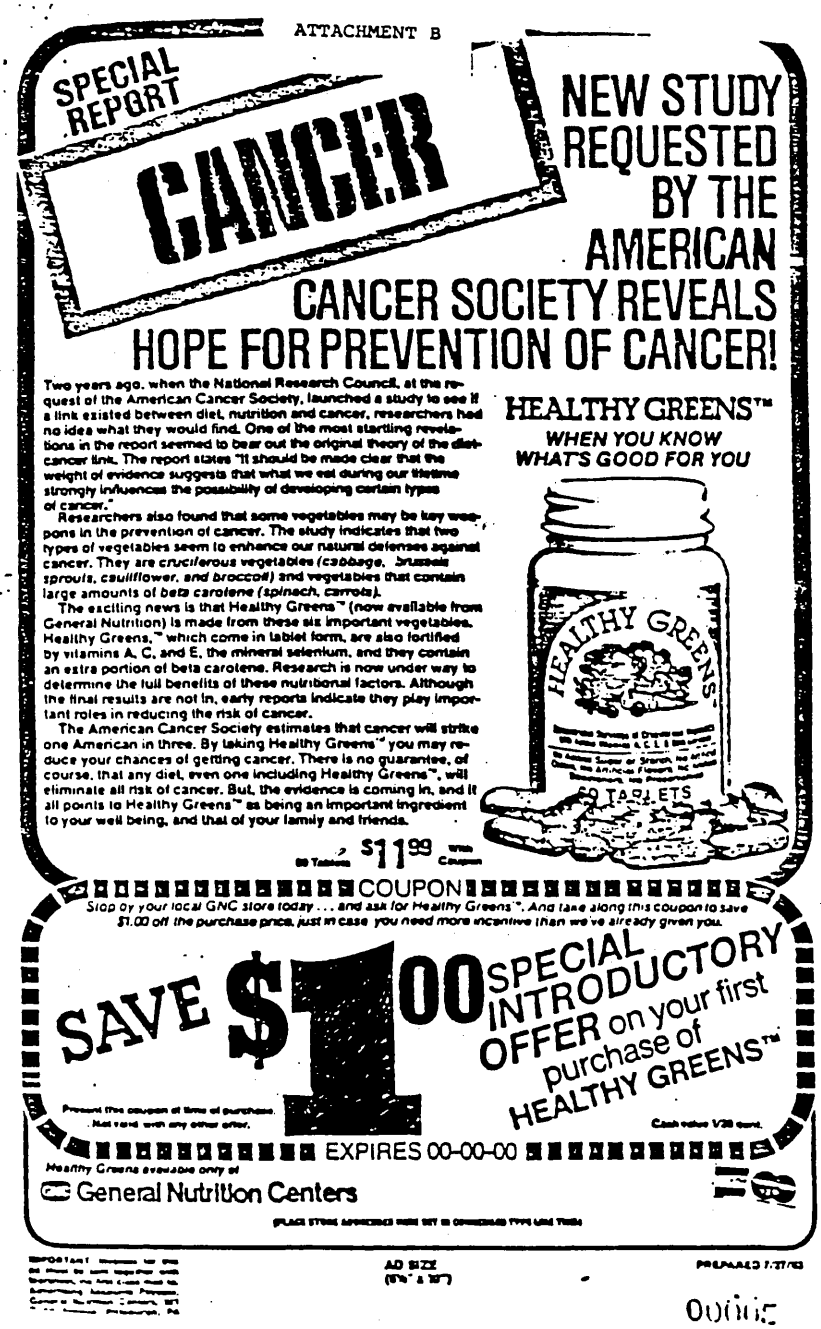
$1.00 OFF

THE HEDGE AGAINST CANCER. Healthy Greens™ is brand new! And each tablet gives you exactly what the name implies—your daily dose of healthy greens! In convenient tablet form. And judging from the NRC study for the National Cancer Institute...just possibly your best hedge against cancer. There is no guarantee against cancer...but it is foolish not to give your health every chance you can.

GNC Available only at General Nutrition Centers

ATTACHMENT B

ATTACHMENT B



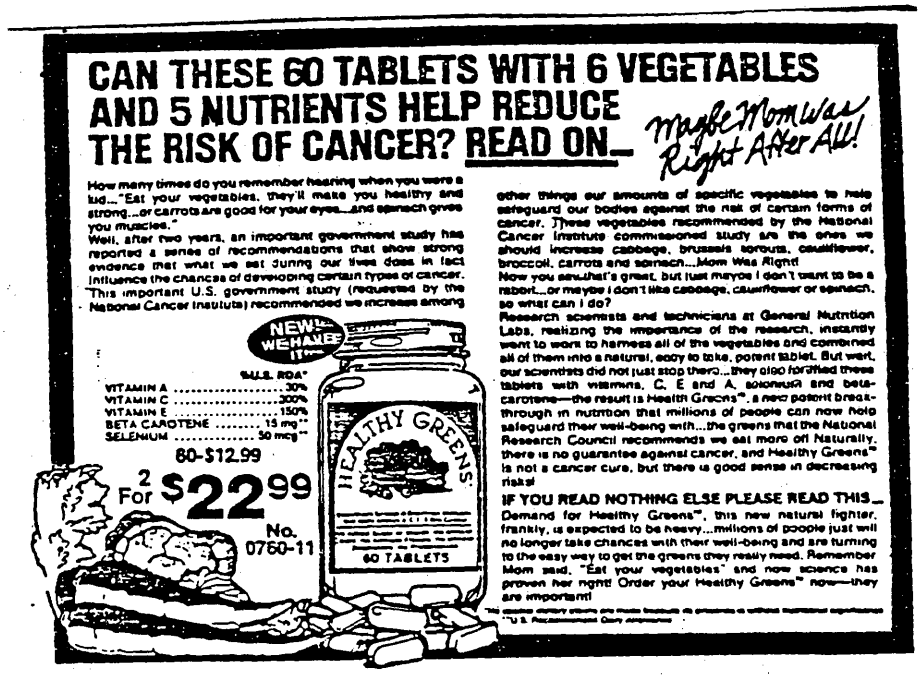
AD SIZE

PREPARED 7/27/83

Oofiic

ATTACHMENT C

ATTACHMENT D



ATTACHMENT E

DEAR

CAN OUR ALL NEW HEALTHY GREENS WITH SIX VEGETABLES AND FIVE NUTRIENTS HELP YOU REDUCE THE RISK OF CANCER.....READ ON.

MAYBE MOM WAS RIGHT AFTER ALL.....HOW MANY TIMES DO YOU REMEMBER HEARING WHEN YOU WERE A KID.....EAT YOUR VEGETABLES THEY'LL MAKE YOU HEALTHY AND STRONG.....OR EAT YOUR SPINACH IT GIVES YOU MUSCLES....

WELL, AFTER TWO YEARS MR WILLIAMSON, AND IMPORTANT GOVERNMENT STUDY HAS REPORTED A SERIES OF RECOMMENDATIONS THAT SHOW STRONG EVIDENCE, THAT WHAT WE EAT DURING OUR LIVES DOES IN FACT INFLUENCE THE CHANCES OF DEVELOPING CERTAIN TYPES OF CANCER. THIS IMPORTANT GOVERNMENT STUDY REQUESTED BY THE NATIONAL CANCER INSTITUTE SAID IT RECOMMENDS WE INCREASE AMONG OTHER THINGS OUR AMOUNTS OF SPECIFIC VEGETABLES TO HELP SAFEGUARD OUR BODIES AGAINST THE RISKS OF CERTAIN FORMS OF CANCER. THEY ARE CABBAGE, BRUSSELS SPROUTS, CAULIFLOWER, BROCCOLI, CARROTS, AND SPINACH.....MOM WAS RIGHT.

REALIZING THE IMPORTANCE OF THIS STUDY, WE TOOK ALL THESE VEGETABLES, AND COMBINED ALL OF THEM INTO POTENT EASY TO TAKE TABLETS CALLED HEALTHY GREENS. WE ALSO FORTIFIED THEM WITH VITAMINS C, E, AND A PLUS SELENIUM AND BETA CAROTENE. MR WILLIAMSON, HEALTHY GREENS IS THE EASY WAY TO GET THE GREENS YOU NEED. MOM SAID EAT YOUR VEGETABLES AND NOW SCIENCE HAS PROVEN HER RIGHT. ORDER YOUR HEALTHY GREENS NOW.... 60 TABLET BOTTLE NO. 0760-11 IS ONLY $12.99...THEY ARE IMPORTANT...

08C183 A,B,C,D,E,G

ATTACHMENT F

VITALLY IMPORTANT
GOVERNMENT STUDY

Diet, Nutrition & Cancer:

Points The Way For You To Reduce Cancer Risk.

The National Cancer Institute asked the National Research Council (NRC) to study the question of diet and cancer. After two years of reviewing the state of knowledge and information important to diet, nutrition and incidence of cancer, the NRC committee released a series of recommendations relating dietary components, nutritional factors and the incidence of cancer. They reported that it isn't now possible to specify a diet that protects all people against all forms of cancer but, "It should be made clear that the weight of evidence suggests that what we eat during our lifetime strongly influences the probability of developing certain types of cancer."

The committee recommended that we should eat less fat, salt cured or smoked food and drink alcohol only in moderation. The committee also recommended that we increase the amounts of fruits, whole grain cereals and vegetables, especially vegetables rich in beta-carotene like cabbage, brussels sprouts, cauliflower and broccoli. Further, the government report noted the scientific interest in vitamins A, C, E and the mineral selenium in cancer protection, even though there isn't enough information yet to make solid conclusions or recommendations of individual supplements.

ATTACHMENT G

ATTACHMENT

Vitally Important Government Study:

DIET, NUTRITION and CANCER

points the way for you to reduce cancer risk.

The National Cancer Institute asked the National Research Council (NRC) to study the question of diet and cancer. After two years of reviewing the state of knowledge and information important to diet, nutrition and incidence of cancer, the NRC committee released a series of recommendations relating dietary components, nutritional factors and the incidence of cancer. They reported that it isn't now possible to specify a diet that protects all people against all forms of cancer but, "It should be made clear that the weight of evidence suggests that what we eat during our lifetime strongly influences the probability of developing certain types of cancer."

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ADVANTAGE ~~INTRODUCES~~...

THE ULTIMATE NUTRITION SUPPLEMENT—

HEALTHY GREENS

Let Advantage put science to work for you! It may not always be possible for you to get all the right green leafy vegetables or other rich sources of beta-carotene and nutrients the government reveals to be so important to you and your family's future health. Or maybe you just don't like those foods.

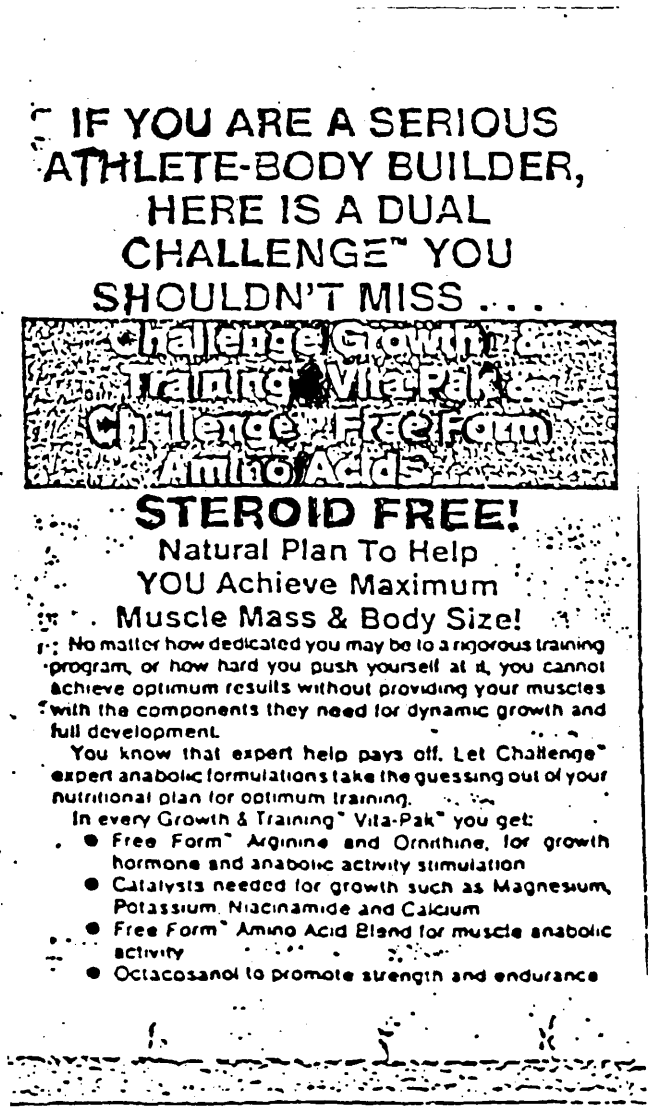
HEALTHY GREENS™ combines cabbage, spinach, brussels sprouts, carrots, cauliflower and broccoli with Vitamin C, selenium (organically bound in yeast) Vitamin E, beta-carotene and Vitamin A in one easy to take tablet. Easy. No fuss. Simple to take once a day every day. And, of course, no preservatives, no sugar, no artificial color or flavors are added.

There is no guarantee against cancer, and Healthy Greens™ is not a cancer cure, but there is good sense in decreasing risks. Like following the recommended dietary guidelines of the National Research Council each day.

Staying healthy is a job for all seasons. Healthy Greens™ is a supplement for all seasons, no matter what vegetables are available in the market, no matter how busy you are or how much time you have to prepare and eat the kind of meals you should. Start using Healthy Greens™ today!

Diet, Nutrition, and Cancer, Committee on Diet, Nutrition and Cancer, Assembly of Life Sciences, National Research Council, National Academy Press Washington, D.C. 1982

ATTACHMENT H




In every Challenge™ Free Form Amino Acid Capsule you get nitrogen containing amino acid nutrients in easy to assimilate form:
L-ISOLEUCINE
L-LEUCINE
L-LYSINE
L-METHIONINE
L-TYROSINE
L-THREONINE
L-VALINE
L-ARGININE
L-HISTIDINE
L-GLUTAMINE
L-TRYPTOPHANE
GLYCINE
MONOPOTASSIUM L-ASPARTATE
MONOMAGNESIUM DI-L-ASPARTATE
CHALLENGE™ IS FOR ALL SERIOUS ATHLETES WHO WANT A STEROID ALTERNATIVE
Don't waste your time with a rigorous training program unless you have a nutritional plan equal to it... Use Challenge™ Growth & Training™ Vita-Pak™ and Challenge™ Free Form™ Amino Acids.
DON'T WORKOUT WITHOUT IT
Code 568011

ATTACHMENT I

Based On A #1 Best Selling Book On Extending Your Life

Introducing The Life™ Expander SERIES

LIFE EXPANDER™

Based on a #1 best selling book on extending your life. A totally new, healthful and exciting product [illegible] designed to take advantage of scientific discoveries that could add quality years to your life!

The Life Expander Series is a specific program that provides a revolutionary approach to the preservation and expansion of human life. It is a total program for anyone truly interested in doing something for themselves to promote a quality, maximum, healthful long life. The [illegible] Life Expander products may just be that "opportunity of a lifetime" that comes along once. Don't fail to take advantage of it.

[illegible]

This product is the essential, specially formulated vitamin and mineral base of the entire program. Nine special nutrients, all of which are involved in vitally important life processes, are combined in measured proportion for convenient six tablet per day protection.

[illegible]

Vitamin E	[illegible] IU	Ascorbyl palmitate	[illegible] mg
Selenium	160 mcg	Bioflavonoids	[illegible] mg
Vitamin B 6	200 mg	Pantothenic Acid	[illegible] mg
Vitamin C	2000 mg	Cysteine	[illegible] mg
		Methionine	[illegible] mg

[illegible]

Today's chemically complex world can assault bodily systems in ways that we have never had the opportunity to adapt to—specifically or to the overwhelming volume. The ever increasing amount of chemicals [illegible] and up in air, water or food may be capable of damaging the delicate balance of cells by a process called oxidation.

The anti-oxidant formula contains three nutrients that scientists believe can help protect cells and cell structures from oxidation damage. These powerful nutrients can assist you by helping to neutralize potentially harmful oxidant chemicals that seem to be increasing in the environment.

Five tablets provide: Vitamin C, 3000 mg; Cysteine, 1000 mg; and Vitamin B-1, 250 mg.

[illegible]

Arginine is one of the nutritionally essential amino acids that is a "building block" of protein. But even more important is the scientific discovery that it can stimulate the release of growth hormone! Growth hormone is important in the healing process—a process of obvious importance to long life.

Arginine powder is a concentrated nutrient form. Each teaspoon of powder provides over 3.7 grams!

[illegible]

This special product contains D.M.A.E. (dimethylaminoethanol) which may be helpful against "aging" pigments.

Lipofuscin ("liver spots") and amyloid are pigments that can increase with age. It is thought that these pigments can accumulate and interfere with the normal physiological processes of cells, even brain cells.

D.M.A.E. is provided in liquid form. Each bottle contains 1.7 ounces.

[illegible]

If you are concerned about excessive hair loss, Polysorbate 80 should be part of your hair care product system.

Polysorbate 80 is a special detergent that is approved for use in shampoo. The function of Polysorbate 80 is to make normally unmixable fat and water to mix. This is important to remove excess dihydrotestosterone and cholesterol, two normally water insoluble compounds whose control is very important in normal hair production.

A few drops in specific locations or a small amount that will produce a thin scalp coating is all that's needed. A vigorous scalp rub is then recommended before rinsing about 5 or 10 minutes after application. Follow this with a normal shampooing. Very simple! Very easy!

Supplied in convenient, long lasting 8 oz. size.

[illegible]

G.A.B.A. is gamma aminobutyric acid, an amino acid that has a special physiological role as a neurotransmitter. Neurotransmitters are critical in proper brain function because they serve to carry messages from nerve fiber to nerve fiber in the brain.

For instance, G.A.B.A. is thought to be important in proper control of the hormone prolactin. Too much prolactin is thought to depress sex drive in men and may contribute to enlarged prostate (enlarging prostate can be a reason for frequent nighttime urination). Also, G.A.B.A. (and inositol) may be involved in the body's own "tranquilizer" mechanism that involves the binding of the vitamin niacinamide to special receptor sites in the brain.

G.A.B.A., inositol and niacinamide are combined in G.A.B.A. Plus. Available in 60 tablet supply.

[illegible]

Ascorbic acid (Vitamin C) is known to be a strong antioxidant. The vitamin is thought to have a protective function by neutralizing potentially harmful oxidizing chemicals. But, these oxidizing reactions can occur in fatty tissues too, and the usual Vitamin C is water soluble which means it doesn't dissolve in fat.

Ascorbyl palmitate is a special fat soluble version of Vitamin C. It is designed to allow you to extend Vitamin C protection to fatty tissues or areas of cells containing non-water soluble structures. With regular Vitamin C and ascorbyl palmitate you can maximize body Vitamin C coverage.

Available in 380 mg tablet.

[illegible]

Choline is important to the body because of its many functions including a neurotransmitter role in proper brain learning and memory function, the proper elimination of cholesterol, maintaining strong cell membranes and proper distribution of body fat.

Available in easy to digest 8 oz. liquid form.

[illegible]

G.H. Releaser is an amino acid supplement of L-Ornithine, L-Arginine and L-Tryptophane. Each amino acid has the ability to stimulate body production of growth hormone; together they form a potent combination.

Growth hormone directs the body to burn fat for needed energy—a very desirable factor for those trying to lose weight. Growth hormone is also important in building muscle tissue—very important in the healing process or for those interested in body building.

G.H. Release is available in 60 tablet supply.

[illegible]

Cysteine is a special amino acid that contains sulfur. Its unique molecular structure provides it with important antioxidant properties allowing it to neutralize potentially harmful oxidants.

Another unique factor about cysteine is that it is necessary for normal hair. Hair is about 8% cysteine so if you are concerned about proper hair growth you should be concerned about getting needed cysteine.

Cysteine is available in potent 1000 mg size, 30 tablet supply.

[illegible] Life Expander/PCA Skin Spra[illegible]

PCA Skin Spray is a dramatic new discovery fo[illegible] looking skin. At last, science has isolated young [illegible] humectant, a moisturizing substance called P[illegible]

PCA contributes to the nourishing of skin and re[illegible] of fluids that give young skin its dewy, still suppl[illegible] as skin ages it can lose natural PCA and com[illegible] the fact that there are many chemicals in the en[illegible] that can cause loss of natural PCA, skin can los[illegible] supple, beautiful young look before its time.

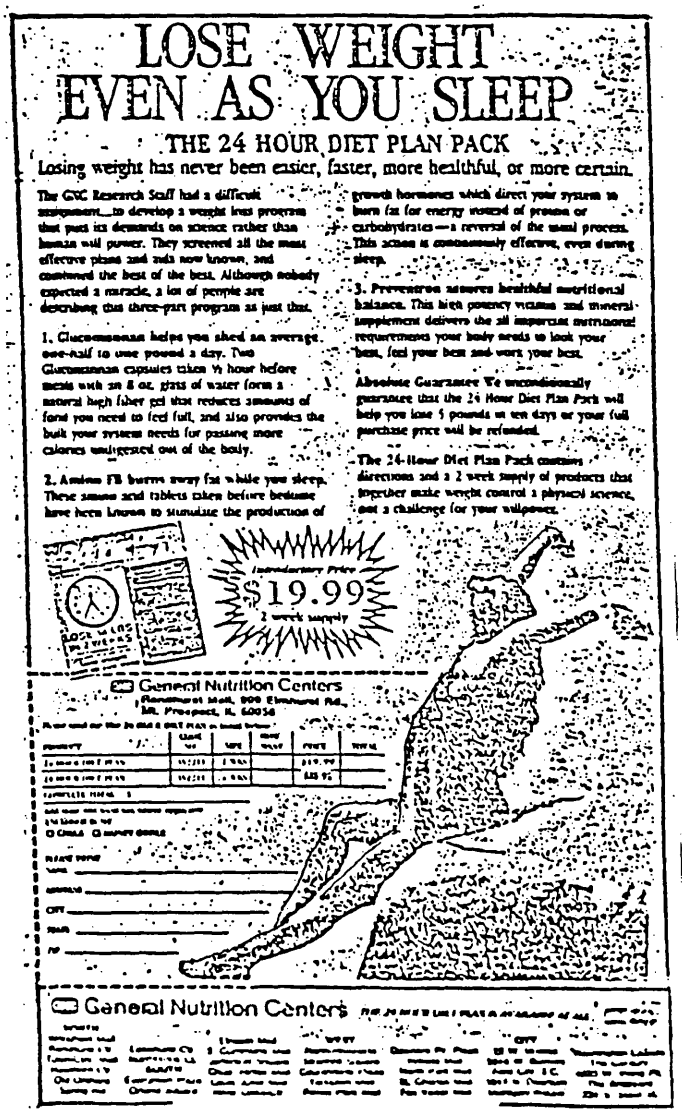
Now you can give your skin back what it has [illegible] time you use PCA Skin Spray. Available in 8 o[illegible]

IMPORTANT . . .

These new Life Expander [illegible] ducts can help your "aging [illegible] clock" run healthier. We [illegible] proud to be able to bring th[illegible] fine Life Expander™ product[illegible] you. They are a practical, [illegible] nonsense way for you to live [illegible] healthful full life you deser[illegible] enjoy!!

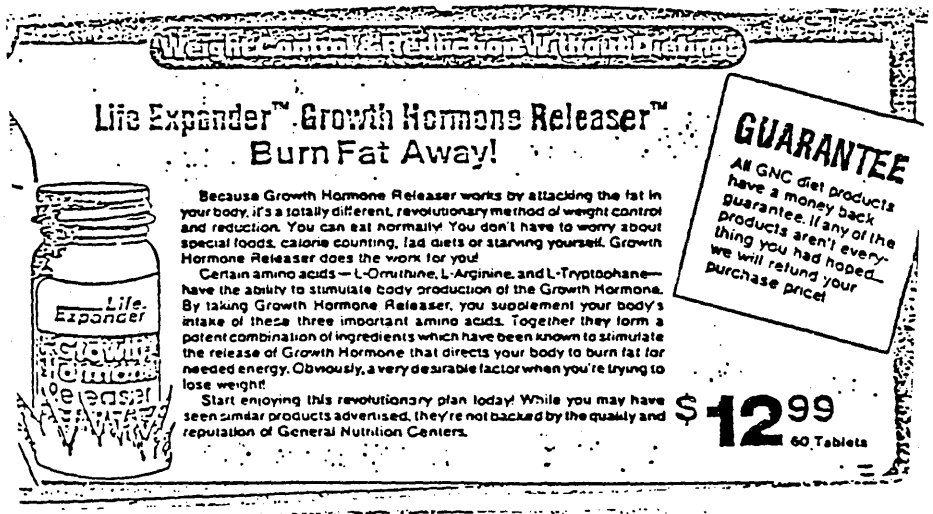
ATTACHMENT I

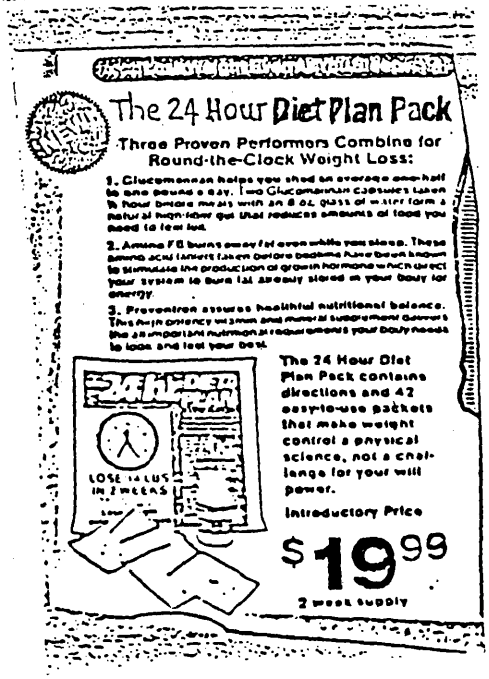
ATTACHMENT J



ATTACHMENT J

ATTACHMENT K





ATTACHMENT L

You Need About ... WE HAVE IT

L-ORNITHINE L-ARGININE

Nature's Amino Acids

L-Ornithine and L-Arginine are amino acids, better known as "building blocks of protein." These natural products can be derived from protein in our diet. But, when they come from protein foods they come with other amino acids which "dilutes" their concentration, and the current interest in L-Ornithine and L-Arginine centers on their special body function when eaten alone. L-Ornithine and L-Arginine stimulate the body's production of growth hormone and growth hormone has some pretty amazing functions in the body.

Growth Hormone Directs Body To Burn Fat!

Growth hormone moves large amounts of fatty acids out of storage in fat tissue. This fat is then burned by the body as the main source of energy for body cells. Therefore, body fat is burned saving valuable muscle protein and stored carbohydrate.

Growth Hormone Helps Build Muscle Tissue

Protein is needed for muscle tissue growth, body organ maintenance and to repair wounds. Growth hormone increases the amount of protein made inside body cells even without an increase in dietary protein.

Exactly how this occurs is not completely understood, but it is known that over longer periods of time increased amounts of RNA (protein synthesis messenger in cells) is produced. This in turn promotes growth if sufficient vitamins and other nutrients are available.

Growth Hormone Helps Carbohydrate Energy Storage

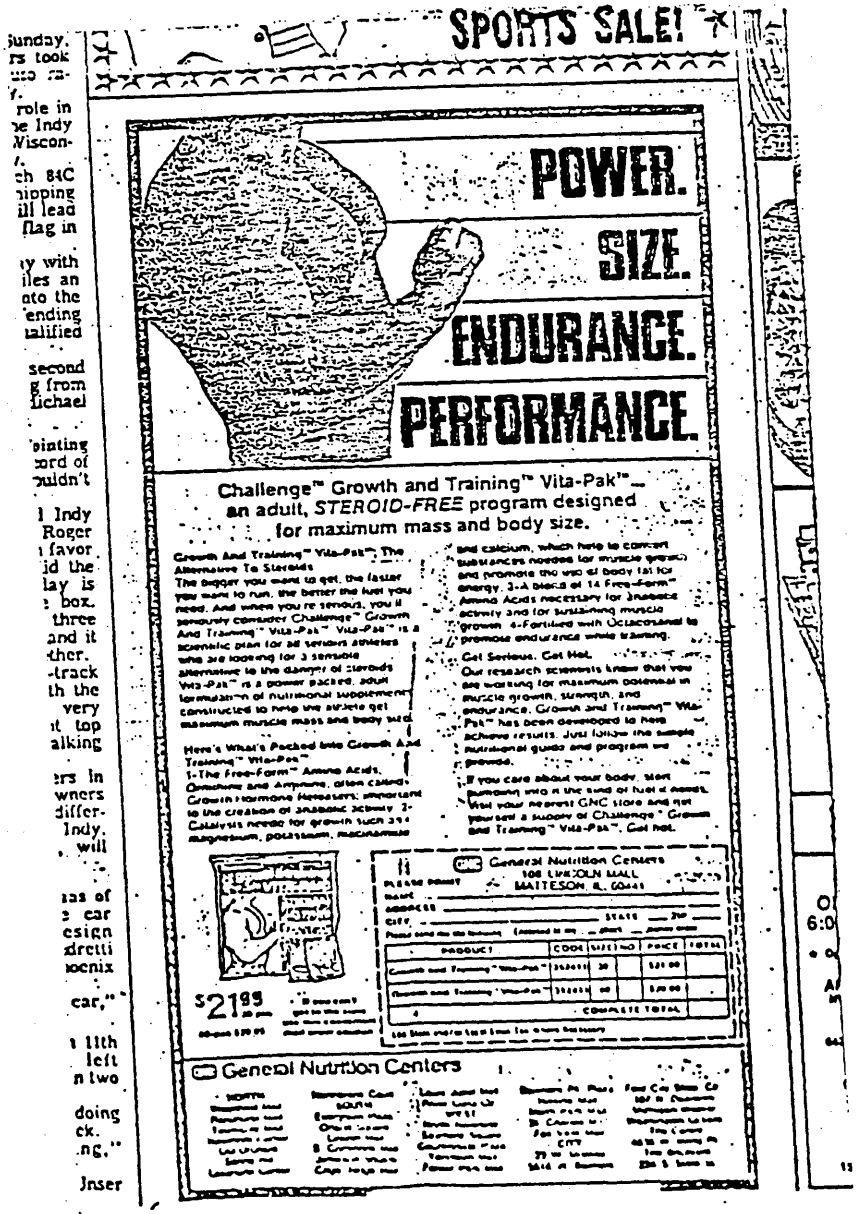
Many athletes know that glycogen, the storage form of carbohydrate energy, is valuable for endurance type activities. Growth hormone, by directing the body to burn fat, "spares" the breakdown of glycogen.

L-Ornithine Or L-Arginine?

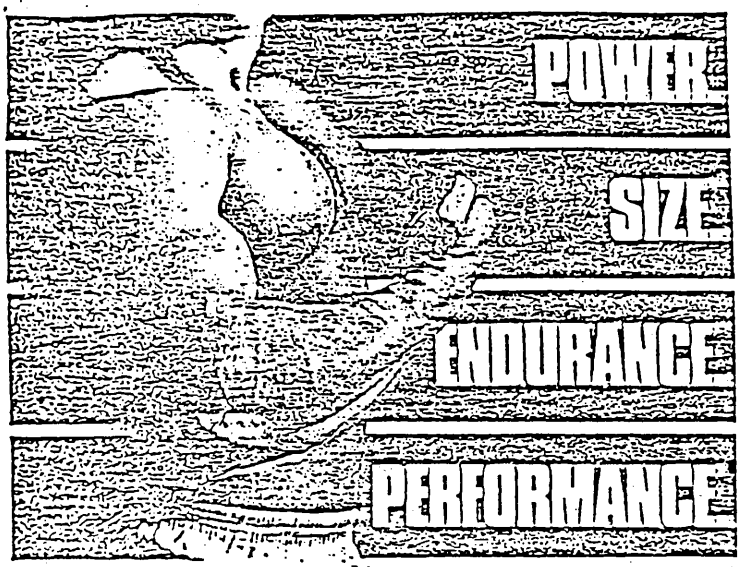
Both L-Ornithine and L-Arginine increases growth hormone secretion. But, L-Ornithine is said to cause almost twice as much growth hormone secretion as L-Arginine on an equal weight basis.

Code #567211

ATTACHMENT M



ATTACHMENT N



Challenge™ Growth and Training™ Vita-Pak™ ... an adult, *STEROID-FREE* program designed for maximum mass and body size.

It's hard to believe that so many guys pretend to be serious about their bodies and completely ignore the fact that they pump into themselves. What's the use of trying to build up a good looking, high performance body if you ignore or abuse it? It's like pumping cheap gas into a Mercedes.

Growth and Training™ Vita-Pak™. The Alternative To Steroids

The bigger you want to get, the faster you want to run, the better the fuel you need. And when you're serious, you'll seriously consider Challenge™ Growth and Training™ Vita-Pak™. Vita-Pak™ is a scientific plan for all serious athletes who are looking for a sensible alternative to the danger of steroids. Vita-Pak™ is a power packed, adult formulation of nutritional supplements constructed to help the athlete get maximum muscle mass and body size.

Here's What's Packed Into Growth And Training™ Vita-Pak

Growth and Training™ Vita-Pak™ is for the guy who is looking for results. Here's what you get: 1—The Free-Form™ Amino Acids, Ornithine and Arginine, often called Growth Hormone Releasers, important to the creation of anabolic activity in the body. 2—Catalysts needed for growth such as magnesium, potassium, niacinamide and calcium, which help to convert substances needed for muscle growth and promote the use of the body fat for energy. 3—A blend of 14 Free-Form™ Amino Acids necessary for anabolic activity and for sustaining muscle growth. 4—Fortified with Octacosanol to promote endurance while training.

Get Serious. Get Hot.

Our research scientists know that you are working for maximum potential in muscle growth, strength and endurance. Growth and Training™ Vita-Pak™ has been developed to help you achieve the results you are looking for. Just follow the simple nutritional guide and program we provide. Vita-Pak™ makes sense, it packs the nutritional punch you big guys need.

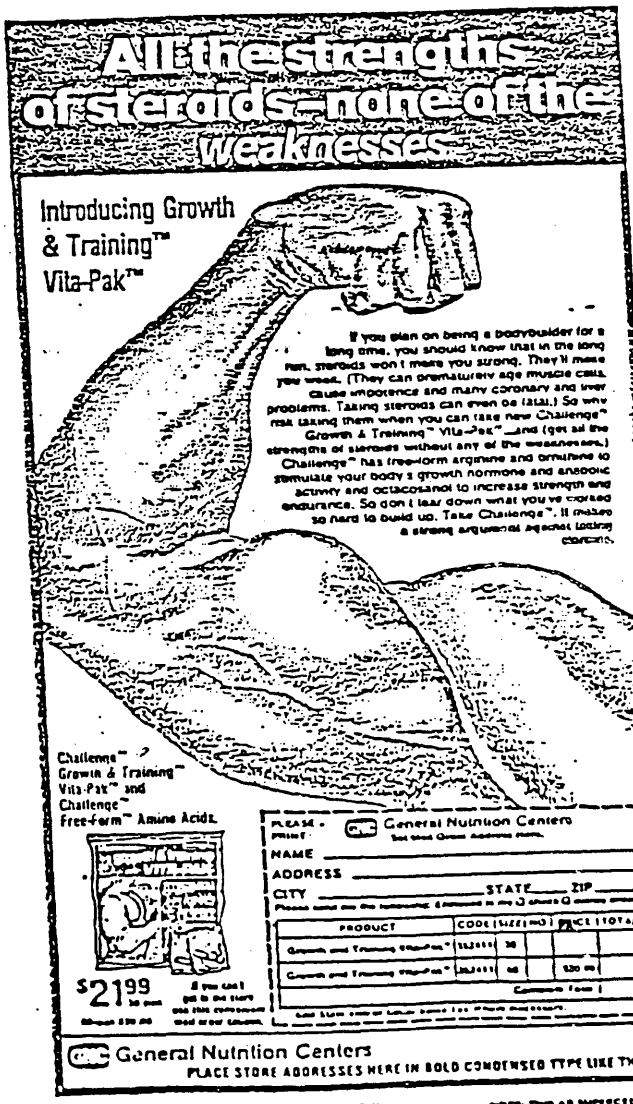
If you care about your body, start pumping into it the kind of fuel it needs.

$19.95 30 pak

No. 3524-11

60 pak $35.95

ATTACHMENT O



AD PLACEMENT MANAGER: Have Full Address of your store only set here. Include zip code.

ATTACHMENT P

A lot of diet programs are full of baloney. Ours lets you eat baloney and a whole lot more.

Introducing

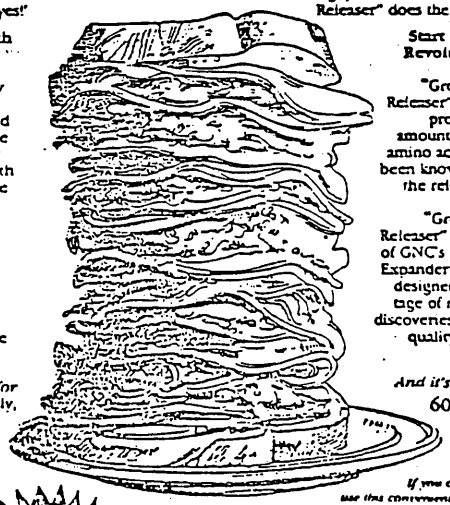
GROWTH HORMONE RELEASER™

Growth Hormone Directs the Body to Burn Fat. Recent studies of the human endocrine system have demonstrated that an increase in the release of somatotropin, *or Growth Hormone, can actually re-direct the body to burn fat, over other sources of energy!* But is there a way to stimulate the production of Growth Hormone in *anyone?* The answer is 'yes!'

Weight Control and Reduction Without Diet-ing! Because "Growth Hormone Releaser" works by attacking the fat in your body, it's a totally *different* method of weight control and reduction. You can eat normally! You don't have to worry about special foods, calorie counting, fad diets or starving yourself. "Growth Hormone Releaser" does the work for you!

Life Expander™ Growth Hormone Releaser

Chances are you've already heard about how certain amino acids—L-Ornithine, L-Arginine and L-Tryptophane—have the ability to stimulate body production of the Growth Hormone. By taking "Life Expander™ Growth Hormone Releaser" you supplement your body's intake of these three important amino acids. Together they form a potent combination of ingredients which have been known to stimulate the release of *Growth Hormone that directs your body to burn fat for needed energy.* Obviously, a very desirable factor when you're trying to lose weight!



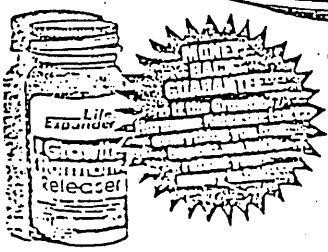
Start Enjoying this Revolutionary Plan Today!

"Growth Hormone Releaser" is designed to provide measured amounts of the crucial amino acids which have been known to stimulate the release of Growth Hormone.

"Growth Hormone Releaser" is one example of GNC's full line of "Life Expander™" products, all designed to take advantage of recent scientific discoveries that could add quality to the years of your life.

And it's available now!

60 $12.99



If you can't get to the store, use this convenient mail order coupon.

GENERAL NUTRITION CENTERS

PLEASE PRINT

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PRODUCT	QUANTITY	PRICE	TOTAL
		CURRENT TOTALS	

General Nutrition Centers ATTACHMENT P

PLACE STORE ADDRESSES HERE IN BOLD CONDENSED TYPE LIKE THIS

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with §3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in §3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. General Nutrition, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 921 Penn Avenue, in the City of Pittsburgh, Commonwealth of Pennsylvania.

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

ORDER

I.

It is ordered, That respondent General Nutrition Incorporated, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufac-

ture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Healthy Greens," or any substantially comparable product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society, or U.S. Government, or any finding contained in the Report entitled *Diet, Nutrition, and Cancer,* supports the claim that use of such product is associated with a reduction in incidence of any type of cancer.

II.

It is furthered ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data, with respect to such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

III.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," or "24 Hour Diet Plan," or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane or a combination thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such nutrient supplement will stimulate greater production or release of human growth hormone in users than in non-users;

B. Any such nutrient supplement will aid a user in achieving greater or faster muscular development than a non-user or will aid a user in achieving muscular development similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, *e.g.*, rapid or substantial muscular development;

C. Any such nutrient supplement will burn away fat or otherwise alter human metabolism to use up or "burn" stored fat, rather than stored carbohydrates, or will aid a user in attaining greater weight loss during sleep than a non-user; or

D. Any such nutrient supplement will expand, extend, or prolong life, or retard aging.

IV.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary division or other device, do forthwith cease and desist from using the expression "Growth Hormone Releaser," or other expressions of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such expression, respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation. "*Reliable and competent scientific evidence*" shall mean for purposes of paragraphs IV and V of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

V.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of any product in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

A. Concerning such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans;

B. That such product assists or enables a user to lose or control weight or fat, or suppress appetite;

C. That such product expands, extends, or prolongs life or retards aging; or

D. That such product aids a user in achieving greater or faster muscular development than a non-user or aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user.

unless, at the time of making such representation (V A-D above), respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation.

Provided however, that respondent shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondent;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondent and does not contain respondent's name or logo;

4. The product was not developed or manufactured at the instigation or with the assistance of respondent; and

5. The product representation is not otherwise advertised or promoted by respondent.

VI.

It is further ordered, That respondent shall pay, in lieu of redress, the aggregate sum of six hundred thousand dollars ($600,000.00) divided in three equal parts to the America Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds shall be designated for the support of research or fellowships in the fields of nutrition, obesity or physical fitness. Respondent shall make payment in three installments, each installment to be divided equally among the recipients: the first installment

in the amount of $300,000.00 within 30 days of the date of service of this order; the second in the amount of $200,000.00 within one year and 30 days of the date of service of this order; and, the third in the amount of $100,000.00 within two years and 30 days of the date of service of this order. In the event any default in payment occurs and continues for 10 days beyond the due date of payment and the giving of notice of such default, the entire remaining amount shall then become due and payable.

VII.

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

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and
2. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this order.

VIII.

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

IX.

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

X.

It is further ordered, That respondent shall forthwith distribute a

copy of this order to each of its operating divisions and to all distributors of products manufactured or marketed by respondent.

Commissioner Azcuenaga dissenting. Commissioner Machol was recorded as not participating.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the Commission's decision to accept a proposed consent order with General Nutrition, Inc. ("GNC") because the order leaves GNC free to sell products that it knows are deceptively labeled.

The proviso to Paragraph V of the consent order provides that GNC would not necessarily be liable for unsubstantiated claims appearing on the labels of the products sold at its stores even if it was clear that the company had actual knowledge that those claims were unsubstantiated. I believe that the order should hold GNC liable if it knows that the packaging of these products contains unsubstantiated claims.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC, ET AL.

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

Docket 9189, Complaint, Dec. 20, 1984—Final Order, Feb. 22, 1989*

This final order requires, among other things, the Detroit, Mich.-area automobile dealerships to remain open a minimum of 64 hours a week for one year and to post conspicuously their hours of operation. The order prohibits all of the respondents from conspiring in any way to fix hours of operation, and requires the associations to amend their bylaws, rules, and regulations to eliminate any provision inconsistent with any provision of this order.

Appearances

For the Commission: *Dennis F. Johnson.*

For the respondents: *Katherine S. Nucci, Judy P. Jenkins & Howard E. O'Leary, Dykema, Gossett, Spencer, Goodnow & Trigg,* Washington, D.C. *J.F. Rill & Jeffrey W. King, Collier, Shannon, Rill & Scott,* Washington, D.C. *Glenn A. Mitchell, Stein, Mitchell & Mezines,* Washington, D.C. *Lawrence F. Raniszeski, Colombo & Colombo,* Birmingham, Mi. *Fred L. Woodworth, Dykema, Gossett, Spencer, Goodnow & Trigg,* Detroit, Mi. and *John F. Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood,* Detroit, Mi.

*Complaint previously published at 108 FTC 193.