

IN THE MATTER OF
BLOCK DRUG COMPANY, INC., ET AL.

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

Docket 9050. Complaint, July 29, 1975 — Final Order, Dec. 21, 1977

This order, among other things, requires a Jersey City, N.J. manufacturer and distributor of denture adhesives and denture cleansers to cease misrepresenting the effectiveness of its products and to cease making unsubstantiated performance claims.

Appearances

For the Commission: *Melvin H. Orlans* and *Mark A. Heller*.

For the respondents: *James M. Nicholson*, *Robert E. Liedquist* and *Edward A. Geltman*, *Nicholson & Carter*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Block Drug Company, Inc., a corporation, and Grey Advertising, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Block Drug Company, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 257 Cornelison Ave., Jersey City, New Jersey.

Respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 777 Third Ave., New York, New York.

PAR. 2. Respondent Block Drug Co., Inc. is now, and for some time last past has been, engaged in the manufacture, distribution, sale and advertising of various products, including denture adhesives and denture cleansers, which are drugs, devices and/or cosmetics within the meaning of the Federal Trade Commission Act. [2]

Respondent Grey Advertising, Inc. is now, and for some time last past has been, an advertising agency of respondent Block Drug Co.,

Inc., and now and for some time last past has prepared and placed for publication and caused the dissemination of advertising referred to herein, to promote the sale of various products of respondent Block Drug Co., Inc., including denture adhesives and denture cleansers.

PAR. 3. Respondent Block Drug Co., Inc. causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Block Drug Co., Inc. maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said businesses, respondents Block Drug Co., Inc. and Grey Advertising, Inc. have disseminated and caused the dissemination of advertisements concerning the aforementioned products, including denture adhesives and denture cleansers, in or affecting commerce by means of advertisements printed in magazines and/or newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products, including denture adhesives and denture cleansers.

PAR. 5. Among the advertisements so disseminated or caused to be disseminated by respondents are the advertisements attached as Exhibits A through D.

PAR. 6. Exhibits A, B and C hereto and others substantially similar thereto (hereinafter referred to as the "denture adhesive advertisements") represent that:

1. Users of Poli-Grip or Super Poli-Grip denture adhesive, regardless of their particular denture holding problems, can eat each of a group of so-called "problem" foods (including, for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort. [3]

2. After the use of Poli-Grip or Super Poli-Grip, dentures will hold in place for denture wearers, regardless of particular denture holding problems, when the wearer eats each of the aforementioned "problem" foods.

PAR. 7. In truth and in fact:

1. Users of Poli-Grip or Super Poli-Grip denture adhesive cannot eat each of the aforementioned "problem" foods without embarrass-

ment or discomfort and without regard to particular denture holding problems.

2. After the use of Poli-Grip or Super Poli-Grip, dentures will not hold in place for denture wearers, regardless of particular denture holding problems, when the wearer eats each of the aforementioned "problem" foods.

Therefore, the denture adhesive advertisements were, and are, deceptive and/or unfair.

PAR. 8. Exhibit D hereto and others substantially similar thereto (hereinafter referred to as the "denture cleanser advertisements") represent that users of New Extra Effervescent Polident denture cleanser will see a visible and significant improvement in the cleanliness of their dentures relative to results they would obtain through the use of Extra Strength Efferdent, a competitive product.

PAR. 9. In truth and in fact, at the time respondents made the representations as alleged in Paragraphs Six and Eight, respondents did not possess and rely upon a reasonable basis for making said representations. Therefore, the denture adhesive advertisements and the denture cleanser advertisements were, and are, unfair and/or deceptive.

PAR. 10. The denture adhesive advertisements and the denture cleanser advertisements represent, directly or by implication, that respondents had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraphs Six and Eight. [4]

PAR. 11. In truth and in fact, at the time respondents made the representations as alleged in Paragraph Ten, respondents had no reasonable basis for making the representations as alleged in Paragraphs Six and Eight. Therefore, the denture adhesive advertisements and the denture cleanser advertisements were, and are deceptive and/or unfair.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Block Drug Company, Inc. has been and now is in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of denture adhesives and denture cleansers of the same general kind and nature as those sold by said respondent.

In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Grey Advertising, Inc. has been, and now is, in substantial competition in commerce with other advertising agencies.

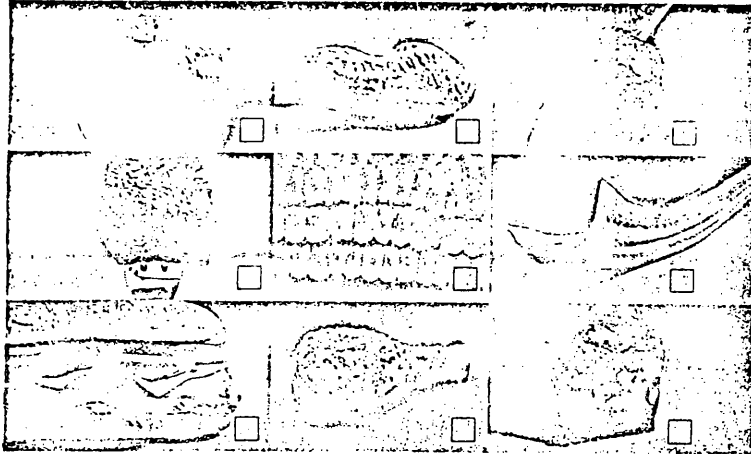
PAR. 13. The use by respondents of the aforesaid unfair and/or deceptive statements, representations and practices has had, and

now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of denture adhesives and denture cleansers manufactured by respondent Block Drug Co., Inc.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails, and in commerce, in violation of Section 12 of the Federal Trade Commission Act.

Commissioners Thompson and Nye dissenting.

Denture wearers, check the foods you can eat without worry.



Check Poli-Grip and take a good healthy bite.

Millions of Americans who wear dentures depend on Poli-Grip to help them eat the foods they love without embarrassment or discomfort. Poli-Grip's exclusive holding formula helps keep dentures in place for hours. And for extremely hard-to-hold dentures — or during the period of adjustment to new dentures — there's Super Poli-Grip, the extra-holding formula that lets you eat many foods you worried about before.

No matter what your denture holding problem, Poli-Grip helps you eat — almost anything your heart desires.

Poli-Grip — America's number one cream denture adhesive.



Advertised in Reader's Digest — May, 1974

(Preprint for Identification Only)

EXHIBIT A

Block Drug - Poli-Grip Exhibit
File No: 10-29-74
Agency: 103
Date: 10-29-74

Complaint

90 F.T.C.

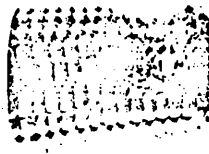
Block Drug Company
267 Cornalison Avenue, Jersey City, New Jersey

PRODUCT: POLI-GRIP
TITLE: "GOOD BITE" II

LENGTH: 30 SEC.
CODE NO.: BDSF4020



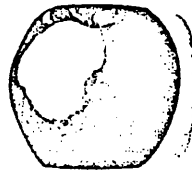
1. ANNCR: (VO) Denture Wearers, listen!!!! (SFX)



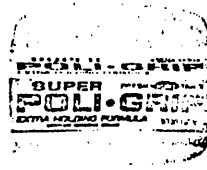
2. CHORUS: Go on now eat as you like! (SFX)



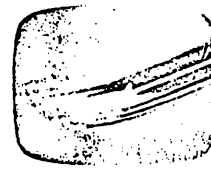
3. Yeah! Eat as you like! (SFX)



4. Take your good, healthy bite of life! (SFX)



5. ANNCR: (VO) Now with Super Poli-Grip Cream Denture Adhesive



6. you can eat almost anything. (SFX)



7. Its strong-holding, long-holding plastic formula



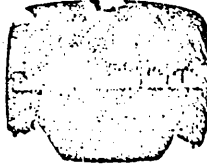
8. helps keep even hard-to-hold dentures in place



9. so problem foods aren't such a problem. (SFX)



10. Super Poli-Grip with plastic, or regular Poli-Grip.



11. CHORUS RETURNS: Take a good healthy bite of life!



12. (SFX: CHOMP)

EXHIBIT B

Block Drug-Poli-Grip Exhibit
File No: 7-13 5032 7 0000

Complaint

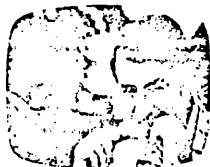
Block Drug Company
257 Cornalison Avenue, Jersey City, New Jersey

PRODUCT: POLI-GRIP
TITLE: "GOOD EATING" II

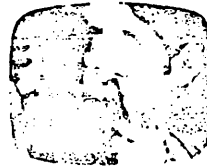
LENGTH: 30 SEC.
CODE NO.: BDSP4019



1. CHORUS: Go on now eat as you like!



2. Yeah, eat as you like.



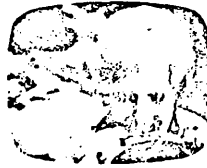
3. Take your good, healthy bite of life!



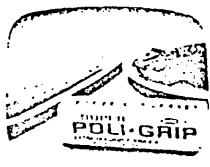
4. ANNCR: (VO) So what if you wear dentures?



5. Now, super Poli-Grip's plastic cream formula



6. holds strong, holds long,



7. helps keep even hard-to-hold dentures in place,



8. so you can eat almost anything.



9. Super Poli-Grip with plastic, or regular Poli-Grip.



10. Go on, eat as you like!



11. REPRIS: Take a good, healthy bite of life!

EXHIBIT C

Block Drug-Picrip Exhibit
F.C. No: 102 5032
AC No: 103
Date: 10-29-74

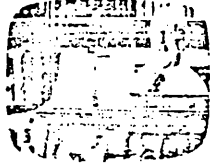
Complaint

90 F.T.C.

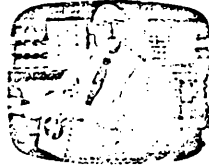
Block Drug Company
257 Cornelison Avenue, Jersey City, New Jersey

PRODUCT: POLIDENT TABLETS
TITLE: "STORE OWNER"

LENGTH: 30 SECONDS
CODE NO.: BDPT3173



1. HENRY: if just yesterday, you asked me:



2. "Henry, which denture cleanser should I buy?"



3. What could I tell you?



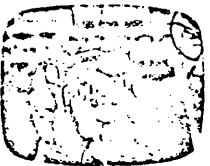
4. One turns blue, one turns green. They both work.



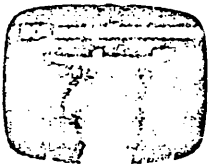
5. Well today! Today there's a new one.



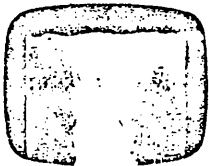
6. New Extra Effervescent Polident Tablets.



7. Extra.



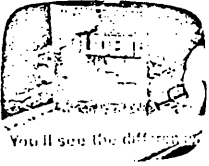
8. That means 50% more effervescent cleaning action than it ever had before.



9.To work better on stains and odors.



10. But don't just take my word. Take home some New Polident.



11. You'll see the difference.

Block Drug Company
257 Cornelison Avenue, Jersey City, N.J. 07310
Tel. 201-761-1622
Telex 16-29-74

EXHIBIT D

9337

331c

DISSENTING STATEMENT OF COMMISSIONER NYE

JULY 29, 1975

I agree that staff has presented the Commission with reason to believe that Block Drug Company did not have sufficient substantiation for its advertising of Poli-Grip. I am concerned, however, that the Commission has decided to proceed against Block without first investigating the substantiation its competitors have for their denture-adhesive claims, which appear equally unsupportable. Although the law does not require the Commission to proceed against all alleged malefactors simultaneously, we should when we can, and we can in this case. I would therefore complete our investigation and, thereafter, file all law enforcement actions warranted at the same time.

DISSENTING STATEMENT OF COMMISSIONER MAYO J. THOMPSON

JULY 29, 1975

It is with concern that I note today that the Commission has, with this complaint, started down the road toward the prosecution of another "Dry Ban" case.

The majority has voted to issue a complaint alleging, among other things, that certain Block Drug print advertisements falsely represented that use of Block's Poli-Grip or Super Poli-Grip denture adhesive would allow denture wearers, regardless of their denture-holding problems, to eat "problem foods" such as apples, corn-on-the-cob, and candy caramels without embarrassment or discomfort. The complaint also includes a charge that Block had no "reasonable basis" for claims that its denture cleanser New Extra Effervescent Polident would clean dentures significantly better than the Warner-Lambert product Extra Strength Efferdent.

I do not challenge my fellow Commissioners' decision that they had the requisite statutory "reason to believe" that a significant number of consumers perceived from the challenged advertisements the claims which the complaint alleges were made, nor do I challenge their decision that they had "reason to believe" the claims were false or unsubstantiated.

But I cannot agree that this proceeding is in the "public interest," as I am required by Section 5 of the Federal Trade Commission Act to determine before voting a complaint against any respondent.

As I stated in my opinion concurring in the dismissal of the complaint against the Bristol-Myers Company and its advertising agency, Ogilvy & Mather, Inc., for their advertisements for the

underarm deodorant Dry Ban, Dkt. 8897 (April 22, 1975) [85 F.T.C. 688], I do not believe it is in the public interest for the Commission to challenge advertising claims the truth or falsity of which the average consumer can judge through use of one rather [2] inexpensive jar, tube, or box of the advertised product. As I stated in the Dry Ban case, even if one believes that deceptive advertising claims can convince the consumer to purchase a product he would not otherwise have purchased, if the consumer can judge the truth or falsity of the claim himself, he is not likely to repeat the purchase if he has been misled. Surely it is repeat sales that a company needs in order to survive, and if a company attempts to deceive the public with claims the consumer can quickly determine to be false, the company will not enjoy repeat sales and may even lose market share.

I believe these principles apply quite properly to this case. The costs of one tube or box of the products involved in this case are not high in absolute amounts, and they surely make up a negligible percentage of any purchaser's budget. Further, I believe denture wearers should be able to judge the efficacy of these products quite easily. Their experience should enable them to judge whether Polident really does clean 50 percent better than the other leading brand. And as for Block's denture adhesives, it is inconceivable to me that any denture wearer who applied Poli-Grip or Super Poli-Grip and bit into a red apple and then saw his dentures smiling back at him would ever purchase the Gripper again.

Some might argue, though, that persons who would be likely to purchase denture adhesives, for example, are in general elderly and on fixed incomes, and that they cannot really afford even the cost of one tube of an ineffective denture adhesive. But this argument assumes that absent the false claims these persons would not purchase denture adhesives at all. I find this difficult to believe.

Information in this file shows that experts generally agree that persons owning well-fitting dentures probably do not need to use denture adhesives, but that the adhesives probably provide some aid to those with dentures that do not fit properly. I suspect that most persons owning ill-fitting dentures are aware that the adhesives help them to some extent and that they will continue buying them so long as they are advertised and sold. Seeing nothing in this file to indicate that Block Drug's adhesives are either less effective or more expensive than other products in this market, I am not convinced that singling out Block Drug Company and challenging certain specific advertising claims is in the public interest.

INITIAL DECISION* BY MILES J. BROWN, ADMINISTRATIVE LAW
JUDGE

OCTOBER 4, 1977

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this matter on July 29, 1975 (mailed August 21, 1975), charging Block Drug Company, Inc. ("Block")¹ with unfair or deceptive acts or practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and false advertisements disseminated by U.S. mail and in commerce, in violation of Section 12 of the Federal Trade Commission Act (15 U.S.C. 52). [2]

In the complaint it was alleged that Block, through certain particular advertisements, had falsely represented that —

1. Users of Poli-Grip or Super Poli-Grip denture adhesive, regardless of their particular denture holding problems, can eat each of a group of so-called "problem" foods (including for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort, and

2. After the use of Poli-Grip or Super Poli-Grip, dentures will hold in place for denture wearers, regardless of particular denture holding problems, when the wearer eats each of the aforementioned "problem" foods.

It was also alleged that in certain advertisements respondents had represented that users of New Extra Effervescent Polident denture cleanser will see a visible and significant improvement in the cleanliness of their dentures relative to results they would obtain through use of Extra Strength Efferdent, a competitive product.

It was further alleged that, at the time it disseminated the challenged advertisements, Block did not possess or rely upon a reasonable basis for making the alleged representations, which constituted a violation of the Federal Trade Commission Act. In addition, it was alleged that Block falsely represented that it had a reasonable basis for making such representations.

In its answer, Block denied the substantive allegations of the complaint. By way of affirmative defenses, it challenged the validity

* Reported as modified by the Commission's Final Order of December 21, 1977.

¹ The complaint also named Grey Advertising, Inc., a corporation ("Grey"). On July 13, 1977, the Administrative Law Judge certified to the Commission a joint motion of Grey and complaint counsel to withdraw the matter from adjudication as to Grey to consider an agreement containing a consent order to cease and desist. By order dated July 22, 1977, the Commission withdrew the matter from adjudication as to Grey.

of the Commission's "reasonable basis" doctrine on several grounds, and asserted that the Commission's proceeding against it was arbitrary and not in the public interest.

On February 3, 1976, Administrative Law Judge Harry R. Hinkes² certified to the Commission Block's motion to dismiss, or in the alternative to suspend, proceedings in [3] this matter because on November 11, 1975 the Commission proposed a Trade Regulation Rule Proceeding that would govern Over-the-Counter ("OTC") drug advertising including representations concerning denture products. On March 22, 1976, the Commission denied the motion to terminate or suspend the proceeding.

Thereafter the parties initiated their discovery. Complaint counsel filed their proposed exhibit and witness lists on October 15, 1976, and their trial brief on November 1, 1976. Respondents filed their proposed exhibit and witness lists on November 15, 1976. Adjudicative hearings were scheduled to commence February 21, 1977.

On January 12, 1977, upon joint motion of counsel, the initial hearing date was rescheduled for March 21, 1977. Respondent's trial brief was filed February 4, 1977.

At a prehearing conference held March 8, 1977, complaint counsel announced their plan to move to amend the complaint in a significant respect and moved for postponement of the adjudicative hearings. Respondents opposed the motion for postponement and the Administrative Law Judge denied the motion (Tr. 22-23; see also order dated March 15, 1977). Complaint counsel's motion to amend was certified to the Commission.³ On March 18, 1977, the Commission declined to upset the Administrative Law Judge's ruling that the adjudicative hearings would not be stayed.

Hearings commenced March 21, 1977, at which time complaint counsel's documents were offered into evidence and rulings were made on objections thereto. No witnesses were called and the hearings were adjourned until March 28, 1977. On March 28, 1977, counsel filed a joint motion to continue the hearing until April 18, 1977, to permit them an opportunity to expedite the ultimate resolution of this matter. The joint motion was granted.

A further continuance was granted, after counsel advised the Administrative Law Judge that they intended to submit this matter on a stipulated record and an agreed order (see order dated April 15, 1977). [4]

On June 6, 1977, respondent Grey and complaint counsel filed

² The matter was reassigned to the undersigned on October 22, 1976.

³ By order dated June 21, 1977, the Commission granted complaint counsel's unopposed motion to withdraw the motion to amend the complaint.

their joint motion to withdraw the matter from adjudication as to Grey (see footnote 1, *supra*). On July 6, 1977, hearings were held for completion of the record as to Block at which time the parties filed the affidavits of their expert witnesses (CXs 93-96; RXs 1-4)⁴ and a stipulation (CX 97). In addition, certain documents received into the record at the March 21, 1977, hearing were withdrawn (CXs 14-21, 27-35, 41, 47, 50, 53, 55, 60-61, 66). On August 2, 1977, the Administrative Law Judge issued his order receiving substitute Affidavit-Exhibit CX 94 A-H into evidence, and closing the record for the receipt of evidence.

The evidentiary facts are not the subject of significant dispute. The affidavits of the Commission's expert witnesses and respondent's employees and expert witness were received into the record without objection and both parties have recommended an identical order to be issued if the findings of fact in this Initial Decision are substantially similar to the findings of fact proposed by complaint counsel. However, it should be emphasized that this proceeding is not a consent order proceeding. The Administrative Law Judge and the Commission may, on the evidentiary record, issue any order deemed appropriate. The dilemma posed by the situation that prevailed in *National Biscuit Co.*, Docket No. 5013, will not be present. See *National Biscuit Company v. Federal Trade Commission*, 400 F.2d 270 (5th Cir. 1968); *Nabisco, Inc. v. Federal Trade Commission*, 459 F.2d 1023 (5th Cir. 1972). Of course, Block and complaint counsel reserve the right to appeal any order issued in this matter that does not conform substantially to the agreed-upon order.

Any motions appearing on the record not heretofore or hereby specifically ruled upon either directly or by the necessary effect of the conclusions of this Initial Decision are hereby denied.

The proposed findings and conclusions submitted by counsel supporting the complaint ("CXCPF") and counsel for Block ("Resp. PF") have been given careful consideration and [5] to the extent not adopted by this decision, in the form proposed or in substance, are rejected as not supported by the evidence or as immaterial.

Having reviewed the entire record in this proceeding, together with the pleadings, the proposed findings, and conclusions, I make the following findings of fact based on the record considered as a whole:

⁴ One of the affidavits (CX 94) had not as of that date been executed properly.

FINDINGS AS TO THE FACTS

1. Respondent Block is a New Jersey corporation with its principal place of business located at 257 Cornelison Ave., Jersey City, New Jersey (Ans. Par. 1; Resp. PF 1).

2. Block does now, and at all times relevant hereto did, engage in the manufacture, distribution, sale and advertising of denture adhesive and denture cleansers. These products are transported from Block's place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia (Compl. Pars. 2, 3; Ans. Pars. 2, 3; Resp. PF 2).

3. Block authorized the publication of numerous advertisements, including the advertisements challenged in the complaint, in publications of interstate circulation, and by national network television (CXs 23, 24, 26). Dissemination of such advertisements has been substantial. Approximately \$7.4 million per year for the last three years has been expended for the purpose of selling its denture adhesive products Poli-Grip and Super Poli-Grip and its denture cleanser product New Effervescent Polident (CX 97d (Stip.)).

4. Block maintains, and at all times relevant to this proceeding has maintained, a substantial course of trade in commerce in the said denture adhesive products and denture cleanser product as "commerce" is defined in the Federal Trade Commission Act and the challenged acts and practices are "in commerce" and "affect commerce" as such terms are defined in said Act (see CX 97a, c (Stip.)).

5. Block is in competition with corporations engaged in the sale and distribution of denture cleansers and adhesives (Ans. Par. 12; see Resp. PF 5). [6]

6. Physical Exhibit B (see storyboard CX 10) is typical of the challenged denture adhesive advertisements that were included in Block's advertising campaign entitled "Bite of Life" (see 97d (Stip.)). This advertisement is a 30-second television advertisement entitled "Good Eating II" and may be described as follows:

The commercial opens by showing several people heartily enjoying, and eating at, an outdoor picnic. The audio chorus sings: "Go on now eat as you like" (Frame 1). A close-up is then shown of a male picnicker eating his fried chicken with gusto and confidence. The chorus simultaneously sings: "Yeah, eat as you like. Take your good healthy bite of life" (Frames 2, 3). The camera then shifts to a female picnicker who is enthusiastically eating corn-on-the-cob. The audio portion becomes an announcer's voice, which notes "So what if you

wear dentures” (Frame 4). The video immediately changes to a box of Super Poli-Grip on the table next to an ear of corn while the announcer’s voice states that “Now, Super Poli-Grip’s plastic cream formula (Frame 5) holds strong, holds long (Frame 6) helps keep even hard to hold dentures in place” (Frame 7). Toward the latter part of the announcer’s statement, the scene shifts back to a close-up of another female eating a spare-rib (Frame 6). The box of Super Poli-Grip is again shown on the table, this time surrounded by a plate of spare-ribs as well as an ear of corn (Frame 7). The scene then shifts, this time to a close-up of a man in a business suit biting a thick sandwich. The announcer continues: “So you can eat almost anything” (Frame 8). Boxes of Poli-Grip and Super Poli-Grip are then shown on the table, surrounded by an ear of corn, a plate of spare-ribs, and a thick, “hero”-type sandwich. The announcer states: “Super Poli-Grip with plastic, or regular Poli-Grip” (Frame 9). The scene then returns to the picnic with the people identified as denture wearers eating several different foods with enjoyment and without difficulty, embarrassment or apparent discomfort. The chorus sings “Go on, eat as you like. [Frame 10] Take a good healthy bite of life!” (Frame 11). At the last line of the song, the camera shows a man biting an apple, on the upper portion of the screen; the lower portion contains the Poli-Grip and Super Poli-Grip boxes, and in the middle of the screen the phrase “take a good healthy bite of life” is superimposed. [7]

7. Physical Exhibit A (see storyboard CX 9), entitled “Food Bite”, contains substantially the same audio material as the “Good Eating” commercial (see finding 6, *supra*), but contains a video portion featuring the simulated biting of corn-on-the-cob, a piece of chicken, an apple (twice), a piece of celery and a carrot. Each food item first is shown whole and then with a bite taken out of it. The “bite” sequence is accompanied by a distinct audio “chomp.”

8. Block conducted so-called “copy tests” of the advertisements “Food Bite” and “Good Eating” (CXs 59, 64). These “copy tests” involved showing the advertisements to a number of consumers and asking them questions about them.

The results reported in CX 59(s) (1974) under the category “eating benefits” may be summarized as follows:

	<i>Percent (of 150 viewers) who perceived message</i>	
Message Perceived	“Food Bite”	“Good Eating”
Can eat difficult foods/problem foods	42	39

	Initial Decision	90 F.T.C.
Can eat anything	24	34
Similar results reported in CX 64(j) (1975) were as follows, although the test involved 126 viewers.		
Can eat difficult		
foods/problem foods	39	75
Can eat anything	51	46

9. By and through the use of the challenged denture adhesive advertisements (CXs 6-12); Physical Exhibits A, B, D), respondent Block represented that —

(a.) Users of Poli-Grip or Super Poli-Grip denture adhesive, regardless of their particular denture holding problems, can eat each of a group of so-called “problem” foods (including, for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort; and

(b.) After the use of Poli-Grip or Super Poli-Grip, dentures will hold in place for denture wearers, regardless of particular denture holding problems, when the wearer eats each of the aforementioned “problem” foods. [8]

10. Dentures are man-made replacements for natural teeth. Dentures are usually constructed out of porcelain or acrylic, and are intended cosmetically to look like natural teeth. As replacements for natural teeth, dentures enable denture wearers to recover but a small portion of the function of the natural teeth which they no longer possess (CX 94b (Kapur)).

Dentures are constructed so that the forces involved in eating, or otherwise in using the dentures, are evenly distributed over a maximum area. This makes functions such as biting, which concentrates the force in one area, difficult to perform. In addition, the front teeth in many dentures are placed against the lips to keep the lips from collapsing without support. Although this placement maximizes aesthetic appearance, it minimizes the functional utility of the front teeth. The fundamental principles incorporated into denture construction make it difficult to bite or tear food with the front teeth (CX 94d (Kapur); see CX 93c (Atwood); 95c(Kratochvil)).

There is a wide variation among the denture wearing population in terms of the ability to eat with dentures. Such factors as the physical condition of the denture wearer’s support area including mouth tissue and bone, the dimension and fit of the denture, the person’s ability to adjust to the use of dentures and the wearer’s tolerance to discomfort and pain, vary widely from individual to

individual. In addition various types of foods will present varying degrees of problems to different people.

An apple is recognized as being hard to bite, but not hard to chew. On the other hand, sticky candy is hard to chew. Certain fibrous foods like celery are difficult to manage for denture wearers (CX 94d-e (Kapur); CX 93d (Atwood); 95d (Kratochvil)).

A denture adhesive is a sticky substance generally either karaya gum, a natural substance, or an artificial plastic (CX 94b (Kapur); 95b (Kratochvil)).

Poli-Grip's active ingredient is gum karaya. This ingredient has been used in denture adhesive products for over 50 years. Super Poli-Grip's active ingredients are synthetic, non-toxic water soluble substances with excellent adhesive qualities (RX 3 (Fischer); RX 2 (Rosenthal)). [9]

The denture adhesive is applied to the base of the denture in as even a layer as possible. When the denture is then placed in the mouth, the adhesive acts as a sort of temporary glue and creates an adhesive bond (CX 94b-c (Kapur)).

A denture adhesive aids in remedying only one of the various factors that affect a wearer's denture performance, namely retention. Unless this factor represents the totality of the wearer's problem, an adhesive will not solve the biting or chewing problems experienced by the wearer (CX 93b (Atwood); 95b, c (Kratochvil)).

Accordingly, the very manner in which many dentures are constructed results in the situation where the front teeth are virtually useless for biting and only serve cosmetic purposes. The back teeth then become the surface for pulverizing food. Because of the limitation in denture functions, many denture wearers cannot eat hard-to-bite foods such as apples and corn-on-the-cob, with or without the use of an adhesive (CX 93c (Atwood)). For many of them dislodgement of the dentures will occur if they attempt to eat such foods, with or without the use of an adhesive (CX 93d (Atwood); 95d(Kratochvil)).

11. Respondent's claims that users of denture adhesives, Poli-Grip and Super Poli-Grip, regardless of their particular denture holding problems, can eat each of a group of so-called "problem foods" (including, for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort, and that, after the use of a denture adhesive Poli-Grip and Super Poli-Grip, dentures will hold in place for denture wearers, regardless of their particular denture holding problems, when the wearer eats each of the aforementioned

“problem” foods, are false (CX 93b (Atwood); CX 94c (Kapur); CX 95b (Kratochvil)).

12. The limited extent to which denture adhesives can serve to ameliorate the usual problems that denture wearers encounter in using dentures is well known among the professional ranks of those specializing in all aspects of the fitting and functioning of dentures and in the use of denture adhesives (“prosthodontics”)(CX 95 (Kratochvil); CX 94 (Kapur); CX 93 (Atwood)). Block’s employees, [10] including Murray Rosenthal, Block’s Vice-President, Research and Development, on the basis of such general knowledge as well as certain tests that had been conducted in the use of such products since 1962, were of the opinion that Poli-Grip and Super Poli-Grip would help *many* denture wearers eat various types of foods where the denture wearers’ primary problem was retention (RX 2 (Rosenthal)). No representative of Block has stated that they had any reason to believe that Poli-Grip or Super Poli-Grip would accomplish the results promised in the advertising claims that Block made in the challenged commercials as alleged in the complaint and found in this decision.

13. Accordingly, Block, at the time it caused the dissemination of the challenged advertisements did not possess or rely upon a reasonable basis for the claims made therein. Failure to have a reasonable basis for such claims is an unfair practice.

14. In making the claims contained in the challenged advertisements, Block represented, directly or indirectly, that it had substantiation for said claims.

15. As found above (finding 13), Block did not have a reasonable basis for the said claims and its representation that it did, was false and misleading.

16. The challenged denture cleanser television advertisement (CX 13; Physical Exhibit C), entitled “Store Owner,” is a 30-second commercial and portrays a man named Henry, standing behind a store counter, who offers the following advice:

Frame 1 If just yesterday, you asked me:

Frame 2 “Henry, which denture cleanser should I buy?”

Frame 3 What could I tell you?

Frame 4 One turns blue, one turns green. They both work.

Frame 5 Well today! Today there’s a new one.

Frame 6 New Extra Effervescent Polident Tablets.

Frame 7 Extra

Frame 8 That means 50 percent more effervescent cleaning action than it ever had before.

Frame 9 To work better on stains and odors. [11]

Frame 10 But don't just take my word. Take home some New Polident.

Frame 11 You'll see the difference.

In the video portion of the commercial Frames 8 and 9 demonstrate the "effervescence" action of the tablet in what appears to be a glass of water.

17. The purpose of the aforesaid commercial was to introduce New Extra Effervescent Polident to supersede old Polident, its predecessor product (CX 97c (Stip.)). The phrase "one turns blue" (CX 13 (Frame 4)), is a reference to Extra Strength Efferdent, a competitive product marketed by Warner-Lambert Co. (CX 97a,c (Stip.)). The phrase "one turns green" (CX 13 (Frame 4)) is a reference to the old Polident product (CX 97a, b, c, (Stip.)).

18. By and through the use of the challenged denture cleanser advertisement respondent Block has represented that users of New Extra Effervescent Polident denture cleanser will see a visible and significant improvement in the cleanliness of their dentures relative to results they would obtain through the use of Extra Strength Efferdent, a competitive product.

19. The material submitted to the Commission in response to a Commission order to substantiate the advertising claim for New Extra Effervescent Polident did not consist of reliable scientific evidence upon which Block could form a "reasonable basis" for such a claim. For the most part the tests submitted related to comparisons between New Extra Effervescent Polident and the prior Polident product. Where comparisons between New Extra Effervescent Polident and Efferdent were attempted the results showed that there was no appreciable difference in the visible appearance as to whiteness after using the various denture cleansers (see CX 69z170; CX 96b, e, f, g; see also CX 37 (*in camera*)).

20. Accordingly, Block, at the time it caused the dissemination of the challenged advertisement did not possess or rely upon a reasonable basis for the claim made therein. Failure to have a reasonable basis for such a claim is an unfair practice.

21. In making the claim contained in the challenged advertise-

ment, Block represented, directly or indirectly, that it had substantiation for said claim. [12]

22. As found above (finding 20), Block did not have a reasonable basis for such a claim and its representation that it did, was false and misleading.

DISCUSSION

The principal issue at this posture of the proceeding is whether Block, by the challenged advertisements, made the representations as alleged in the complaint. It is Block's position that it did not make such claims, and that the claims it did make were not only true, but were substantiated.

It is well settled that the meaning of an advertisement is a question of fact and that such meaning may be determined by an examination of the advertisement itself. *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963); *J.B. Williams Co., Inc. v. Federal Trade Commission*, 381 F.2d 884 (6th Cir. 1967). Advertisements may have more than one meaning. Implications and inferences may be made from statements actually made as well as from information not set forth therein, if the excluded facts are material *i.e.*, are facts considered to be material to the consumer's choice whether to purchase the product advertised. *Chrysler Corp. v. Federal Trade Commission*, D.C. Cir. (decided July 6, 1977, slip opinion at p. 12); *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965).

In my opinion it is clear that the challenged denture adhesive advertisements did make the claims alleged in the complaint. This determination has been made from carefully considering the advertisements, including the format and the emphasis placed on certain words and phrases contained therein. The so-called "Food Bite" commercial with its video and audio "chomp" sequences on various foods is a clear promise that Poli-Grip and Super Poli-Grip will enable any denture wearer to eat those same foods without any difficulty and without concern as to retention problems.

Block contends that the advertisement represented only that Poli-Grip and Super Poli-Grip will help many denture wearers eat various types of food (see Resp. PF pp. 5-6). Clearly, the message conveyed by these commercials is not such a qualified representation as to the efficacy of Block's denture adhesives. [13]

If there was any doubt as to the message conveyed by these denture adhesive advertisements, such doubt is dispelled by the results of the "copy tests", where a not insubstantial number of

persons sampled perceived the messages as representing eating benefits similar to the allegations of the complaint.

The material submitted by Block for purposes of substantiation goes to the claim that its denture adhesives will help many denture wearers eat various types of food. Block does not make an attempt to substantiate the broader claim actually made in the commercials. Indeed, the expert testimony, which is not controverted, demonstrates that many denture wearers cannot eat problem foods in the manner portrayed, whether or not they use a denture adhesive, and that the physical limitations on the use of dentures by many wearers would make substantiation of the broad claims impossible.

Block contends that it was the intended purpose of the "Store Owner" advertisement to communicate to denture wearers the superiority of the cleansing power of the new Polident formula as compared to its old product formula. In my opinion the advertisement claims much more. It includes the competing product (Efferdent) "the blue one" in the comparison and promises that the consumer will "see the difference." The important difference to the consumer would be the appearance of the dentures as to cleanliness.

There is no charge in this matter that the "Store Owner" commercial was false. The allegations of violations of the Federal Trade Commission Act are that Block had no substantiation for the claim actually made.

Although the material of record demonstrates that Block has done considerable testing with respect to its new formula Polident as compared to its old formula Polident, the testing of new Polident as compared to Efferdent, the competing product, was very limited, and the results were quite inconclusive as to the relative appearance of dentures cleansed by use of those two products. No substantiation which would constitute a reasonable basis for the claim made has been demonstrated. [14]

There is no longer any dispute in this proceeding as to whether it is an unfair practice in violation of Section 5 of the Federal Trade Commission Act to make a product claim without possessing and relying upon a reasonable basis for that claim at the time the product claim is made. The Commission's "reasonable basis" doctrine has been upheld by the circuit courts of appeals. See *Firestone Tire & Rubber Co. v. Federal Trade Commission*, 481 F.2d 246 (6th Cir. 1973); *Fedder Corp. v. Federal Trade Commission*, 529 F.2d 1398, 1400-1 (2d Cir. 1976).

Finally, there is the question as to whether the products in question come within the coverage of Section 12 of the Federal Trade Commission Act. Block, throughout this proceeding, has maintained

that its products are not "devices" within the meaning of the Act. Complaint counsel have not pressed this point in their proposed findings and it is deemed abandoned.

In any event, the issue does not appear to have any substantive importance in this matter.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondent Block and the acts and practices which are the subject matter of this proceeding.

2. Block, at all times relevant hereto, has been engaged in "commerce" within the meaning of Section 5 of the Federal Trade Commission Act, and has been and now is, in substantial competition, in commerce, with corporations, firms or individuals in the sale of denture adhesives, denture cleansers and other dental products.

3. The advertisements pertaining to denture adhesives and the statements and representations therein that are challenged in this proceeding are false, misleading and unsubstantiated. The advertisement pertaining to denture cleansers and the statements and representations therein challenged in this proceeding are unsubstantiated. Therefore, the challenged statements and representations were, and are either false, deceptive and/or unfair in material respects.

4. The use by the respondent of the aforesaid advertisements had and now have the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said advertisements and the statements and representations in connection therewith were and are true and/or substantiated. As a result, substantial trade has been and is being unfairly diverted to Block, from its competitors in the dental product market. [15]

5. The aforesaid acts and practices of Block, as charged in the complaint and as reflected in the record, were and are all to the prejudice and injury of the public and of Block's competitors and constituted, and now constitute, unfair and deceptive acts and practices "in commerce" and "affecting commerce" and are unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

6. This proceeding is in the public interest. The Commission so determined upon the assumption of jurisdiction through the issuance of the complaint. *American Airlines, Inc. v. North American Airlines, Inc.* 351 U.S. 79, 83 (1956). Nothing in the record or the findings requires a different result. See *Federal Trade Commission v. Klesner*, 280 U.S. 19 (1929).

7. No determination has been made in this proceeding as to whether the denture products subject to the complaint are "devices" within the meaning of Section 12 of the Federal Trade Commission Act.

REMEDY

Complaint counsel and respondent Block have submitted an agreed-to order, recommending that it be entered in the event the Administrative Law Judge finds the violations alleged in the complaint.

Upon review of the terms of the order, I am of the opinion that it satisfies the needs of this proceeding. It is reasonably related to the practices found to be unlawful and prohibits Block's use of those and similar practices in the future. It also provides that should any Trade Regulation Rule permit any practice prohibited by the recommended order, that such provision of the order shall "abate" upon final promulgation of such a Rule. This provision appears to be consistent with the ongoing Commission policy of reconciling the terms of outstanding orders with its Rules and Guides.

ORDER

It is ordered, That respondent Block Drug Company, Inc., and its officers, representatives, agents and employees directly or through any corporate or other device, in [16] connection with the advertising, offering for sale, sale or distribution of products, sold by the respondent in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statements or representations directly or by implication concerning any performance or other characteristic or attribute of any dental product, except denture cleansers, without possessing and relying upon a reasonable basis for each such statement or representation at the time it is made.
2. Making any comparative statements or representations directly or by implication concerning any performance attribute of any competitor's denture cleanser product without possessing and relying upon a reasonable basis for each such statement or representation at the time it is made.
3. Misrepresenting in any manner the effectiveness of any denture adhesive product.
4. Representing, directly or by implication, that:
 - a. Every user of denture adhesives, regardless of his or her

particular denture holding problem, can eat any of a group of so-called "problem" foods (including, for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort; and/or [17]

b. After the use of a denture adhesive, dentures will hold in place for every denture wearer, regardless of his or her particular denture holding problem, when the wearer eats any of the aforementioned "problem" foods.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

It is further ordered, That the respondent submit to the Commission, in writing, a compliance report detailing the manner and form in which it complied with this order. Such reports shall be submitted sixty (60) days after the entry of a final order and, thereafter, annually for two (2) years from the date of the first submission. [18]

In addition, any provision of this order shall abate when inconsistent with a final Federal Trade Commission trade regulation rule if the trade regulation rule specifically authorizes any claim prohibited herein.

It is further ordered, That the complaint, insofar as it charges Block with violation of Section 12 of the Federal Trade Commission Act, is dismissed.

FINAL ORDER

The administrative law judge filed his initial decision in this matter on October 4, 1977, and service of the initial decision was completed on October 28, 1977. No appeal from the initial decision has been filed, and the Commission has determined that the initial decision and order contained therein shall become the decision and order of the Commission, with the following minor changes:

Page 2, line 1, change "is" to "it."

Page 5, Finding 2, line 2, delete final "r" in "manufacturer."

Page 12, line 5, change "principle" to "principal."

Therefore, it is ordered, That the initial decision (as modified above) and order contained therein, shall become the decision and order of the Commission on the date of issuance of this order.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

Docket 9072. Interlocutory Order, Dec. 27, 1977

Order denying respondents' motion to dismiss complaint. Only in extraordinary circumstances, not shown in the instant case, will the Commission review a determination of public interest after a complaint has issued.

ORDER DENYING MOTION TO DISMISS

Respondents Chrysler Corporation and Chrysler Credit Corporation have moved to dismiss the complaint herein on the ground that the theory on which it rests should have been pursued by rulemaking rather than adjudication. Movants requested that, to the extent the Administrative Law Judge lacked authority to rule on this motion, it be certified to the Commission. By order of September 7, 1977,¹ Administrative Law Judge Parker certified a portion of the motion and denied the remainder.

As it comes to us,² the ground urged for dismissal is supported by two arguments: 1) that a rule would have industrywide application and would thus be more equitable and more effective; and 2) that adjudication is not the appropriate forum for the determination of preemption issues (to the extent they are presented). The resolution of the present motion, however, is controlled by our decision on the very similar motion in the companion *Ford Motor Co.* case.³ There, the Commission noted that "[o]nly in the most extraordinary circumstances, not shown here, will the Commission review [the determination that a particular adjudicative proceeding is in the public interest] once a complaint has issued." Nothing presented here distinguishes the present motion from that in *Ford* in any way relevant to that standard. Accordingly,

It is ordered, That the motion to dismiss be, and it hereby is, denied.

¹ Due to an unfortunate clerical lapse, this order was not transmitted to the Commissioner responsible until November 23.

² Insofar as the motion is based upon the argument that the complaint should be dismissed because it assertedly conflicts with state and federal statutes, the Administrative Law Judge correctly determined that he had authority to rule upon it, and did so. This argument, as such, is not before us.

³ *Ford Motor Co., et al.*, Dkt. 9073, Order Denying Motion to Dismiss Complaint, issued May 25, 1976. See also our July 7, 1976 order, identically titled, in the third companion case, *General Motors Corporation et al.*, Dkt. 9074.

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Dec. 28, 1977

Order denying application for review of administrative law judge's order denying request for certification of proceeding under Section 3.23(b) of the Commission's Rules of Practice. The Commission finds no basis for a finding of abuse of discretion and no basis for extraordinary review.

ORDER DENYING APPLICATION FOR REVIEW

Once again in this proceeding,¹ the Commission has before it an application for review of a ruling by the Administrative Law Judge filed in spite of his denial of requested certification under Rule Section 3.23(b). American Home Products Corporation ("AHP") urges that we find a clear abuse of discretion which will result in irreparable injury in Judge Hyun's orders of May 26 and September 20, 1977, respecting pre-trial exchanges of proposed exhibits, insofar as they require pre-trial disclosure of respondent's "proposed exhibits which contain data taken directly from the complaint counsel's exhibits but which may be used in or serve as the basis of cross-examination of opposing expert witnesses."²

At the threshold, we note that AHP rather exaggerates the scope of Judge Hyun's order, which explicitly does not extend to "documents or tabulations which respondents intend to use solely for the purpose of cross-examination in impeaching complaint counsel's witnesses without offering them as respondents' exhibits in support of their cases."³ In any event, we find no basis in AHP's application for a finding of clear abuse of discretion in the Administrative Law Judge's rulings, and no basis for exercising extraordinary review thereof. Accordingly,

It is ordered, That the application be, and it hereby is, denied.

¹ See the Commission's orders of August 18, 1977, and September 10, 1974, similarly denying applications for review made over the Administrative Law Judge's refusal to certify under Rule Section 3.23(b).

² AHP's application, at page 3.

³ Order Denying Respondent's Application for a Determination Permitting Interlocutory Review, issued October 6, 1977.

Modifying Order

90 F.T.C.

IN THE MATTER OF

UNIVERSAL FIGURE FORM OF YOUNGSTOWN,
INCORPORATED, ET AL.MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2317. Final Order, Nov. 15, 1972 — Modifying Order, Dec. 28,
1977*

This order modifies a final order to cease and desist issued November 15, 1972, 37 FR 28281, 81 F.T.C. 785, by deleting Paragraph III, which required that disclosure notice of third party purchase be incorporated into instruments of indebtedness.

*Appearances*For the Commission: *Phillip R. Fine.*For the respondents: *Donald H. Powers, Terrell, Williams & Salim,*
Cleveland, Ohio.

ORDER MODIFYING FINAL ORDER

Pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, and after consideration of respondents' petition of October 6, 1977 to reopen and delete Paragraph III of the final order to cease and desist dated November 15, 1972, and after further consideration of the response of the Bureau of Consumer Protection in support of such petition,

It is ordered, That the proceedings be, and they hereby are, reopened for the limited purpose of deleting Paragraph III from the final order to cease and desist.

It is further ordered, That Paragraph III be deleted from the final order to cease and desist dated November 15, 1972.

Complaint

IN THE MATTER OF

RYDER SYSTEM, INC.

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

Docket C-2915. Complaint, Dec. 28, 1977 — Decision, Dec. 28, 1977

This consent order, among other things, requires a Miami, Fla. vocational training correspondence school to cease misrepresenting or failing to disclose pertinent facts regarding industry demand, government and industry requirements; job placement; and location of training sites. Respondent is required to provide enrollees with prescribed forms and disclosures relating to rights of cancellation and refund; and employment success of former graduates. Further, respondent is required to make restitution to those former students determined to be eligible, in the manner and form set forth in the order.

Appearances

For the Commission: *Donald Williams.*

For the respondent: *Richard J. Wertheimer and M. Jean Anderson,*
Arnold & Porter, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ryder System, Inc., 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ryder System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2701 South Bayshore Drive, in the city of Miami, State of Florida.

Respondent now, and for some time last past has been primarily engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction purporting to prepare graduates thereof for entry-level employment as truck drivers, automobile mechanics, diesel mechanics, air conditioner mechanics and repairmen, refrigeration mechanics and repairmen, machinists, welders, heavy equipment operators, heavy equipment mechanics, body and

fender repairmen, electronics technicians, computer technicians, mechanical draftsmen and architectural draftsmen.

PAR. 2. In the course and conduct of its business of offering for sale, sale and distribution of courses of instruction, respondent through home-study branch facilities and resident training facilities which it owned, organized and operated, and by means of wholly-owned subsidiaries, has authorized individuals and entities to solicit and write enrollments in respondent's corporate title and under the trade names "Greer Technical Institute," "Lincoln Technical Institute," "National Professional Truck Driver Training," "Radio Television Technical School," "Electronics Training Center" and "Ryder Technical Institute."

Respondent, through its said home-study branch facilities and resident training facilities, places into operation and implements a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mails or by means of other statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts or enrollment agreements for a course of home-study and/or resident training of a stated length of time and for a stated tuition cost.

Respondent arranges or assists in the arrangement of credit and deferred payment terms for the financing of said executed contracts, and accepts the proceeds thereof.

In the manner aforesaid, respondent dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondent's home-study branch facilities and resident training facilities.

Alternatively, with respect to the acts and practices of respondent's home-study branch facilities and resident training facilities hereinafter set forth, respondent knew or should have known of the said acts and practices and failed to exercise its control to curb the said acts and practices.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, said aforementioned courses of instruction to be distributed from its places of business to said aforementioned home-study branch facilities and resident training facilities located in various States of the United States other than the state of origination of said courses. Respondent transmits and receives, and causes to be transmitted and

received, in the course of the sale of, distribution of and financing of its courses of instruction by said home-study branch facilities and resident training facilities among and between the several States of the United States, retail installment contracts, financial reports, checks, monies or other commercial paper.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and to induce the purchase of its courses of instruction by members of the general public, respondent and its home-study branch facilities and resident training facilities have disseminated, or caused the dissemination of, via the United States' mail or other means, radio, television, newspaper, print media or other forms of advertising, or other means and instrumentalities which are furnished, approved, created or condoned by respondent. In conjunction therewith, respondent and its home-study branch facilities and resident training facilities and the salespersons of its home-study facilities and resident training facilities have made certain statements and representations respecting the existence of a substantial and continuing demand for graduates of respondent's courses, the lack of cost of placement services offered, the employment security of persons employed in the trucking industry, the amount of time required to complete successfully respondent's tractor-trailer driver course, and the approval by the Veterans Administration of respondent's schools or courses.

Typical of the statements and representations, but not all inclusive thereof, are the following:

A. Radio and Television

Would you like to hear some good news for a change? You don't have to continue being worried about job layoffs and earning a living wage. As you know almost every major industry in the country is laying off people. Yet there is still a shortage of trained tractor-trailer drivers. Drivers in the expanding trucking industry have above average earnings and job security. There are still good jobs waiting to be filled by trained drivers. If you are 21 or over, in good health, and have a good driving record, NATIONAL PROFESSIONAL TRUCK DRIVER TRAINING, A RYDER SCHOOL, can train you for one of these jobs.

B. Newspaper and Direct Mail

Free job placement service

* * * * *

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90 F.T.C.

TRACTOR-TRAILER STUDENTS NEEDED

Men, you are 3 weeks or 8 weekends away from driving the big rigs . . . local and over-the-road. Train full time or weekends.

* * * * *

APPROVED FOR VETERANS
TRAIN TO BECOME A
TRACTOR TRAILER DIESEL
DRIVER IN A FEW WEEKS

EFFECTIVE PLACEMENT SERVICE

Minimum Age 20 Years
OUR drivers in constant demand

* * * * *

BE A TRACTOR-TRAILER DRIVER . . . VA APPROVED "Vets & GI's"

* * * * *

This School is VA Approved

* * * * *

ATTENTION MEN TRAIN NOW TO OPERATE HEAVY EQUIPMENT

.BULLDOZER

.FRONT END LOADER

.GRADER

DRAGLINE.

SHOVEL.

CLAM SHELL.

Resident Training on the Big Equipment, High paying jobs in the construction industry will be available for trained men.

* * * * *

C. Promotional Material**Job Opportunities**

for the trained Tractor-Trailer Driver
58,000 new drivers needed through the 1970's

.Expanding National Economy

.Decentralized Manufacturing

.Declining Railroad System

.Growing Interstate Highway Network

* * * * *

JOB OPPORTUNITIES FOR OPERATING ENGINEERS

36% ANNUAL GROWTH IN U.S. THROUGH THE 70's...

410,000 JOBS PROJECTED FOR 1980.

Federal Government's multibillion-dollar Interstate expressway program is but one example of massive use of materials and skilled men. Other Federal, State,

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County and City programs, and private projects boost the need for trained Heavy Equipment Operators all across America.

* * * * *

Ryder Technical Institutes . . . Teach skills to meet strongest job demand

* * * * *

RYDER KNOWS THE TRUCKING INDUSTRY and what kinds of drivers are needed and hired. Ryder trains to place.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondent and its home-study branch facilities and resident training facilities and the salespersons of the home-study branch facilities and the resident training facilities have represented, directly or by implication, that:

1. There is an urgent need or demand for all or most graduates of respondent's tractor-trailer driver and heavy equipment operator courses in positions for which respondent trains such persons.

2. Respondent had a reasonable basis from which to conclude that:

- (a) there was at the time such representations were made, or
- (b) would be at the time that persons then enrolling graduated,

an urgent need or demand for all or most graduates of respondent's tractor-trailer driver and heavy equipment operator courses in positions for which respondent trains such persons.

3. All or substantially all graduates of respondent's tractor-trailer driver and heavy equipment operator courses are able, on graduation, to secure the positions for which respondent has trained them.

4. The placement assistance furnished by respondent is free.

5. Unlike a person employed in a non-trucking industry, a person employed in the trucking industry does not experience layoffs.

6. A purchaser will complete respondent's tractor-trailer driver course and qualify for employment as a tractor-trailer driver within three weeks of beginning the course on a full-time basis or within eight weekends of beginning the course on a part-time basis.

7. Respondent's schools or courses are approved by the Veterans Administration.

PAR. 6. In truth and fact:

1. At the time it was so represented there was not an urgent need or demand for all or most graduates of respondent's tractor-trailer

driver and heavy equipment operator courses in positions for which respondent trains such persons.

2. Respondent had no reasonable basis from which to conclude that:

- (a) there was at the time such representations were made, or
- (b) would be at the time that persons then enrolling graduated,

an urgent need or demand for all or most graduates of respondent's tractor-trailer driver and heavy equipment operator courses in positions for which respondent trains such persons.

3. All or substantially all graduates of respondent's tractor-trailer driver and heavy equipment operator courses are not able, on graduation, to secure the positions for which respondent has trained them.

4. The placement assistance furnished by respondent is not free, but, rather is included in the tuition cost of respondent's courses.

5. As is true of a person employed in a non-trucking industry, a person employed in the trucking industry does experience layoffs.

6. A purchaser cannot complete respondent's tractor-trailer driver course and qualify for employment as a tractor-trailer driver within three weeks of beginning the course on a full-time basis or within eight weekends of beginning the course on a part-time basis.

7. Respondent's schools or courses are not approved by the Veterans Administration. Respondent's schools merely offer some courses that an appropriate state agency has approved as courses a veteran may attend and become eligible to receive veterans' educational assistance benefits from the United States Government.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are, false, misleading or deceptive acts or practices.

PAR. 7. Respondent, in offering for sale courses of instruction purporting to prepare graduates thereof for entry-level employment as tractor-trailer drivers and heavy equipment operators, failed to disclose in advertising or through the salespersons of its home-study facilities and resident training facilities the following information with respect to each school for each course offered:

1. The percentage of recent graduates who were able to obtain employment in the positions for which they were trained;
2. The employers that hired any such recent graduates;
3. The initial salary any such recent graduates received; and
4. The percentage of recent enrollees who have failed to complete their courses of instruction.

Knowledge of such facts would be an indication of the probability of

graduating from respondent's courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondent has failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 8. Respondent, in offering for sale a tractor-trailer driver course, failed to disclose in a clear and conspicuous manner:

(a) that the United States Department of Transportation has established certain requirements which must be met before a person may drive a tractor-trailer;

(b) that various states maintain certain requirements that must be met before a person is licensed as a tractor-trailer driver;

(c) that many employers of tractor-trailer drivers will not accept an applicant for a position as a tractor-trailer driver unless he or she is at least twenty-five years of age and has previous experience driving tractor-trailers;

(d) that in order to attain a position as a tractor-trailer driver, a person may be required to join a union.

Knowledge of such facts would aid a consumer in determining the likelihood that he or she could meet governmental standards for tractor-trailer drivers and would be an indication of the possibility of securing future employment upon graduating from said course and the nature of such employment. Thus, respondent has failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether or not to purchase said course of instruction. Therefore, the aforesaid acts and practices were and are, false, misleading, deceptive or unfair acts or practices.

PAR. 9. Respondent, in offering for sale a tractor-trailer driver course, failed to disclose in a clear and conspicuous manner the location of the residential training center at which enrollees who have read, viewed or heard a given advertisement will receive their resident training. Knowledge of such facts would be an indication of the full cost and time requirements of enrolling in said course. Thus, respondent has failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether or not to purchase said course of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 10. Respondent, in offering for sale a tractor-trailer driver course, failed to disclose, in a clear and conspicuous manner, the

minimum amount of time which would be spent driving tractor-trailers and the minimum number of miles which tractor-trailers would be driven by each enrollee who graduates from said course. Knowledge of such facts would be an indication of the potential usefulness of the course in obtaining future employment. Thus, respondent has failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether or not to purchase said course of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11.

(a) Respondent, as aforesaid, has been and is now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondent substantial sums of money to purchase courses of instruction whose value to the said persons for future employment in the jobs for which training was offered was virtually worthless. Respondent has received the said sums and has failed to offer to refund and refused to refund such money to such purchasers of its courses.

The use by respondent of the aforesaid practices and its continued retention of the said sums, as aforesaid, is an unfair act or practice.

(b) In the alternative and separate from subparagraph (a) above, respondent, who is in substantial competition in commerce with corporations, firms and individuals engaged in the sale of courses of vocational instruction, has been and is now, as aforesaid, failing to disclose material facts while using false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondent substantial sums of money to purchase courses of instruction.

The effect of using these aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain or prevent competition between the respondent and the aforesaid competitors.

PAR. 12. By and through the use of the aforesaid acts and practices, respondent places in the hands of others the means and instrumentalities by and through which it may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 13. In the course and conduct of their business, and at all times mentioned herein, respondent has been and now is in, substantial competition in commerce with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 14. The use by respondent of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices,

has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to purchase respondent's courses by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of the complaint the Commission issued, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Ryder System, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 2701 South Bayshore Drive, Miami, Florida.

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 Ryder System, Inc., a corporation, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, franchisee or other device, in connection with the creation, advertising, promotion, offering for sale, or distribution to individual students of home study courses or combination home study-resident training courses or tractor-trailer drive or heavy equipment operator resident courses of study in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally, visually, or in writing, directly or by implication, that:

(a) The placement assistance furnished by respondent is free; or misrepresenting, orally, visually, or in writing, the cost of any placement assistance or service.

(b) Unlike a person employed in a non-trucking industry, a person employed in the trucking industry does not experience layoffs; or misrepresenting, orally, visually, or in writing, the conditions of employment in the trucking industry or in any other industry.

(c) A purchaser will complete respondent's entire combination home study-resident training tractor-trailer driver course and qualify for employment as a tractor-trailer driver within three weeks of beginning the course; or misrepresenting, orally, visually, or in writing, the length of time required to complete any course of instruction offered by respondent which is subject to part I of this order.

(d) Respondent's schools or courses are "approved" by the Veterans Administration; or misrepresenting, orally, visually, or in writing, the extent or nature of any approval or other form of government action taken with respect to any school or course of instruction.

(e)(i) There is a substantial demand, or a demand of any size or proportion, for persons completing any course offered by respondent which is subject to part I of this order,

(ii) or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons, except in the form as hereinafter provided in part I, paragraphs 6(a)(ii)a. and 6(b)(ii)a. of this order, provided, however, that respondent shall cease and desist making such representations with respect to any such new school location or such new course of

instruction unless the respondent in each and every instance shall have in good faith conducted a statistically valid survey which establishes the validity of any such representations at all times when the representations are made, and have disclosed in immediate and conspicuous conjunction with any such representation, that:

All representations of potential employment demand or opportunities for graduates of this school (course) are estimates. This school (course) has not been in operation (offered) long enough to indicate what actual employment may result upon graduation.

(iii) After the passage of the ten-month period to be determined pursuant to part I, paragraphs 6(a)(ii)e. and 6(b)(ii)d. of this order, and until two years after establishment of a new school location by respondent in any metropolitan area or state where it did not previously operate a school, and after the introduction by respondent of any new course of instruction subject to part I of this order, at any school or location, respondent shall:

a. make any such representations in the form and manner provided in part I, paragraphs 6(a)(ii)a. and 6(b)(ii)a. of this order, and

b. disclose in immediate and conspicuous conjunction with any such representation, that:

This school (course) has been in operation (offered) since (insert date on which school or course commenced).

2. Using orally, in writing, or in any other manner at any time statistical data or numerical estimates, derived from any source whatsoever, other than the statistical data or numerical estimates referred to in part I, paragraph 1(e) of this order, respecting present or future occupational demand or the growth of employment or the salaries earned in any field, or misrepresenting in any manner the meaning, application, relevancy or import of any statistical data or statistical projections of any type from any source.

3. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice, and which shall be maintained by respondent for so long as the material covered by part I, paragraphs 3(a) or 3(b) of this order is disseminated or approved for dissemination, or a statement covered by paragraphs 3(a) or 3(b) of this order is made by said respondent, and for a further period of five (5) years after said respondent's last dissemination or approval of dissemination of such material or such statement:

(a) Which disclose the facts upon which any statement of demand, placement percentages or claims, or other representations of the type described in part I, paragraphs 1(e), 6(a)(ii)a., and 6(b)(ii)a. through 6(a)(ii)c. of this order are based; and

(b) From which the validity of any statements of demand, placement percentages or claims, or other representations of the type described in part I, paragraphs 1(e), 6(a)(ii)a. through 6(a)(ii)c., and 6(b)(ii)a. through 6(b)(ii)c. of this order was determined; and

(c) Which reflect the delivery and date of delivery of the data described in part I, paragraphs 6(a), 6(b), and 8 of this order.

(d) Which reflect the delivery of the refunds described in part I, paragraph 7 of this order.

4. Enrolling any person in any tractor-trailer driver course which is subject to part I of this order before delivering to that person a notice concerning United States Department of Transportation requirements in the language, manner and form shown in Appendix A to this order.

5. Enrolling any person in any tractor-trailer driver course which is subject to part I of this order before delivering to that person a list of respondent's resident training centers in the language, manner and form shown in Appendix A to this order.

6. (a) Failing to deliver to each person who shall contract with respondent for the purchase of any tractor-trailer driver course subject to part I of this order, a written notice, printed in at least 10-point type which shall disclose in the form provided in Appendix B, the following information and none other:

(i) The title "IMPORTANT INFORMATION" printed in boldface type across the top of the form.

(ii) Paragraphs reciting the following information to be computed in the language, manner and form set forth below for the applicable base period as hereinafter defined in part I, paragraph 6(a)(ii)e. of this order:

a. For any tractor-trailer driver course subject to part I of this order offered by respondent for each school, location or facility at which respondent offers said course of instruction:

The dates of the "base period" as computed in part I, paragraph 6(a)(ii)e. of this order; the total number of students who graduated during such base period; the total number of students who responded to respondent's inquiry concerning employment status in the three months following graduation; the numbers and percentages of such responding graduates who responded that they had attained employment as tractor-trailer drivers, with such information accompanied by the following disclosures:

i. Requirements for licensing tractor-trailer drivers vary from state to state. Many states require license applicants to take road tests on the types of vehicles they expect to drive, and the applicants are required, at their own expense, to furnish the vehicles needed to take the road tests. In addition to the usual visual

tests and written tests which states require, some states also require applicants to take specialized written tests relating to the types of vehicles they expect to drive. You should determine the requirements for licensing tractor-trailer drivers in the state in which you intend to seek a license.

ii. You should also obtain information concerning employment in the types of trucking jobs in which you might like to work after graduation. Some employers will hire drivers who are under the age of twenty-five or who lack previous tractor-trailer experience and some employers will not. Some tractor-trailer jobs require union membership and some jobs do not. You should explore the availability of the particular type of job in which you are personally interested.

b. As to the same graduates who respond to respondent's inquiry concerning employment and are used to compute the placement statistics in part I, paragraph 6(a)(ii)a. of this order, separately, for each school, location or facility at which respondent offers said course, a list of all firms or employers which are known to have hired any of such graduates during the base period; and the number of such graduates hired by each firm or employer in the position of a tractor-trailer driver.

c. As to the same graduates used to compute part I, paragraph 6(a)(ii)a. of this order, the hourly starting wages and incomes of said graduates who are known to have attained full-time employment as tractor-trailer drivers. Such wages or incomes shall be stated in consecutive categories of one dollar amounts, in the form described in Appendix B (*e.g.*, \$3.00 to \$3.99, \$4.00 to \$4.99 . . .) or, if such hourly wages and incomes are not known, the monthly wages and incomes which are reported to respondent.

d. In compiling the foregoing information, respondent shall not include any such graduates who respondent knows have not retained such positions for more than one month from the initial date of employment. Respondent may use information supplied by graduates, employers, or other sources and shall not be required to obtain such information independently.

e. "Base Period" shall mean a six (6) month period beginning ten (10) months before and ending four (4) months before the date on which respondent must begin to disseminate the necessary statistics with respect to the base period. There shall be two base periods each year, one beginning on January 1 and concluding on June 30; the other shall begin on July 1 and conclude on December 31.

There shall be a four (4) month period immediately following the close of a base period during which respondent shall gather the necessary statistics with respect to said base period. These statistics will relate to those graduates who successfully completed the particular course of instruction during the base period and who

reported employment during the base period. Respondent may not include in the computation of the statistics for the base period any persons who graduated during the months after the base period; such persons will be included in statistics for the base period during which they graduate.

On the first day of the fifth month following the close of each base period, respondent shall begin to distribute statistics relating to the last completed base period. Respondent shall continue to distribute said statistics until the first day of the fifth month following completion of the next base period.

For any six-month period during which respondent has no graduates for a particular course of instruction, respondent may continue to distribute the statistics with respect to the prior base period for said course of instruction until such time as respondent has graduates of said course of instruction and has had four (4) months in which to gather statistics with respect to those graduates.

(b) Failing to deliver to each person who shall contract with respondent for the purchase of any course of instruction which is subject to part I of this order, other than a course described in part I, paragraph 6(a) of this order, a written notice printed in at least 10-point type which shall disclose in substantially the same form as provided in Appendix B the following information and none other:

(i) The title "IMPORTANT INFORMATION" printed in boldface type across the top of the form.

(ii) Paragraphs reciting the following information to be computed in the manner set forth below for the applicable base period defined in part I, paragraph 6(a)(ii)e. of this order:

a. For each such course of instruction offered by respondent for each school, location or facility at which respondent offers said course of instruction:

The dates of the "base period" as computed in part I, paragraph 6(a)(ii)e. of this order; the total number of students who graduated during such base period; the total number of students who responded to respondent's inquiry concerning employment status in the three months following graduation; and the numbers and percentages of such responding graduates who advised respondent that they had attained employment in the fields for which such graduates were trained. Such information must include an accurate description of each position in which such graduates attained employment.

b. As to the same graduates used to compute the placement and employment statistics in part I, paragraph 6(b)(ii)a. of this order, a list of all employers which are known to have hired any such

graduates during the base period, the number of such graduates hired by each firm or employer and the positions in which said graduates were hired.

c. As to the same graduates used to compute the statistics in part I, paragraph 6(b)(ii)a. of this order, the hourly starting wages or incomes of said graduates. Such wages or incomes shall be classified by number of graduates attaining employment in each position described in part I, paragraph 6(b)(ii) of this order and shall be stated in consecutive categories of one dollar amounts, in the form described in Appendix B (e.g., \$3.00 to \$3.99, \$4.00 to \$4.99 . . .) or, if such hourly wages and incomes are not known, the monthly wages and incomes which are reported to respondent.

d. In preparing the information required in part I, paragraphs 6(a)(ii)a. through c. of this order, respondent shall follow the instructions set forth in part I, paragraphs 6(a)(ii)d. through e. of this order.

7. Contracting for any sale of any course of instruction which is subject to part I of this order in the form of a sales contract or other agreement which shall become binding prior to midnight of the third business day after receipt by a customer of the form of notice provided in part I, paragraph 8 of this order. Upon cancellation of any said sales contract or other agreement as provided for in part I, paragraph 8 of this order, respondent is obligated to refund within ten (10) business days to any person exercising the cancellation right all the monies paid or remitted up to the notice of cancellation.

8. Failing to deliver to each person who shall contract with respondent for the purchase of any course of instruction which is subject to part I of this order, a one-page form (hereinafter "cancellation form") in duplicate, that contains the following unsigned statement printed in boldface type of at least ten (10) points:

IMPORTANT

NOTICE TO THE PURCHASER

THE ENROLLMENT CONTRACT THAT YOU SIGNED WITH (NAME OF SCHOOL) ON (DATE) TO ENROLL IN (NAME OF COURSE) MAY BE CANCELLED BY YOU, FOR ANY REASON, IF YOU SIGN THIS STATEMENT AND MAIL IT TO THE ABOVE NAMED SCHOOL WITHIN THREE (3) DAYS FROM THE TIME THAT YOU RECEIVED THIS STATEMENT. YOU ARE THUS FREE TO CANCEL YOUR ENROLLMENT AND RECEIVE A FULL REFUND OF ANY MONIES YOU HAVE PAID TO THE SCHOOL. IF YOU DO WANT TO CANCEL, YOU SHOULD SIGN YOUR NAME BELOW

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AND MAIL THIS STATEMENT TO THE SCHOOL WITHIN THREE (3) DAYS.
KEEP THE DUPLICATE COPY FOR YOUR OWN RECORDS.

DATE

SIGNATURE

9. The cancellation form shall not contain any information or representations other than the information specified in part I, paragraph 8 of this order, and the cancellation form shall be delivered along with the data required by part I, paragraph 6 of this order. The cancellation form and said data shall be delivered by respondent no later than the next business day after the person shall have contracted for the purchase of any course of instruction which is subject to part I of this order. During such period provided for in part I, paragraph 8 of this order respondent shall not initiate contact with such person other than that required by this paragraph.

10. Making any representation of any kind whatsoever in connection with the advertising, promoting, offering for sale, sale or distribution of any course of study subject to part I of this order, for which respondent has no reasonable basis prior to the making or dissemination thereof.

11. In the event that the Commission promulgates a trade regulation rule on advertising, disclosure, cooling-off, or refund requirements for proprietary vocational and home study schools, or any trade regulation rule providing for the disclosure of employment or similar data to prospective students, then part I, paragraphs 1(e), 2, 3, 6, 7, 8 and 9 of this order shall be superseded thereby, and such trade regulation rule shall completely supersede and replace said paragraphs and such trade regulation rule shall become part of this order.

II

1. *It is further ordered, That:*

(a) Respondent deliver a copy of this decision and order to each of its present and future employees, salesmen, agents, solicitors, independent contractors or to any other person or entity which promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order.

(b) Respondent provide each person or entity so described in part II, paragraph 1(a) of this order with a form returnable to the respondent clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this

order; retain said statement during the period said person or entity is so engaged and for a period of five (5) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon request.

(c) Respondent inform each person or entity so described in part II, paragraph 1(a) of this order that the respondent will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondent that he or she will be bound by the provisions contained in this order.

(d) If such party as described in part II, paragraph 1(a) of this order will not agree to so file the notice set forth in part II, paragraph 1(b) of this order with the respondent and be bound by the provisions of the order, the respondent shall not use or engage or continue the use or engagement of, such party to promote, offer for sale, sell or distribute any course of instruction included in this order.

(e) Respondent herein inform the person or entities described in part II, paragraph 1(a) of this order that the respondent is obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the acts or practices prohibited by this order.

(f) Respondent herein discontinue dealing with or terminate the use or engagement of any person or entity described in part II, paragraph 1(a) of this order, who continues on his or her own any act or practice prohibited by this order.

2. *It is further ordered*, That respondent shall forthwith distribute a copy of this order to each of its divisions or subsidiary corporations which is involved in the advertising, promotion or sale of any course of instruction included within the scope of this order.

III

It is further ordered, That:

1. Within thirty (30) days after the date this order is served on respondent (hereinafter "date of service") respondent shall employ an independent contractor acceptable to the Compliance Division of the Bureau of Consumer Protection of the Commission (hereinafter "Compliance Division").

2. Within ninety (90) days after the date of service, respondent shall compile a list from records in respondent's possession, custody, or control and from information which may be transmitted to respondent by the Commission or by others within said number of days. That list shall state the following with respect to each person who completed the resident training portion of respondent's tractor-

trailer driver course between January 1, 1970 and December 31, 1972, and each person who completed the resident training portion of respondent's heavy equipment operator course between January 1, 1971 and December 31, 1973 (hereinafter "the graduates"):

- (a) Name; and
- (b) Last known address; and
- (c) Course and date of completion; and
- (d) Total tuition paid by or for such graduate to respondent; and
- (e) The other names and addresses that appear in the student or placement file of respondent relating to each graduate.

3. Within ninety (90) days after the date of service, respondent shall give to the independent contractor the list described in part III, paragraph 2 of this order.

4. On the one hundred and twentieth (120th) day after the date of service, the independent contractor shall deposit in the United States mail, first class postage prepaid, an envelope addressed to each graduate at his or her last known address. Each envelope shall bear the independent contractor's return address and shall contain:

- (a) A copy of the letter and the appropriate affidavit that appear in the language, manner, and form shown in Appendices C, D, and E; and

- (b) A first class postage prepaid envelope addressed to the independent contractor.

5. If any envelope mailed to a graduate pursuant to part III, paragraph 4 of this order is returned to the independent contractor by the United States Postal Service, then, within five (5) business days after each such envelope is returned, the independent contractor shall deposit in the United States mail, first class postage prepaid, an envelope addressed to each name and address described in part III, paragraph 2(e) of this order. Each envelope shall bear the independent contractor's return address and shall contain:

- (a) A letter in the language, manner, and form shown in Appendix N; and

- (b) A first class postage prepaid envelope addressed to the independent contractor.

6. (a) If, within fifty (50) days after the date set forth in part III, paragraph 4 of this order, the independent contractor receives from any source a new address or addresses for graduates whose names appear on the list described in part III, paragraph 2 of this order, then, within five (5) business days after receiving such new addresses, the independent contractor shall deposit in the United States mail, first class postage prepaid, envelopes which shall be addressed to the graduates at the new address or addresses, bear the

independent contractor's return address, and contain the items described in part III, paragraphs 4(a) and 4(b) of this order.

(b) If, within fifty (50) days after the date set forth in part III, paragraph 4 of this order, the independent contractor receives requests from anyone for a copy of Appendices C, D, E, or for information necessary for the implementation of part III of this order, then, within five (5) business days after receiving such requests, the independent contractor shall deposit in the United States mail, first class postage prepaid, envelopes which shall be addressed to the persons making the requests, bear the independent contractor's return address, and contain the items described in part III, paragraphs 4(a) and 4(b) of this order.

7. The independent contractor shall keep safe all executed copies of Appendices D and E (hereinafter "claimant affidavits") which are delivered to him.

8. Within two hundred (200) days after the date of service, the independent contractor shall transmit to respondent all claimant affidavits in his possession, custody, or control, and shall maintain a record of the names of claimants whose affidavits are transmitted to respondent, the dates such transfers occur, and the dates such claimant affidavits were received by the independent contractor.

9. Respondent's payment obligations pursuant to part III of this order shall be limited to those graduates who meet all of the conditions described in part III, subparagraphs (a) through (g) of paragraph 9 of this order, that is, persons:

(a) Who completed the resident training portion of respondent's tractor-trailer course between January 1, 1970 and December 31, 1972, or who completed the resident training portion of respondent's heavy equipment operator course between January 1, 1971 and December 31, 1973; and

(b) Whose tuition was not paid for in full by his employer or a governmental agency other than the United States Veterans Administration or who had an obligation to repay all or part of the tuition paid in full by said employer or governmental agency; and

(c) Who, (i) in the case of a tractor-trailer course graduate, failed to obtain employment at any time after graduation in a target job, that is, as a truck driver, instructor of truck driving, or manager or safety director or foreman of persons engaged in truck driving; or, (ii) in the case of a heavy equipment course graduate, failed to obtain employment for a reasonable period of time at any time after graduation in a target job, that is, as a heavy equipment operator or instructor of heavy equipment operation, or manager or safety director or foreman of heavy equipment operators, but who either

made a reasonably diligent search for employment in their respective target jobs, or who failed to make such a search for excusable reasons; and

(d) Who have returned to the independent contractor within seventy-five (75) days after the date set forth in part III, paragraph 4 of this order, a claimant affidavit; and

(e) Who, if sent one or more of the letters referred to in part III, paragraph 10(b)(ii) of this order, have returned to the independent contractor by the date set forth in part III, paragraph 10(e) of this order, their responses to such letters; and

(f) Whose properly signed and notarized claimant affidavits, together with responses to any such letters referred to in part III, paragraph 10(b)(ii) of this order, contain sufficient information to establish that they are persons described by part III, paragraphs 9(a) through 9(c) of this order; and

(g) Who agree in writing that, in consideration of the monies received pursuant to part III of this order, he or she releases respondent from any and all further claims, known and unknown, with respect to or arising from tuition for respondent's course or courses.

10. (a) Within two hundred and thirty (230) days after the date of service, respondent shall identify each claimant affidavit which respondent asserts to be so incomplete, ambiguous, or internally inconsistent that respondent cannot fairly decide whether the person submitting such a claimant affidavit is a person described in part III, paragraphs 9(a) through 9(d) of this order.

(b) With respect to each person submitting such an incomplete, ambiguous, or internally inconsistent claimant affidavit, respondent shall, on the two hundred and thirtieth (230th) day after the date of service, deposit in the United States mail, first class postage prepaid, an envelope which shall bear the return address of the independent contractor and which shall contain:

(i) That person's claimant affidavit; and

(ii) One or more appropriate form letters in the language, manner and form shown in Appendices F, G, or H, or a specially prepared letter, if none of the form letters is appropriate, requesting that the necessary additional or clarifying information be added to or incorporated in the claimant affidavit; and

(iii) A first class postage prepaid envelope addressed to the independent contractor.

(c) Before mailing a specially prepared letter of the sort described in part III, paragraph 10(b)(ii) of this order, respondent shall first send a copy of the letter and a copy of relevant portions of the

claimant affidavit to the Compliance Division. The Compliance Division shall have seven (7) days, from the time respondent deposits the copy of the letter in the United States mail addressed to the Compliance Division, in which to notify respondent that such a letter is acceptable or unacceptable. If, within those seven (7) days, respondent receives actual written or oral notice from the Compliance Division that a letter is not acceptable, then respondent shall not mail the letter, and respondent and the Compliance Division shall negotiate the wording of the letter. Within one (1) business day after respondent and the Compliance Division reach agreement, a letter acceptable to the Compliance Division shall be mailed. If, within those seven (7) days, the Compliance Division either notifies respondent that a letter is acceptable, or fails to notify respondent that a letter is acceptable or unacceptable, then, on the next business day, respondent shall mail the letter.

(d) Each letter referred to in part III, paragraph 10(b)(ii) of this order shall record the addressee's name, address, and telephone number. Respondent shall retain a copy of each letter.

(e) The deadline for receipt by the independent contractor of responses to the letters described in part III, paragraph 10(b)(ii) of this order shall be midnight on the thirty-fifth (35th) day after the date the letters described in part III, paragraph 10(b)(ii) are mailed. Persons whose responses are received after that time shall not be eligible for any payment under part III of this order.

11. Within two hundred and ninety-five (295) days after the date of service, respondent shall make an initial determination of:

(a) Those persons who are described in part III, paragraphs 9(a) through 9(f) of this order; and

(b) Those persons who have submitted claimant affidavits which show that they are not persons described in part III, paragraphs 9(a) through 9(f) of this order; and

(c) Those persons who respondent has reason to believe are not persons described in part III, paragraphs 9(a) through 9(f) of this order, notwithstanding their claimant affidavits.

12. Within three hundred and five (305) days after the date of service, respondent shall deliver to, or make available, at the option of the Compliance Division, and the Compliance Division shall commence to review:

(a) The initial determination made by respondent pursuant to part III, paragraph 11 of this order; and

(b) All claimant affidavits and any related documents or information which respondent used to make its initial determination.

13. Within three hundred and fifty (350) days after the date of

service, the Compliance Division shall complete its review of the materials described in part III, paragraph 12 of this order. Immediately thereafter, the Compliance Division and respondent shall attempt to resolve any differences concerning the categorization of claimant affidavits and any other questions arising in connection with respondent's performance of part III of this order.

14. Within three hundred and eighty (380) days after the date of service, respondent shall make a final determination of:

(a) Those persons who both the Compliance Division and respondent agree are described by part III, paragraphs 9(a) through 9(f) of this order (hereinafter "eligible graduates"); and

(b) Those persons who both the Compliance Division and respondent agree are not described by part III, paragraphs 9(a) through 9(f) of this order (hereinafter "ineligible graduates"); and

(c) Those persons who respondent considers to be ineligible graduates but who the Compliance Division considers to be eligible graduates (hereinafter "potentially eligible graduates").

15. Arbitration shall determine whether each potentially eligible graduate is a person described by part III, paragraphs 9(a) through 9(f) of this order. Such arbitration shall be conducted according to the following provisions:

(a) Arbitration shall take place in accordance with the Special Arbitration Rules, Appendix I.

(b) Within three hundred and ninety (390) days after the date of service, respondent shall deposit in the United States mail, first class postage prepaid, an envelope, addressed to the American Arbitration Association, that shall contain:

(i) A Demand for Arbitration, in the language, manner, and form of Appendix J, which shall state:

a. That respondent denies that (name of graduate) is an eligible graduate; and

b. The reasons respondent denies that (name of graduate) is an eligible graduate, including any affidavits, documents, or other information supporting respondent's position; and

c. That respondent has submitted the matter to arbitration pursuant to this order of the Commission; and

(ii) A copy of the claimant affidavit of (name of graduate), and a copy of his response, if any, to any letter mailed to him pursuant to part III, paragraph 10(b)(ii) of this order; and

(iii) A copy of the Special Arbitration Rules, Appendix I.

(c) Respondent shall be obligated to transmit to the American Arbitration Association \$50.00 with each case submitted to arbitration.

(d) The arbitrator's decision in each matter submitted to him shall be limited to his finding with respect to whether the potentially eligible graduate is a person described by part III, paragraphs 9(a) through 9(f) of this order.

(e) The arbitrator's decision in each and every matter submitted to him shall be transmitted to respondent within four hundred and eighty (480) days after the date of service.

16. (a) Within four hundred and ninety (490) days after the date of service, respondent shall deposit in the United States mail, first class postage prepaid, an envelope addressed to each eligible graduate and to each person who has been determined by arbitration to be a person described by part III, paragraphs 9(a) through 9(f) of this order.

(b) The envelope shall contain two copies of a letter, in the language, manner, and form shown in Appendix K.

17. (a) Within ten (10) days after the date of receipt by the independent contractor of the releases described in part III, paragraph 16(b) of this order, respondent shall compile a registry. Such registry shall contain the names and addresses of those persons whose releases have been received by the independent contractor within twenty (20) business days after the date specified in part III, paragraph 16(a) of this order. The persons whose names appear on the registry shall be the "refund recipients."

(b) Within thirty (30) days after the date of receipt by the independent contractor of the releases described in part III, paragraph 16(b) of this order, respondent shall deliver to the Compliance Division a compliance report consisting of a copy of said registry described in part III, paragraph 17(a) of this order and calculations of refund amounts due each refund recipient.

(c) Within five (5) business days after the date specified in part III, paragraph 17(b) of this order, the Compliance Division shall review said compliance report, and the Director of the Bureau of Consumer Protection shall advise respondent in writing whether payment of such refund amounts to such refund recipients, provided that such payment is made in accordance with part III, paragraph 19 of this order, shall constitute satisfactory compliance by respondent with part III, paragraphs 1 through 19 of this order.

18. Respondent shall pay to each of the refund recipients, as defined in part III, paragraph 17 of this order, an amount as determined below:

(a) Respondent's total payment obligation under this order shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000) under any circumstances.

(b) Respondent's total payment obligation under this order shall be reduced by a sum equal to the monies expended by respondent for:

(i) The cost to respondent of any independent contractor employed pursuant to part III, paragraphs 1 through 19 of this order; and

(ii) Postage costs incurred by any such independent contractor and postage costs and other reasonable out-of-pocket costs incurred by respondent pursuant to part III, paragraphs 1 through 17 of this order; and

(iii) Reasonable personnel costs incurred by respondent pursuant to part III, paragraph 2 of this order; and

(iv) The arbitration costs incurred by respondent pursuant to part III, paragraph 15 of this order, limited to \$50.00 per arbitration claim assessed by the American Arbitration Association.

(c) The difference between One Million Five Hundred Thousand Dollars (\$1,500,000) and the sum of the costs described in part III, paragraphs 18(b)(i), (ii), and (iii) of this order shall be the "cap figure."

(d) Subject to part III, paragraph 18(e) of this order, the "refund amount" for each refund recipient shall be equal to seventy-five percent (75%) of the total amount of tuition paid to respondent by or for the refund recipient after the following are subtracted from such total amount of tuition paid:

(i) Amounts paid for tuition by a governmental agency other than the United States Veterans Administration, or by the refund recipient's employer without obligation of repayment by the refund recipient; and

(ii) Any prior refunds of tuition paid by respondent to the refund recipient.

(e) If the sum of all refund amounts, as defined by part III, paragraph 18(d) of this order, would be greater than the cap figure, as defined by part III, paragraph 18(c) of this order, then the refund amount for each refund recipient shall be reduced on a pro rata basis so that the total of all refund amounts equals the cap figure.

19. (a) Within ten (10) days after the date specified in part III, paragraph 17(c) of this order, respondent, or, at respondent's option, an independent contractor, shall deposit in the United States mail, first class postage prepaid, an envelope, which shall be addressed to each refund recipient, which shall bear the return address of respondent or the independent contractor, and which shall contain:

(i) One-quarter of the "refund amount" due each refund recipient pursuant to part III, paragraphs 18(d) and (e) of this order; and

(ii) A letter in the language, manner, and form shown in Appendix L.

(b) If the envelope addressed to any refund recipient is returned by the United States Postal Service, then respondent or the independent contractor shall attempt to locate such refund recipient through as many of the following methods as are necessary:

(i) Sending a first class postage prepaid letter in the language, manner, and form shown in Appendix M, together with a first class postage prepaid envelope, to each of the names and addresses that relate to the refund recipient and that are in the respondent's or the independent contractor's possession, custody, or control either by reason of part III, paragraphs 7 or 9(d) of this order or by reason of information received by respondent or the independent contractor subsequent to the date of service.

(ii) Telephoning any telephone numbers that relate to the refund recipient and that are in the respondent's or the independent contractor's possession, custody, or control either by reason of part III, paragraphs 7 and 9(d) of this order or by reason of information received by respondent or the independent contractor subsequent to date of service.

(iii) Requesting the assistance of the Social Security Administration (hereinafter "SSA") by:

a. Providing SSA with the refund recipient's name and SSA number, if it is known; and

b. Providing SSA with a first class postage prepaid letter which shall bear the refund recipient's name on the envelope and which shall request the refund recipient to inform respondent or the independent contractor of his current address; and

c. Tendering any required fee for such services to SSA; and

d. Requesting SSA to mail such letter to the refund recipient.

(c) If respondent or the independent contractor can locate the refund recipient's current address through the methods specified by part III, paragraph 19(b) of this order, then respondent or the independent contractor shall mail to the refund recipient, at his current address, the items described in part III, paragraph 19(a) of this order.

Provided, however, that respondent or the independent contractor shall be entitled to deduct from the amount specified in part III, paragraph 19(a)(i) of this order for each refund recipient an amount equal to the reasonable out-of-pocket costs incurred by respondent in locating such refund recipient.

(d) Neither respondent nor the independent contractor shall have any duty to attempt to locate refund recipients except by the methods specified in part III, paragraph 19(b) of this order.

20. No later than one (1) year after the date specified in part III,

paragraph 19(a) of this order, respondent, or, at respondent's option, an independent contractor, shall commence again to perform the tasks described in part III, paragraph 19 of this order.

21. No later than two (2) years after the date specified in part III, paragraph 19(a) of this order, respondent, or, at respondent's option, an independent contractor, shall commence again to perform the tasks described in part III, paragraph 19 of this order.

22. No later than May 1, 1979, or two (2) years, nine (9) months after the date specified in part III, paragraph 19(a) of this order, whichever date is later to occur, respondent, or, at respondent's option, an independent contractor, shall commence again to perform the tasks described in part III, paragraph 19 of this order.

23. Respondent shall maintain records and documents relating to respondent's compliance with part III of this order for a period of three (3) years following the date of the final payment by respondent pursuant to part III of this order and such records and documents shall be made available to the Compliance Division at respondent's offices upon reasonable notice.

24. Within sixty (60) days after performing all the tasks described in part III, paragraph 19 of this order, within sixty (60) days after performing all the tasks described in part III, paragraph 20 of this order, within sixty (60) days after performing all the tasks described in part III, paragraph 21 of this order, and within sixty (60) days after performing all the tasks described in part III, paragraph 22 of this order, respondent shall file with the Commission a written report setting forth the manner and form in which respondent has complied with part III of this order.

25. If any task required to be performed or completed on a day certain under part III of this order falls upon a non-business day, then the task shall be performed on the following business day.

26. For good cause shown, the Commission's Assistant Director for Compliance may grant extensions of time to respondent, the independent contractor, the arbitrator, or the Compliance Division, of up to thirty (30) days at any one time, for the performance of any of the provisions of part III of this order. In considering "good cause," the Assistant Director for Compliance shall take into account needs resulting from any extensions previously granted.

27. 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 which may affect compliance obligations arising from this order.

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*APPENDIX A**IMPORTANT INFORMATION**Department of Transportation Requirements*

A person who wishes to obtain a tractor-trailer driver position with an interstate motor carrier is obliged to meet certain age, mental and physical requirements established by the United States Department of Transportation (DOT). You are advised to obtain full information concerning the DOT requirements and to determine prior to enrollment whether there is anything which might disqualify you from meeting these requirements.

For full information about the DOT requirements, call or write:

Bureau of Motor Carrier Safety Federal Highway Administration
Department of Transportation Washington, D.C. 20590

Resident Training Centers

In order to complete Ryder's tractor-trailer driver course, it will be necessary for you to spend [length of time] at one of Ryder's resident training centers listed below:
[Insert all addresses of resident training centers]

APPENDIX B

Date:

Note: This table, compiled for period
ending [], supersedes all previous
editions.

IMPORTANT INFORMATION

Regarding Students of Ryder Technical Institute's Home Study Division
Professional Truck Driver Training Course

NOTE: Requirements for licensing tractor-trailer drivers vary from state to state. Many states require license applicants to take road tests on the types of vehicles they expect to drive, and the applicants are required, at their own expense, to furnish the vehicles needed to take the road tests. In addition to the usual vision tests and written tests which states require, some states also require applicants to take specialized written tests relating to the types of vehicles they expect to drive.

You should also obtain information concerning employment in the types of trucking jobs in which you might like to work after graduation. Some employers will hire drivers who are under the age of twenty-five or who lack previous tractor-trailer experience and some employers will not. Some tractor-trailer jobs require union membership and some jobs do not. You should explore the availability of the particular type of job in which you are personally interested.

Information Regarding Post-Graduate Employment of Graduates: Results of Student Survey Within 90 Days of Graduation

<i>Jan—June, 1974</i>	<i>Number</i>	<i>Percent</i>
Total Graduates	100	100

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Graduates Responding to Inquiries Within 3 Mos. of Graduation	50	50
Responding Graduates Who Reported Employment as Tractor-Trailer Drivers Within 3 Mos. of Graduation, as a Percentage of Total Responding Graduates	40	80
Responding Graduates Who Reported Employment as Tractor-Trailer Drivers, as a Percentage of Total Graduates	—	40
Responding Graduates Who Reported Other Employment and Types of Such Employment	5	—
Graduates Who Did Not Respond to Inquiries	50	50

Certain Employers Known to Have Hired Persons Who Graduated from
Ryder's National Professional Truck Driver Training Courses

As Tractor-Trailer Drivers

<i>Employers</i>	<i>Employers Address</i>	<i>Jan/June 1974 Graduates Hired</i>
A Company	_____	4
B Company	_____	2
C Company	_____	1

Earnings Information Reported by Graduates from Ryder's National
Professional Truck Driver Training Course

	<i>Jan/June 1974</i>
Graduates beginning at hourly rates between \$3.00 and \$3.99	3
Graduates beginning at hourly rates between \$4.00 and \$4.99	4
Graduates beginning at hourly rates between \$5.00 and \$5.99	7
Graduates responding to inquiry about employment but declining to disclose earnings	16

APPENDIX C

Dear Sir or Madam:

Under an order of the U. S. Federal Trade Commission, agreed to by us and effective as of [insert effective date], you are requested to fill out *in full* the enclosed affidavit questionnaire. You are also requested to sign it; swear to it before a notary

public or other person authorized to witness sworn statements in your state, and return it in the enclosed stamped, self-addressed envelope.

The Federal Trade Commission has found that the collection of the information requested by this letter and the enclosed affidavit questionnaire is necessary to carry out a Federal Trade Commission order. Among other things, the order requires us to make certain tuition adjustments for certain former students who finished the resident training part of our tractor-trailer driver course during 1970, 1971 or 1972 or our heavy equipment operator course during 1971, 1972 or 1973.

You are under no obligation to fill out or return the enclosed affidavit questionnaire. But your qualifications for any possible tuition adjustment will not be considered unless you fill out the affidavit questionnaire and we receive it no later than [the date set forth in part III, paragraph 9(d) of this order].

If you fill out the affidavit questionnaire, please fill it out completely and truthfully. Answer *all* the applicable questions and answer them with the same care you would use in preparing a tax return, registering a motor vehicle, or undertaking any other serious matter.

Keep in mind that you can be exposed to criminal penalties if you knowingly give false information.

DIRECTIONS: Please *answer every question that applies to you* in the affidavit questionnaire. Make your answers *complete and truthful*.

After you have answered every applicable question in the affidavit questionnaire, do *not* sign the affidavit questionnaire. Take it to a notary public or other person authorized to witness sworn statements in your state. Then sign and swear to the affidavit questionnaire in the presence of that person. He or she will then notarize it.

Please return the filled out, signed and notarized affidavit questionnaire in the enclosed stamped, self-addressed envelope. MAIL IT EARLY ENOUGH TO REACH US BY [the date set forth in part III, paragraph 9(d) of this order]. If you should misplace the enclosed envelope, please mail the affidavit questionnaire to the [name and address on the return envelope].

Thank you for your cooperation.

Sincerely,
James M. Herron
Vice President and Secretary
Ryder System, Inc.

Enclosure

APPENDIX D

[Tractor-trailer form]

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE
COMMISSION

In re
Ryder System, Inc., et al.,

Docket No. C-2915

AFFIDAVIT OF [Give your name]

COUNTY OF [Give County where Affidavit is notarized]

STATE OF [Give State where Affidavit is notarized]

[Give your name], being duly sworn, deposes and answers the questions listed below as follows:

[PLEASE TYPE OR CAREFULLY PRINT ALL YOUR ANSWERS.]

1. Did you ever take Ryder's tractor-trailer driver course? YES NO

1A. If your answer to Question 1 was NO but you took and finished *all* of the resident training part of Ryder's heavy equipment operator course during 1971, 1972 or 1973, and you want to get an affidavit questionnaire similar to this one, but relating to the heavy equipment operator course, check here , and skip to Question 14. Answer Question 14 and return this document in the enclosed postage paid envelope *without having it notarized*. You will get an affidavit on the heavy equipment operator course.

2. Did you finish *all* of the resident training part of the course? YES NO

(If your answer to Question 2 was YES, then please give *full* answers to *all* of the remaining questions that apply to you.

(If your answer to Question 2 was NO, skip to Question 14; don't answer Question 2A through Question 13; sign this document and return it in the enclosed postage paid envelope *without having it notarized*.)

2A. Where did you take the resident training part of the course? [*Give location of the resident training center*]

2B. Did you finish the resident training part of the course during 1970, 1971 or 1972? YES NO

When did you finish it? [*Give month and year when you finished the resident training part of the course*]

(If your answer to Question 2B was YES, then please give *full* answers to *all* of the remaining questions that apply to you.

If your answer to Question 2B was NO, then skip to Question 14; do not answer Questions 3 through 13; sign this document and return it in the enclosed postage paid envelope *without having it notarized*.)

3. How old were you when you finished the resident training part of the course? _____ years old. I was born on [*Give date of birth*]

4. When you first began the *home study* part of the course:

(a) Did you then have a job in the trucking industry? YES NO

If you then had a job in the trucking industry, what job did you hold? [*Give the job you held*]

(b) Did you then have a job in some other field? YES NO

What field? [*Give the field in which you then had a job*]

What job did you hold? [*Give the job which you held*]

(c) Were you unemployed? YES NO

(d) Were you a student in some other school? YES NO

What sort of school? [*Give type of school in which you were a student*]

5. When you first began the *resident training* part of the course:

(a) Did you then have a job in the trucking industry? YES NO

If you then had a job in the trucking industry, what job did you hold? [*Give the job you held*]

If you then held a job in the trucking industry, what company did you work for? [*Give the name of the company*]

(b) Did you then have a job in some other field? YES NO

What field? [*Give the field in which you then had a job*]

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What job did you have? *[Give the job you held.]*

(c) Were you unemployed? YES NO

(d) Were you a student in some other school? YES NO

What sort of school? *[Give the type of school in which you were a student]*

6. What was the *most important* reason or reasons for which you took a truck driving course? [LOOK OVER ALL OF THE REASONS BELOW AND THEN PUT A CHECK MARK (X) NEXT TO THE MOST IMPORTANT REASON OR REASONS. YOU CAN CHECK MORE THAN ONE REASON.]

(a) I wanted to make use of Veterans Administration education benefits. _____

(b) I wanted to learn tractor-trailer driver skills but not for purposes of finding employment in the trucking industry. _____

(c) I wanted to find employment as a truck driver. _____

(d) I wanted to learn trucking skills in order to become an owner-operator in the trucking industry. _____

(e) I was already a truck driver and I took the course to improve my driving skills so I might qualify for advancement. _____

(f) I wanted to _____

[Give the most important reason for which you took the course if it was none of the reasons given in (a) through (e)]

7. What was the total tuition cost for the home study and resident training parts of the course? (Do not include interest charges.) \$ _____ *[Give total or approximate tuition cost.]*

7A. Did a governmental agency other than the Veterans Administration — for example, a Job Corps agency or a manpower rehabilitation agency — pay any part of this tuition? YES NO

If so, how much? \$ _____ *[Give amount which government agency other than VA paid. Do not give amount which VA paid.]*

7B. Did your employer pay any part of this tuition? YES NO

If so, how much \$ _____ *[Give amount which you recall your employer paid.]*

7C. If your employer paid any part of this tuition, did you have any obligation to repay your employer? YES NO

If so, how much of the tuition amount paid by your employer have you repaid to your employer? \$ _____ *[Give amount which you recall you repaid.]*

Are you obligated to repay any of this tuition amount to your employer in the future? YES NO

If so, how much are you obligated to repay to your employer in the future? \$ _____ *[Give amount which you are obligated to repay.]*

8. Did you ever get a full or partial refund of the tuition for the course from Ryder? YES NO

8A. If your answer to Question 8 is YES, how much in total refunds do you recall getting from Ryder?

[Give total amounts of refunds you recall receiving]
When did you get a refund or refunds from Ryder?

[Give month and year of refund or refunds, if known]

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Why did you get that refund or refunds?

[Give a full explanation of the refund or refunds]

9. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a truck driver, or as a truck driving instructor or as a safety director or foreman of truck drivers? YES NO

10. If your answer to Question 9 is YES, then skip to Question 11. If your answer to Question 9 is NO, what was the *most important* reason why you did not make a serious effort to find such a job? [LOOK OVER ALL OF THE REASONS BELOW AND THEN PUT A CHECK MARK (X) NEXT TO THE MOST IMPORTANT REASONS. CHECK ONLY ONE.]

- (a) I was then holding a different job and I did not want to switch. _____
- (b) I decided I did not want to be a truck driver. _____
- (c) I preferred a job in another field. _____
- (d) I decided that I did not want to work in the trucking industry. _____
- (e) I decided to operate my own truck as an owner-operator. _____
- (f) I was drafted or I enlisted in the military service. _____
- (g) I decided to go to another school or to stay in another school. _____
- (h) My family responsibilities prevented me from looking for such a job. _____
- (i) I did not make a serious effort to find such a job for a different reason, that is:

[Explain fully]

11. If, after finishing the resident training part of the course, you *did* make a serious effort to find a job as a truck driver, or as a truck driving instructor or as a safety director or foreman of truck drivers, ANSWER *ALL PARTS OF THIS QUESTION AS PRECISELY AS POSSIBLE*. IF NECESSARY USE THE BLANK PAGES ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO FINISH YOUR ANSWER.

(a) After you finished the resident training part of the course, did you *personally visit* any trucking companies or any other companies that hire truck drivers for the purpose of getting a job as a truck driver? YES NO

(b) If your answer to Question 11(a) is YES, what is the *total number* of companies you *personally visited* for the purpose of getting a job as a truck driver?

[Give the total number of companies which you personally visited for the purpose of getting a job as a truck driver]

(c) Give the names and locations of the companies that you *recall* personally visiting for the purpose of getting a job as a truck driver.

Name of Company

Location

(d) Of the total number of companies listed in answer to Question 11(b), at how many of the companies did you *fill out a job application*?

[Give the total number of companies at which you filled out a job application]

(e) If you did not fill out a job application at all of the companies you personally visited, *why not?* USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO FINISH YOUR ANSWER.

(f) Of the total number of companies listed in answer to Question 11(b), at how many such companies did you have a personal interview?

[Give the total number of companies at which you had a personal interview]

(g) If you did not have a personal interview at all of the companies which you personally visited, *why not?* USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO COMPLETE YOUR ANSWER.

(h) After you made the personal visits to companies which you have described in answer to Questions 11(a) through 11(g), did you ever make a *second personal visit* to any of these companies for the purpose of obtaining employment? YES NO

(i) If your answer to Question 11(h) is YES, at *how many* companies did you make a second personal visit for the purpose of obtaining employment as a truck driver?

[Give the number of companies which you personally visited a second time for the purpose of obtaining employment as a truck driver]

(j) If your answer to Question 11(h) is YES, give the names of the companies that you *recall* personally visiting for a *second time* for the purpose of getting a job as a truck driver.

Name of Company

(k) After you completed the resident training portion of the course, did you seek employment as a truck driver or as a truck driving instructor or as safety director or foreman of truck drivers by making *telephone calls* to potential employers? YES NO

(l) If your answer to Question 11(k) is YES, then how many *telephone calls* did you make in the course of your efforts to seek such employment? (Do not include any of the companies you personally visited.)

[Give number of companies at which you sought employment by telephone]

(m) If your answer to Question 11(k) is YES, then what were the names and locations of the companies which you *recall* telephoning in the course of your efforts to seek such employment? (Do not include any of the companies you personally visited.)

Name of Company

Location

(n) After personally visiting companies for the purposes of obtaining employment as a truck driver or as a truck driving instructor or as safety director or foreman of truck drivers, did you make any *follow-up telephone calls* to any of those companies?
 YES NO

(o) If your answer to Question 11(n) is YES, then how many *follow-up telephone calls* did you make to any companies you had personally visited?

[Give number of companies to whom you made follow-up telephone calls after personal visits]

(p) If your answer to Question 11(n) is YES, then what were the names of the companies to which you *recall making follow-up telephone calls*, after personal visits, for the purpose of seeking employment?

Name of Company

(q) After you completed the resident training part of the course, and after you had made some search for a job as a truck driver or as a truck driving instructor or as safety director or foreman of truck drivers, did you ever *contact Ryder's resident training center for more help* in finding a job? YES NO

(r) If you did contact Ryder's resident training center for more help, *which* Ryder resident training center did you contact?

[Give the location of the Ryder resident training center which you contacted for additional assistance]

(s) After you finished the resident training portion of the course, and after you had made some search for a job as a truck driver or as a truck driving instructor or as safety director or foreman of truck drivers, did you ever *contact any Ryder people other than the people at a resident training center* for more help in finding a job? YES NO

(t) If your answer to Question 11(s) is YES, what advice or assistance were you given? GIVE A FULL ANSWER. IF NECESSARY USE THE BLANK PAGES

ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO COMPLETE YOUR ANSWER.

12(a). As a result of your trying to find a job, as described in response to Question 11, were you ever offered a job:

(i) as a tractor-trailer driver? YES NO

(ii) as a truck driving instructor? YES NO

(iii) as a manager or safety director or foreman of truck drivers? YES NO

(iv) If you were *not* offered such a job, please explain why. GIVE A FULL ANSWER. IF NECESSARY USE THE BLANK PAGES ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO COMPLETE YOUR ANSWER.

(b) If your answer to Question 12(a)(i) (ii) or (iii) is YES, did you actually start work on any such job you were offered? YES NO

(c) If your answer to Question 12(b) is NO, explain in detail why you did not actually start work on any such job.

13. *At any time* between the end of your resident training and today, have you ever worked as a:

- (a) truck driver? YES NO
- (b) truck driving instructor? YES NO
- (c) safety director or foreman of truck drivers? YES NO

14. My present home address is:

Number	Street	Apartment
City	State	Zip Code

My home telephone is:

Area Code: _____

Number: _____

My present business address is:

Employer's Name _____

Number	Street	Apartment
City	State	Zip Code

My business telephone number is:

Area Code: _____

Number: _____

My present job is:

Please give the name, home address and telephone number of a person who would know your home address at all times:

[Name of person who would know your address at all times]

Number	Street	Apartment
City	State	Zip Code
Telephone Area Code	Telephone Number	

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My Social Security number is: _____

My Ryder student identification number was: _____

[Give number if known]

Signature[PLEASE READ THE ACCOMPANY-
ING LETTER BEFORE SIGNING]

Subscribed and sworn to before me this

_____ day of _____, _____

Notary Public

My Commission Expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. 1001.

APPENDIX E

[heavy equipment form]

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In re
Ryder System, Inc., et al.

Docket No. C-2915

AFFIDAVIT OF [Give your name]

COUNTY OF [Give County where Affidavit is notarized]

STATE OF [Give State where Affidavit is notarized]

[Give your name], being duly sworn, deposes and answers the questions listed below as follows:

[PLEASE TYPE OR CAREFULLY PRINT ALL YOUR ANSWERS.]

1. Did you ever take Ryder's heavy equipment operator course? YES NO

1A. If your answer to Question 1 was NO but you took and finished *all* of the resident training part of Ryder's tractor-trailer driver course during the years 1970, 1971 or 1972, and you want to get an affidavit questionnaire similar to this one, but relating to the tractor-trailer driver course, check here , and skip to Question 16. Answer Question 16 and return the document in the enclosed postage paid envelope *without having it notarized*. You will get an affidavit on the tractor-trailer driver course.

2. Did you finish *all* of the resident training part of the course? YES NO

(If your answer to Question 2 was YES, then please give *full* answers to *all* of the remaining questions which apply to you.

If your answer to Question 2 was NO, then skip to Question 16; don't answer Question 2A through Question 15; sign this document and return it in the enclosed postage paid envelope without having it notarized.)

2A. Where did you take the resident training part of the course? [Give location of the resident training center]

2B. Did you finish the resident training part of the course during 1971, 1972, or 1973? YES NO

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When did you do so? *[Give month and year when you finished the resident training part of the course]*

(If your answer to Question 2B was YES, then please give full answers to all of the remaining questions that apply to you.

If your answer to Question 2B was NO, then skip to Question 16; do not answer Questions 3 through 15; sign this document and return it in the enclosed postage paid envelope *without having it notarized.*)

3. How old were you when you finished the resident training part of the course? I was _____ years old. I was born on *[Give date of birth]*

4. When you first began the *home study* part of the course:

(a) Did you then have a job as a heavy equipment operator? YES NO

If you then had a job as a heavy equipment operator, what job did you hold? *[Give the job which you held]*

(b) Did you then have a job in some other field? YES NO

What field? *[Give the field in which you then had a job]*

What job did you hold? *[Give the job which you held]*

(c) Were you unemployed? YES NO

(d) Were you a student in some other school? YES NO

What sort of school? *[Give type of school in which you were a student]*

5. When you first began the *resident training* portion of the course:

(a) Did you then have a job as a heavy equipment operator? YES NO

If you then had a job as a heavy equipment operator, what job did you hold? *[Give the job which you held]*

If you then had a job as a heavy equipment operator, what company did you work for? *[Give the name of the company]*

(b) Did you then have a job in some other field? YES NO

What field? *[Give the field in which you then had a job]*

What job did you have? *[Give the job which you held]*

(c) Were you unemployed? YES NO

(d) Were you a student in some other school? YES NO

What sort of school? *[Give type of school in which you were a student]*

6. What was the *most important* reason or reasons for which you took a heavy equipment course? [LOOK OVER ALL OF THE REASONS BELOW AND THEN PUT A CHECK MARK (X) NEXT TO THE MOST IMPORTANT REASON OR REASONS. YOU CAN CHECK MORE THAN ONE REASON.]

(a) I wanted to make use of Veterans Administration education benefits. _____

(b) I wanted to learn heavy equipment operator skills but not for purposes of finding employment as a heavy equipment operator. _____

(c) I wanted to find employment as a heavy equipment operator. _____

(d) I wanted to learn heavy equipment skills in order to become an owner-operator of heavy equipment. _____

(e) I was already a heavy equipment operator and I took the course to improve my skills so I might qualify for advancement. _____

(f) I wanted to _____

[Give the most important reason for which you took the course if it was none of the reasons stated in (a) through (e)]

7. What was the total tuition cost for the home study and resident training parts of the course? (Do not include interest charges.) \$ _____ [Give total or approximate tuition cost]

7A. Did a governmental agency other than the Veterans Administration — for example, a Job Corps agency or a manpower rehabilitation agency — pay any part of this tuition? YES NO

If so, how much? \$ _____ [Give amount which government agency other than VA paid. Do not insert amount which VA paid]

7B. Did your employer pay any part of this tuition? YES NO

If so, how much? \$ _____ [Give amount which you recall your employer paid]

7C. If your employer paid any part of this tuition, did you have any obligation to repay your employer? YES NO

If so, how much of the tuition amount paid by your employer have you repaid to your employer? \$ _____ [Give amount which you recall you repaid]

Are you obligated to repay any of this tuition amount to your employer in the future? YES NO

If so, how much are you obligated to repay to your employer in the future? \$ _____ [Give amount which you are obligated to repay]

8. Did you ever get a full or partial refund of the tuition for the course from Ryder? YES NO

8A. If your answer to Question 8 is YES, how much in total refunds do you recall getting from Ryder?

[Give total amounts of refunds you recall receiving]
When did you get a refund or refunds from Ryder?

[Give month and year of refund or refunds, if known]
Why did you get that refund or refunds?

[Give a full explanation of the refund or refunds]

9. After finishing the resident training part of the course, did you make a *serious effort* to find a job as a heavy equipment operator or as a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation? YES NO

10. If your answer to Question 9 is YES, then skip to Question 11. If your answer to Question 9 is NO, what was the *most important* reason why you did not make a serious effort to find such a job? [LOOK OVER ALL OF THE REASONS BELOW AND THEN PUT A CHECK MARK (X) NEXT TO THE MOST IMPORTANT REASON. CHECK ONLY ONE.]

- (a) I was then holding a different job and I did not want to switch. _____
 (b) I decided I did not want to be a heavy equipment operator. _____
 (c) I preferred a job in another field. _____

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- (d) I decided that I did not want to work as a heavy equipment operator. _____
- (e) I decided to operate my own heavy equipment as an owner-operator. _____
- (f) I was drafted or I enlisted in the military service. _____
- (g) I decided to go to another school or to stay in another school. _____
- (h) My family responsibilities prevented me from looking for such a job. _____
- (i) I did not make a serious effort to find such a job for a different reason, that is:

[Explain fully]

11. If, after finishing the resident training part of the course, you *did* make a serious effort to find a job as a heavy equipment operator or a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation, ANSWER ALL PARTS OF THIS QUESTION AS *PRECISELY AS POSSIBLE*. IF NECESSARY USE THE BLANK PAGES ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO FINISH YOUR ANSWERS.

(a) After you completed the resident training part of the course, did you *personally* visit companies that hire heavy equipment operators *for the purpose of getting a job* as a heavy equipment operator? YES NO

(b) If your answer to Question 11(a) was YES, what is the *total number* of companies that you personally visited *for the purpose of getting a job as a heavy equipment operator*?

[Give the total number of companies which you personally visited for the purpose of getting a job as a heavy equipment operator]

(c) Give the names and locations of the companies that you *recall* personally visiting for the purpose of getting a job as a heavy equipment operator.

Name of Company

Location

(d) Of the total number of companies listed in answer to Question 11(b), at how many such companies did you *fill out a job application*?

[Give the total number of companies at which you filled out a job application]

(e) If you did not fill out a job application at all of the companies which you personally visited, *why not*? USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO COMPLETE YOUR ANSWER.

(f) Of the total number of companies listed in answer to Question 11(b), at how many such companies did you have a personal interview?

[Give the total number of companies at which you had a personal interview]

(g) If you did not have a personal interview at all of the companies which you personally visited, *why not*? USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO COMPLETE YOUR ANSWER.

(h) After you made the personal visits to companies which you have described in answer to Questions 11(a) through 11(g), did you ever make a *second personal visit* to any of these companies for the purpose of obtaining employment? YES NO

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(i) If your answer to Question 11(h) is YES, at *how many* companies did you make a second personal visit for the purpose of obtaining employment as a heavy equipment operator?

[Give the number of companies which you personally visited a second time for the purpose of obtaining employment as a heavy equipment operator]

(j) If your answer to Question 11(h) is YES, give the names of the companies that you *recall* personally visting for a *second time* for the purpose of getting a job as a heavy equipment operator.

Name of Company

(k) After you completed the resident training portion of the course, did you seek employment as a heavy equipment operator or a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation by making *telephone calls* to potential employers? YES NO

(l) If your answer to Question 11(k) is YES, then how many *telephone calls* did you make in the course of your efforts to seek such employment? (Do not include any of the companies you personally visited.)

[Give number of companies at which you sought employment by telephone]

(m) If your answer to Question 11(k) is YES, then what were the names and locations of the companies which you recall telephoning in the course of your efforts to seek such employment?

(Do not include any of the companies you personally visited.)

Name of Company

Location

(n) After personally visiting companies for the purpose of obtaining employment as a heavy equipment operator or as a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation, did you make any *follow-up telephone calls* to any of those companies? YES NO

(o) If your answer to Question 11(n) is YES, then how many *follow-up telephone calls* did you make to any companies you had personally visited?

[Give number of companies to which you made follow-up telephone calls after personal visits]

(p) If your answer to Question 11(n) is YES, then what were the names of the companies to which you *recall making follow-up telephone calls*, after personal visits, for the purpose of seeking employment?

Name of Company

12. (a) After you finished the resident training part of the course, did you *personally visit* any union hiring halls *for the purpose of getting a job* as a heavy equipment operator? YES NO

(b) If your answer to Question 12(a) was YES, what is the *total number* of union hiring halls which you personally visited for the *purpose of getting a job as a heavy equipment operator*?

[Give the total number of union hiring halls which you personally visited for the purpose of getting a job as a heavy equipment operator.]

(c) List the names and locations of the union hiring halls you recall personally visiting for the purpose of getting a job as a heavy equipment operator.

Name and Number of Union

Location of Hiring Hall

(d) Of the total number of union hiring halls listed in answer to Question 12(b), at how many such halls did you *fill out an application for membership*?

[Give the total number of union hiring halls at which you filled out an application for membership.]

(e) If you did not fill out an application at all of the union hiring halls which you personally visited, *why not?* USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO FINISH YOUR ANSWER.

(f) Of the total number of union hiring halls listed in answer to Question 12(b), at how many of them did you have a *personal interview* with a business agent or other union official?

[Give the total number of union hiring halls at which you had a personal interview]

(g) If you did not have a personal interview at all of the union hiring halls you personally visited, *why not?* USE THE BLANK PAGES AT THE END OF THIS AFFIDAVIT QUESTIONNAIRE IF NECESSARY TO COMPLETE YOUR ANSWER.

(h) After you made the personal visits to the union hiring hall, which you have described in answer to Questions 12(a) through 12(g), did you ever make a *second personal visit* to any of these union hiring halls for the purpose of getting a job?
 YES NO

(i) If your answer to Question 12(h) was YES, at *how many* union hiring halls did you make a *second personal visit* for the purpose of getting a job as a heavy equipment operator?

[Give the number of union hiring halls which you personally visited a second time for the purpose of obtaining employment as a heavy equipment operator.]

(j) If your answer to Question 12(h) was YES, list the names and locations of the union hiring halls which you recall personally visiting for a *second time* for the purpose of getting a job as a heavy equipment operator.

<i>Name and Number of Union</i>	<i>Location of Hiring Hall</i>
---------------------------------	--------------------------------

(k) After you finished the resident training part of the course, did you try to get a job as a heavy equipment operator or as a heavy equipment operation instructor, or as safety director or foreman of persons engaged in heavy equipment operation by making *telephone calls* to union hiring halls? YES NO

(l) If your answer to Question 12(k) was YES, then how many *telephone calls* did you make in the course of your efforts to get such a job? (Do not include any of the union hiring halls visited.)

[Give number of union hiring halls at which you tried to get a job by telephone.]

(m) If your answer to Question 12(k) was YES, then what were the names and locations of the union hiring halls which you recall telephoning in the course of your efforts to get a job? (Do not include any of the union hiring halls you personally visited.)

<i>Name and Number of Union</i>	<i>Location of Hiring Hall</i>
---------------------------------	--------------------------------

(n) After personally visiting union hiring halls to get a job as a heavy equipment operator or as a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation, did you make any *follow-up telephone calls* to any of those union hiring halls? YES NO

(o) If your answer to Question 12(n) was YES, then how many *follow-up telephone calls* did you make to any union hiring halls you had personally visited?

[Give number of union hiring halls to which you made follow-up telephone calls after personal visits.]

(p) If your answer to Question 12(n) was YES, then what were the names and locations of the union hiring halls to which you recall making *follow-up telephone calls*, after personal visits, to try to get a job?

<i>Name and Number of Union</i>	<i>Location of Hiring Hall</i>
---------------------------------	--------------------------------

13(a) After you finished the resident training part of the course, and after you had tried to find a job as a heavy equipment operator or as a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation, did you ever *contact Ryder's resident training center* for more help in finding a job? YES NO

(b) If you did contact Ryder's resident training center for additional help, *which* Ryder resident training center did you contact?

[Give the location of the Ryder resident training center which you contacted for additional help]

(c) After you finished the resident training part of the course, and after you had made some search for a job as a heavy equipment operator or as a heavy equipment operation instructor or as safety director or foreman of persons engaged in heavy equipment operation, did you ever contact *any Ryder personnel other than personnel at a resident training center* for additional help in finding a job? YES NO

(d) If your answer to Question 13(c) was YES, what advice or help did you get? GIVE A FULL ANSWER. IF NECESSARY USE THE BLANK PAGES ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO COMPLETE YOUR ANSWER.

14(a) As a result of your trying to get a job as described in your response to Questions 11, 12, and 13, were you ever offered a job?

(i) as a heavy equipment operator? YES NO

(ii) as an instructor of heavy equipment operation? YES NO

(iii) as a manager or safety director or foreman of persons in heavy equipment operation? YES NO

(iv) If you were not offered such a job, please explain why. GIVE A FULL ANSWER. IF NECESSARY USE THE BLANK PAGES ATTACHED TO THIS AFFIDAVIT QUESTIONNAIRE TO COMPLETE YOUR ANSWER.

(b) If your answer to Question 14(a) (i) (ii) or (iii) was YES, did you actually start work on any such job you were offered? YES NO

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(c) If your answer to Question 14(b) was NO, explain in detail why you did not actually start on any such job.

15. At any time between the end of your resident training and today, have you ever held a job *for more than one day* as a:

(a) heavy equipment operator? YES NO

(b) instructor of heavy equipment operation? YES NO

(c) safety director or foreman of persons engaged in heavy equipment operation?
 YES NO

(d) If your answer to Question 15(a), (b), or (c) was YES, how long did you hold such a job?

16. My present home address is:

Number	Street	Apartment
City	State	Zip Code

My home telephone number is:

Area Code: _____

Number: _____

My present business address is:

 Employer's Name

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Number	Street	
City	State	Zip Code

My business telephone number is:

Area Code: _____

Number: _____

My present job is:

 Please give the name, home address and telephone number of a person who would know your home address at all times:

 [Name of person who would know your address at all times]

Number	Street	Apartment
City	State	Zip Code

Telephone Area Code	Telephone Number
---------------------	------------------

My Social Security number is: _____

My Ryder student identification number was: _____

[Give number if known]

Signature

[PLEASE READ THE ACCOMPANYING LETTER BEFORE SIGNING]

Subscribed and sworn to before me this

_____ day of _____, _____

Notary Public

My Commission Expires: _____

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. 1001.

APPENDIX F

IMPORTANT NOTICE

(Name)

(Address)

(Telephone Number)

Dear (Name):

This letter relates to the affidavit questionnaire (attached) which you returned to us. A review of your answers to the questionnaire shows that your answers to

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Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 appear to be inconsistent with your answers to Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16. (Note circled answers).

It is necessary, before we and the Federal Trade Commission can complete our determination of whether or not you qualify for a tuition adjustment, that you clarify the answer(s) by using the blank sheet of paper attached to the back of your questionnaire.

Your explanation must be *truthful* and *complete*. You should be aware that, although your explanation need not be notarized, you can be subjected to the same criminal penalties for an untruthful answer as in the affidavit. 18 U.S.C. 1001.

Your affidavit, with your explanation inserted on the blank sheet attached to it, must be received no later than [insert date set forth in Part III, paragraph 10(e) of this order] or it cannot be considered for purposes of determining whether or not you qualify for a tuition adjustment. Return your affidavit, with your explanation, in the enclosed, postage prepaid envelope.*

By: _____

Enclosures

APPENDIX G

IMPORTANT NOTICE

(Name)

(Address)

(Telephone Number)

Dear (Name)

This letter relates to the affidavit questionnaire (attached) which you returned to us. A review of your answers to the questionnaire shows that your answer(s) to Questions: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 appear to be unclear or non-responsive. (Note circled answers.)

It is necessary, before we and the Federal Trade Commission can complete our determination of whether or not you qualify for a tuition adjustment, that you clarify the answer(s) by using the sheet of paper attached to the back of your questionnaire.

Your explanation must be *truthful* and *complete*. You should be aware that, although your explanation need not be notarized, you can be subjected to the same criminal penalties for an untruthful answer as in the affidavit. 18 U.S.C. 1001.

Your affidavit, with your explanation inserted in the blank sheet attached to it, must be received no later than [insert date set forth in Part III, Paragraph 10(e) of this order] or it cannot be considered for purposes of determining whether you qualify for a tuition adjustment. Return your affidavit, with your explanation, in the enclosed, postage prepaid envelope.*

By: _____

Enclosures

* If you should misplace the enclosed, postage prepaid envelope, mail your affidavit and explanation in an envelope addressed to [independent contractor's address].

* If you should misplace the enclosed, postage prepaid envelope, mail your affidavit and explanation in an envelope addressed to [independent contractor's address].

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APPENDIX H

IMPORTANT NOTICE

(Name)
 (Address)
 (Telephone Number)

Dear (Name):

This letter relates to the affidavit questionnaire (attached) which you returned to us. A review of your questionnaire showed that the following circled questions were not answered: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16. (Note circled answers.)

It is necessary, before we and the Federal Trade Commission can complete our determination of whether or not you qualify for a tuition adjustment, *that the unanswered questions are answered by you in the appropriate places on the enclosed questionnaire.*

Your answers must be *truthful* and *complete*. You should be aware that although your answers need not be notarized, you can be subjected to the same criminal penalties for an untruthful answer as in the affidavit. 18 U.S.C. 1001.

Your affidavit, with the circled questions answered in the appropriate places, must be received no later than [insert date set forth in Part III, paragraph 10(e) of this order] or it cannot be considered for purposes of determining whether or not you qualify for a tuition adjustment. Return your affidavit, with your answers, in the enclosed, postage prepaid envelope.*

By: _____

Enclosures

APPENDIX I

SPECIAL ARBITRATION RULES FOR

NEGOTIATED CONSENT ORDER (DOCKET NO. C-2915)

BETWEEN THE FEDERAL TRADE COMMISSION AND RYDER

SYSTEM, INC. FOR ARBITRATION THROUGH THE AMERICAN

ARBITRATION ASSOCIATION

I. *Initiation of Arbitration*

With respect to each potentially eligible graduate, for purposes of a tuition adjustment, as the term "potentially eligible graduate" is defined in part III, paragraph 14(c) of the above-captioned order (hereinafter "order"), Ryder System, Inc. (hereinafter "respondent") shall initiate an arbitration proceeding within the time specified in part III, paragraph 15(b) of the order, by sending to [name and address of the representative of the American Arbitration Association (hereinafter "AAA")] the following information and documents in duplicate:

* If you should misplace the enclosed, postage prepaid envelope, mail your affidavit with your answers in an envelope addressed to [independent contractor's address].

(1) A "Demand for Arbitration" in the language, manner, and form shown herein as Appendix J.

(2) A copy of the claimant affidavit, as defined in part III, paragraph 7 of the order, and a copy of all other documents previously submitted to respondent by the potentially eligible graduate in connection with any of the provisions of part III of the order.

(3) A notarized affidavit in which respondent asserts that it believes it has a reasonable basis for denying a partial tuition refund to said Claimant and arbitrating the matter pursuant to the provisions of part III of the order, and that it desires to place the issue in arbitration, which affidavit shall be supported by one or more of the following:

(i) A sworn affidavit based on first hand knowledge asserting facts controverting material facts set forth in the claimant affidavit or other documents submitted to respondent by the potentially eligible graduate in connection with any of the provisions of part III of the order.

(ii) Documentary evidence, fully identified as to source, date, and other material facts pertaining thereto, which controvert material facts in the claimant affidavit on which the Federal Trade Commission bases its claim that the potentially eligible graduate is a person described in part III, paragraphs 9(a) through 9(f) of the order.

(iii) Reference to the provisions of respondent's Initial Compliance Report which authorize arbitration in the absence of the materials described in subparagraphs I(3)(i) or (ii) above.

(4) A copy of part III, paragraphs 9 through 15 and 26 of the order, and the Initial Compliance Report.

II. *Appointment of Arbitrator*

With respect to each matter for which a Demand for Arbitration is submitted, AAA shall appoint an arbitrator to arbitrate said dispute, and shall appoint another arbitrator whenever an appointed arbitrator is unable to serve promptly. All such arbitrators appointed by AAA, including any such arbitrators employed by AAA, shall be persons qualified by AAA as arbitrators.

III. *Determination by Arbitrator as to Whether Respondent Has A Reasonable Basis for Demanding Arbitration*

Upon receipt of the Demand for Arbitration from respondent, the arbitrator shall examine the accompanying affidavits and documents described in part I of these rules and shall determine whether there is any factual basis for putting through arbitration respondent's claim that the potentially eligible graduate is not a person described in part III, paragraphs 9(a) through 9(f) of the order. In making the determination the arbitrator shall be limited to and bound by the standards and definitions of part III, paragraphs 9 through 15 and 26 of the order, and the Initial Compliance Report. If the arbitrator decides that the demand for arbitration by respondent is inconsistent with part III, paragraphs 9 through 15 and 26 of the order, and the Initial Compliance Report, he shall so inform respondent by letter and shall close the case if respondent, within ten (10) days after receipt of said letter, fails to provide the arbitrator with material facts which demonstrate that arbitration would not be inconsistent with part III, paragraphs 9 through 15 and 26 of the order, and the Initial Compliance Report.

IV. *Evidence by Filing of Documents*

All evidence submitted by parties to the arbitrated dispute shall consist of written information or documents. No oral testimony shall be accepted.

V. *Relevancy and Materiality of Evidence*

The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered.

VI. *Transmittal of Evidence to Opposing Party*

Upon determining that respondent's request for arbitration is not inconsistent with part III, paragraphs 9 through 15 and 26 of the order, and the Initial Compliance Report, pursuant to part III of these rules, the arbitrator shall mail to the potentially eligible graduate copies of respondent's Demand for Arbitration and all documents submitted to the arbitrator by respondent.

VII. *Submission of Rebuttal and Additional Evidence*

Within fifteen (15) days after receiving copies of said documents referred to in part I of these rules, the potentially eligible graduate may submit to the arbitrator any information or documents which he or she believes are relevant to rebut respondent's claim that he or she is not a person described in part III, paragraphs 9(a) through 9(f) of the order and is, therefore, not eligible for a partial tuition adjustment. The arbitrator shall immediately mail copies of all such information and documents to respondent and respondent shall have the right to respond within seven (7) days after receipt of such information and documents.

The arbitrator may request such additional evidence as he or she deems necessary from either party before closing the arbitration and shall allow said party seven (7) days after receipt of said request to provide such evidence.

VIII. *Arbitrator's Decision*

With respect to each arbitration proceeding, and on the basis of evidence received pursuant to these rules, the arbitrator shall render his or her decision within ten (10) days after said arbitration proceeding is closed, by AAA mailing a notice of his or her decision to both parties without including in said notice any detailed findings of fact or opinion, and said decision shall be limited to and shall be final and binding on both parties with respect to whether the potentially eligible graduate is a person described in part III, paragraphs 9(a) through 9(f) of the order. The decision shall not be made solely on the failure of a party to submit rebuttal evidence or evidence requested.

IX. *Burden of Proof*

Respondent, in all cases referred to arbitration pursuant to part III, paragraph 15 of the order, shall carry the burden of proof to establish that a potentially eligible graduate is not a person described in part III, paragraphs 9(a) through 9(f) of the order.

X. *General Provisions*

A. To the extent not inconsistent with these special rules, the Commercial Arbitration Rules of AAA shall apply to proceedings under these rules.

B. Either party may have evidence submitted under these rules by an attorney representing said party. However, use of an attorney is not required.

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XI. *Costs*

A. The administrative fee payable to the AAA for each matter submitted to arbitration shall be \$50.00. When respondent demands arbitration, it shall tender said fee with its Demand for Arbitration.

XII. Nothing in these Rules shall invalidate or restrict any right or remedy of any consumer under any State or Federal law.

APPENDIX J

DEMAND FOR ARBITRATION THROUGH THE AMERICAN
ARBITRATION ASSOCIATION

Date _____

TO: (Name of potentially
eligible graduate) _____
(Address) _____
(City and State) _____ (Zip Code) _____

Through: American Arbitration Association
140 West 51st Street
New York, New York 10020
Attn: Mr. Michael Hollering

From: Ryder System, Inc.

After reviewing the affidavit you submitted and other information you submitted, if any, Ryder System, Inc. ("Ryder") has decided that you do *not* qualify for a partial tuition refund under the terms of the Consent Order (Docket No. C-2915) between the Federal Trade Commission and Ryder. Therefore, pursuant to the Consent Order, Ryder has submitted this matter to arbitration.

Ryder believes you do not qualify for a partial tuition refund for the following reasons (as more fully explained in the enclosed affidavit executed by Ryder):

A copy of the affidavit you submitted and a copy of any other information you submitted to Ryder is enclosed.

Also enclosed are the following documents:

- (1) Ryder's affidavit, with supporting documents, explaining why Ryder believes you are not eligible for a partial tuition refund.
- (2) A copy of the Special Arbitration Rules which the arbitrator will use in deciding whether you qualify for a partial tuition refund.

In deciding whether or not you are entitled to a partial tuition refund, the arbitrator will review copies of the enclosed documents plus any additional information you provide.

If you wish to provide the arbitrator with any information in regard to your entitlement to a partial tuition adjustment, you must provide him or her (either personally or through an attorney) with such information within fifteen (15) days from the date you receive this notice. You may send to the arbitrator, in writing, any of the following types of information.

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(1) An explanation of any statement you made in your affidavit or any statement you made in another document you submitted to Ryder;

(2) Any additional information you believe is significant, or copies of any documents you believe are significant, in regard to your eligibility for a partial tuition refund.

(3) A statement contradicting or challenging Ryder's affidavit or supporting documents.

All information submitted to the arbitrator must be in writing. However, *if you have any questions in regard to how this arbitration procedure will work, you may call:* American Arbitration Association, [Area Code] [Telephone Number].

There will be no cost to you for this arbitration proceeding and you are not required to submit any information to the arbitrator.

NOTICE

THE ARBITRATOR MUST RECEIVE ANY INFORMATION YOU DECIDE TO SUBMIT WITHIN FIFTEEN DAYS FROM THE DATE YOU RECEIVE THIS NOTICE.

Carefully review the enclosed copy of your affidavit-questionnaire, Ryder's affidavit, and other enclosed documents submitted by Ryder. Then decide whether you wish to submit any information which may contradict what Ryder has submitted or which in any way may support your claim to a partial tuition refund. Mail any information you wish to submit to:

American Arbitration Association

140 West 51st Street

New York, New York 10020

Attn: Mr. Michael Hollering

APPENDIX K

IMPORTANT NOTICE

(Independent Contractor's
Return Address)

Dear (Name):

Pursuant to an order of the Federal Trade Commission issued on [insert effective date], Ryder System, Inc., has been directed to make certain partial refund payments to certain students who had enrolled in tractor-trailer driving or heavy equipment operations courses previously offered by Ryder.

The order of the Commission contains the provisions identifying the class of persons eligible for partial refunds, and the procedures for making partial refunds. (You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Publications, Room 130, Washington, D.C. 20580. Refer to Ryder System, Inc., Docket No. C-2915.)

In accordance with the provisions of the Order, it has been determined that you are entitled to a partial refund of approximately — percent to — percent of your tuition, which shall be paid in four installments on or before the following dates: [insert the dates set forth in part III, paragraphs 19(a), 20, 21 and 22 of this order].

The order provides that any persons receiving refund payments from Ryder must

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agree in writing that, in consideration of such refunds, he or she releases Ryder from any and all further claims, known or unknown, with respect to or arising from tuition for Ryder's course or courses. ACCORDINGLY, NO LATER THAN [insert date twenty (20) days after date set forth in part III, paragraph 16(a) of this order] YOU MUST SIGN AND RETURN TO RYDER A COPY OF THIS LETTER CONFIRMING YOUR AGREEMENT THAT THE REFUND PAYMENTS YOU RECEIVE FROM RYDER WILL BAR YOU FROM MAKING ANY AND ALL CLAIMS AGAINST RYDER RELATING TO YOUR TUITION AT ANY TIME IN THE FUTURE. IF YOU DO NOT SIGN AND RETURN TO RYDER A COPY OF THIS LETTER BY THAT TIME, YOU WILL NOT BE ENTITLED TO ANY REFUND PAYMENT.

Note: To insure receipt of the later refund installments, you should send us written notice of any change in your name or home address.

Note: The order of the Commission does not affect any tuition loan obligations you may have incurred in connection with your attendance at the Ryder school.

Ryder System, Inc.

By _____

RELEASE

IN CONSIDERATION OF THE PARTIAL REFUND PAYMENTS TO BE MADE TO ME PURSUANT TO THE PROVISIONS OF THE ORDER DESCRIBED ABOVE, I HEREBY RELEASE RYDER SYSTEM, INC. AND ALL OF ITS SUBSIDIARIES AND AFFILIATES, FROM ANY AND ALL FURTHER CLAIMS, KNOWN OR UNKNOWN, WITH RESPECT TO OR RELATING TO MY TUITION FOR A RYDER COURSE OR COURSES.

(Signature)

(Date)

Remember, you must return a *signed and dated* copy of this letter no later than [insert date twenty (20) days after date set forth in part III, paragraph 16(a) of this order] to [Independent contractor's address].

IF YOU DO NOT DO SO YOU WILL NOT RECEIVE ANY REFUND PAYMENTS.

APPENDIX L

[If this appendix accompanies the first, second, or third installments, pursuant to part III, paragraphs 19(a), 20 and 21 of this order, then it shall read:]

(Name)
(Address)

Dear (Name):

Enclosed is a check for the amount of the [first, second, third] installment of your partial tuition refund. The next installment will be sent on or before [insert the correct date from among those set forth in part III, paragraphs 20, 21 and 22 of this order].

If you change your name or address please send written notice of the change to [name and address of Ryder or the independent contractor].

By:

[If this appendix accompanies the last installment, pursuant to part III, paragraph 22 of this order, then the appendix shall read:]

(Name)
(Address)

Dear (Name):

Enclosed is a check for the amount of the fourth and last installment of your tuition refund. It will no longer be necessary for you to notify us of a change in your name or address.

By:

APPENDIX M

[Respondent's or independent
contractor's address]

(Name)
(Address)

Dear (Name):

Ryder System, Inc. has a check which it is attempting to deliver to (name of refund recipient). If you know his (or her) current address, please send us that information. You may send his (or her) current address by writing it on the bottom of this letter or on a separate piece of paper and mailing it to the above address as soon as possible.

By:

Current Address: _____

APPENDIX N

(Name)
(Address)

Dear (Name):

Pursuant to an order of the Federal Trade Commission, agreed to by this company and effective as of [insert effective date], you are requested to provide us with the last known address of [insert name of graduate].

It is believed that this person graduated from a Ryder home study-resident training course. The Federal Trade Commission had determined that the collection of certain information from certain Ryder graduates is necessary in order to implement the terms of a Federal Trade Commission order which, among other things, requires the company to make certain tuition adjustments for certain graduates, possibly including the person listed above.

If you know the current address of the person listed above (whose name is underlined above), please list it in the spot provided at the bottom of this page and return it to us in the enclosed postage prepaid envelope as soon as possible.

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(current address of person listed above)

Your cooperation will be appreciated.

Sincerely,

James M. Herron
Vice President and Secretary
Ryder System, Inc.

ADVISORY OPINIONS

Modular housing, meeting certain home construction standards, is not a “consumer product” under the terms of section 101(1); and a mobile home manufacturer who simply passes on warranties offered by the manufacturers of equipment installed in a mobil home is not a “warrantor” under the terms of section 110(f) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301 *et seq.*) (File No. 773 7013). (42 F.R. 37440).

Advisory Opinion Letter

July 13, 1977

Dear Mr. Miller:

This is in reply to your request of September 13, 1976, for an advisory opinion concerning Sections 101(1) and 110(f) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, as they apply to factory-built housing. Your request takes the form of three questions, but because the first one is compound in nature, the Commission has dealt with it as two separate inquiries. Therefore, the questions involved in your request are as follows:

- (1) Is a modular house, excluding such items of equipment as air-conditioners, furnaces, and water heaters, a “consumer product” within the meaning of Section 101(1) of the Magnuson-Moss Warranty Act?
- (2) Does the classification of a modular house under Section 101(1) of the Magnuson-Moss Warranty Act in any way turn upon whether it is delivered to a real property foundation as a completed structure or in component parts?
- (3) Does the classification of a modular house under Section 101(1) of the Magnuson-Moss Warranty Act in any way turn upon whether it is sold first to a builder or instead is sold directly to an ultimate consumer.
- (4) Is the manufacturer of a mobile home a “warrantor” for purposes of Section 110(f) of the Magnuson-Moss Warranty Act of such items of equipment as air-conditioners, furnaces, and water heaters if the mobile home manufacturer simply “passes

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on” the written warranty given by the manufacturer of the equipment and indicates to buyers that such equipment is covered by a manufacturer’s warranty?

The Commission has carefully considered the matters set forth in your letter. It is the Commission’s conclusion that:

(1) A modular house which meets one of the sets of uniform home construction codes set forth in the appendix to this letter or a construction standard established by a state for modular homes, as distinct from mobile homes as they are defined by the state, is real property and should, therefore, be excluded from the Section 101(1) definition of “consumer product”. The sets of uniform codes are widely used in the construction of conventional, “stick-built” homes, which are real property. These codes are usually the basis for any distinct state modular housing codes. Thus, a factory built house which satisfies one of these sets of codes or a separate state modular code is essentially of the nature of real property and should, therefore, be excluded from coverage of the Act. On the other hand, a factory built dwelling that fails to satisfy one of the specified sets of codes or a separate state modular code must comply with the requirements of the Act.

(2) Whether a modular house is delivered to a foundation site as a completed structure or in component parts is irrelevant to the determination that it is or is not a consumer product under Section 101(1) of the Magnuson-Moss Warranty Act. The essential question is the nature of the finished product, not the location of its final assembly. If a manufactured dwelling satisfies one of the sets of uniform codes in the appendix or a state modular code, it is real property for purposes of the Act. If it fails to satisfy one of the sets of codes or a state modular code, it falls within the scope of Section 101(1) as a consumer product.

(3) Whether a modular house is sold first to a builder or instead to an ultimate consumer is irrelevant to the determination that it is or is not a consumer product under Section 101(1) of the Magnuson-Moss Warranty Act. The fundamental question is again the nature of the dwelling sold, not the identity of the initial purchaser. If a structure is personal property, normally used for personal, family, or household purposes, it is a consumer product under Section 101(1) regardless of who first purchases it from the manufacturer.

(4) A manufacturer of mobile homes who simply passes on a written warranty given by the manufacturer of equipment installed in a mobile home and indicates to buyers that such equipment is covered by a manufacturer's warranty is not a warrantor under Section 110(f) of the Magnuson-Moss Warranty Act. The Commission answered this question previously in Section 700.4 of the "Proposed Interpretations" of the Act, 41 Fed. Reg. 34,654 (August 16, 1976). Section 700.4 applies to all consumer products. This includes all consumer products sold with mobile homes, which are themselves consumer products (See Implementation and Enforcement Policy, Section 2, 40 Fed. Reg. 25,721 (June 18, 1975)), and those consumer products sold with modular homes and traditional real property structures.

By direction of the Commission.

Appendix

The Commission has concluded that a modular house which satisfies any one of the following home construction standards is real property and should, therefore, be excluded from the Magnuson-Moss Warranty Act definition of "consumer product".

(1) The codes published by Building Officials and Code Administrators (BOCA) and the National Fire Protection Association (NFPA):

- (a) BOCA Basic Building Code—1975
- (b) BOCA Basic Industrialized Dwelling Code—1975
- (c) BOCA Basic Mechanical Code—1975
- (d) BOCA Basic Plumbing Code—1975
- (e) National Electrical Code—NFPA 70—1975.

(2) The codes published by the Southern Building Code Congress (SBCC) and the NFPA:

- (a) Standard Building Code—1976
- (b) Standard Gas Code—1976
- (c) Standard Mechanical Code—1976
- (d) Standard Plumbing Code—1975, with 1976 revisions
- (e) National Electrical Code—NFPA 70—1975.

(3) The codes published by the International Conference of Building Officials (ICBO), the International Association of Plumbing and Mechanical Officials (IAMPO), and the NFPA:

- (a) Uniform Building Code—1973
- (b) Uniform Mechanical Code—1975
- (c) National Electrical Code—NFPA 70—1975
- (d) Uniform Plumbing Code—1973 (IAMPO).

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(4) The codes jointly published by BOCA, SBCC, ICBO, the American Insurance Association, and the NFPA:

- (a) One and Two-Family Dwelling Code—1975
- (b) National Electrical Code-70—1975.

**Proposed marketing agreement between state association of
chiropractors and mattress manufacturer (File No. 733 7014).**

Advisory Opinion Letter

July 19, 1977

Dear Mr. Smith:

This is in response to your letter dated October 22, 1976, as supplemented by a letter dated March 8, 1977, requesting an advisory opinion concerning a proposed agreement between the North Carolina Chiropractic Association, Inc. (NCCA), and WRD Associates, Inc.

According to the information you have submitted, WRD Associates has patented the design of a mattress which it proposes to make available to consumers by the placement of orders directly with WRD, the manufacturer-supplier. NCCA members would make literature promoting the mattresses and order forms available in their offices, and an NCCA member's signature would be required on each order received by WRD. A commission on each sale would be paid to the NCCA chiropractor from whose office the order originated, the NCCA itself, and a yet-to-be-formed philanthropic organization promoting educational and scientific work in the field of chiropractic medicine. All sales literature would be approved in advance by the NCCA, and a disclosure of the commission program would be included in all sales literature promoting the mattresses. In addition, the NCCA and its members would have exclusive rights to promote the sale of WRD mattresses in North Carolina as long as the Association maintains sales at the rate of at least six mattresses per year per chiropractic physician.

Given the nature of the chiropractor-patient relationship, extreme care must be exercised in order that consumer deception does not result. Primarily, there would have to be a clear and conspicuous disclosure of the relationship between the NCCA and WRD on all sales literature and forms used in connection with the sale of the mattresses. Such a disclosure should, at a minimum, conspicuously and clearly reveal that the NCCA and its member chiropractors earn commissions on the sale of each mattress, that they have contracted to be exclusive sales agents for the mattresses in North Carolina, and

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that this exclusive agency is contingent upon a rate of sale of at least six mattresses per year by each chiropractic physician. The contract between WRD and the NCCA should be amended to require that the promotional literature containing the disclosures actually be given to every prospective purchaser. The proposed disclosure in your letter of March 8, 1977, falls far short of this standard.

In addition, the Commission notes that you have stated that you make no claim that the mattress will ameliorate physical disorders. However, patients may fairly be expected to view chiropractors as healers rather than salesmen. Accordingly, even where no explicit claim of efficacy is made, the patient may be induced to the belief that a chiropractor is suggesting a mattress purchase as a concomitant to treatment and that the mattresses do in fact have therapeutic or corrective qualities, unless such implications are expressly negated. Therefore, unless the Association has satisfactory and sufficient scientific evidence to substantiate the therapeutic or corrective qualities of these mattresses, if any, it and its chiropractor members should refrain from a program of promoting the sale of such mattresses or should affirmatively disclose in writing to each prospective purchaser that there is no basis to believe that the mattresses will ameliorate any medical condition.

Finally, statements concerning the NCCA's approval of and participation in the sale and promotion of these mattresses should not be made in such a manner as to mislead consumers to the belief that the NCCA has established design standards for mattresses for the correction of physical defects or disorders, or that the WRD mattress has met any such standards.

Please be advised that we have limited our advice to legal issues. The Commission takes no position on any questions of ethics which might be raised by commercial activity of this nature by individual chiropractors or by the Association itself.

By direction of the Commission.

Microfiche viewing system indexing and grouping product warranties by warrantor, rather than product class, satisfies the Trade Regulation Rule on Pre-Sale Availability of Written Warranty Terms (16 CFR 702) (File No. 773 7015). (42 F.R. 39381).

Advisory Opinion Letter

July 28, 1977

Dear Mr. Croissant:

This is in response to your request for an advisory opinion regarding compliance with the Commission's Rule on the Pre-Sale Availability of Written Warranty Terms, 16 C.F.R. 702. You ask whether a microfiche viewing system which indexes and groups product warranties by warrantor, rather than by product class, satisfies Part 702.3(a)(1)(ii) of the Pre-Sale Availability Rule. Part 702.3(a)(1)(ii) provides that a seller (retailer) may meet the requirements of the rule by maintaining a binder "or [other] similar system which will provide the consumer with convenient access to copies of product warranties", 16 C.F.R. 702.1(g). The rule permits sellers to index binders according to either product or warrantor.

The Commission has carefully considered the matters set forth in your request. It is the Commission's conclusion that a microfiche viewing system which indexes and groups warranties by warrantor, rather than by product class, would satisfy Part 702.3(a)(1)(ii) of the Commission rule, if the following conditions are met:

- (1) Simple, complete instructions for use of the system are posted on each viewer;
- (2) Personnel in each selling establishment familiar with the operation of the system are available to assist consumers should the need arise; and
- (3) The microfiche cards used to display warranties contain only warranty information.

These conditions are similar or identical to the conditions which the Commission set out in its advisory opinions to the National Retail Hardware Association, 41 Fed. Reg. 53472, and Sears, Roebuck Inc.,

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42 Fed. Reg. 15679. Those opinions concerned the use of other microfiche or ultrafiche systems under the Pre-Sale Availability Rule. The requirements of those opinions remain applicable to sellers using microfiche or ultrafiche systems in which warranties are grouped and indexed by product class rather than by warrantor.

Your request referred only to microfiche viewing systems. The Commission believes that the differences between microfiche and ultrafiche systems are irrelevant for the purpose of complying with the Pre-Sale Availability Rule. Therefore, this opinion is also applicable to ultrafiche systems in which warranties are indexed and grouped by warrantor.

By direction of the Commission.

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Compliance advisory opinion as to whether three affiliated sellers of correspondence courses have properly determined which former students are eligible for partial tuition refunds under a consent order issued against the firms (88 F.T.C. 683, Docket No. 8963).

Advisory Opinion Letter

September 2, 1977

Gentlemen:

This is to advise you that the Commission has given consideration to your submission under cover of your letters of May 17, and June 29, 1977, of questionnaires which you have sent out pursuant to the order in the above referenced matter and the determinations you have made with respect thereto regarding eligibility for tuition refund as prescribed by said order. In accordance with said order you have submitted said questionnaires for review by the Commission and an advisory opinion as prescribed in Section 3.61(d) of the Commission's Rules of Practice.

Except as noted below, the Commission has determined that your submission represents compliance with the applicable order provisions regarding eligibility of former Lafayette Academy students for partial tuition refunds.

Four completed questionnaires (Appendices 1-4) which you determined to be not payable contained, in response to Question 7, a multiple answer by the student as to why he or she failed to complete the course or failed to seek employment. In these circumstances, where one answer would qualify the former student for eligibility under the Commission's order even though non-qualifying answers were also provided, the Commission is of the opinion that these claims should be honored.

Fourteen questionnaires (Appendices 5-18) which you determined to be not payable contained narrative responses to Question 7 which suggest that the students' failure to complete or to job-search was reasonably related to the sufficiency or quality of the training or job demand as provided for in subparagraphs 5(b)(2) or 5(c) of Part III. The Commission believes that these claims should also be honored.

A group of six questionnaires (Appendices 19-24) were from students who had completed their respective courses, had sought employment but had not obtained employment in the relevant occupations. The Commission is of the opinion that these responses meet the criteria for eligibility contained in the Commission's order and these former students are therefore eligible for refund.

In addition, four former students (Appendices 25-28) by their questionnaires advised that they did not complete their courses because they did not receive necessary study materials or tests from your organization. The Commission's view is that failure to receive such course materials fairly relates to the sufficiency or quality of the training, and that these former students are eligible for refund. Finally, three former students which you have determined to be not eligible (Appendices 29-31) stated that they had failed to complete their particular courses for the reason indicated in item 7j of the questionnaire: "I decided that the course would not help me get a job." This response, in the Commission's view, relates to the sufficiency or quality of the training and/or job demand. Therefore, these students should be determined to be in the eligible class.

It is the opinion of the Commission, based upon the information furnished that with the exceptions noted hereinabove, your eligibility determinations under Part III, paragraph 5 of the Commission's order represent compliance with that provision to the extent that your obligations under other order provisions have been fulfilled. This opinion is not intended to apply to any other duties or obligations imposed upon you by the order other than your responsibility under Part III to make initial determinations as to who constitutes eligible class members for purposes of the required tuition refunds.

The student questionnaires are being returned to you under separate cover.

By direction of the Commission.

Notice required by Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR 433) must be inserted in the consumer credit contract at the time it is taken or received by the seller. Affixing the Notice immediately prior to negotiation to a third party is unacceptable (File No. 783 7001).

Advisory Opinion Letter

October 27, 1977

Dear Mr. Bemederfer:

This is in response to your September 15, 1977 request for an advisory opinion regarding compliance with the Trade Regulation Rule concerning Preservation of Consumers' Claims and Defenses, 16 C.F.R. Part 433.

Specifically, your request pertains to the location and timing of the required Notice. The Rule declares it an unfair or deceptive act or practice to "take or receive a consumer credit contract which fails to contain" the Notice, 16 C.F.R. Section 433.2(a). The answers to the four questions posed in your letter are implicit in the language of the Rule.

Whether or not a contract properly contains the Notice turns upon whether it is a legally enforceable term under state law at the time the contract is taken or received. As a general matter of state law, any term of a contract must be agreed upon by both parties, as ordinarily evidenced by a document the parties execute. This general principle of contract law suggests that it would be highly unlikely that any consumer could enter into a contract governed by the Rule without receiving or having knowledge of the Notice as one of the terms of the underlying contract.

The Commission specifically addressed your third question in its recent denial of petitions for exemption by the National Retail Merchant Association and the American Retail Federation, 42 F.R. 46509 *et seq.* (September 16, 1977). It rejected the concept of affixing the Notice immediately prior to negotiation to a third party rather than at the time of execution. In its denial the Commission reaffirmed the Rule's requirement that the Notice be inserted in the consumer credit contract at the time it is taken or received by the

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seller. On balance, the Commission concluded that incorporation at the time of making was the only certain means of protecting the consumers' rights, 42 F.R. 46512.

The response to your third question also answers the fourth question.

Finally, you suggest that two-party open end consumer credit contracts have not previously been subject to the Rule's requirements. In fact, the Rule has applied to two-party open end consumer credit contracts since May 14, 1976, although such contracts have been exempted from compliance with the Rule until October 31, 1977.

By direction of the Commission.

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Modular housing, meeting certain home construction standards, is not a "consumer product" under the terms of section 101(1); and a mobile home manufacturer who simply passes on warranties offered by the manufacturer of equipment installed in mobile home is not a "warrantor" under the terms of section 110(f) of the Magnuson-Moss Warranty Act (15 U.S.C. 2301 <i>et seq.</i>) [<i>File No. 773 7013, Keller, Thoma, Toppin & Schwarze, July 7, 1977</i>]	980
Proposed marketing agreement between state association of chiropractors and mattress manufacturer [<i>File No. 773 7014, North Carolina Chiropractic Association, Inc., July 19, 1977</i>]	984
Microfiche viewing system indexing and grouping product warranties by warrantor, rather than product class, satisfies the Trade Regulation Rule on Pre-Sale Availability of Written Warranty Terms (16 CFR 702) [<i>File No. 773 7015, Liberty Distributors, Inc., July 21, 1977</i>]	986
Compliance advisory opinion as to whether three affiliated sellers of correspondence courses have properly determined which former students are eligible for partial tuition refunds under a consent order issued against the firms [<i>Docket 8963, Lafayette United Corporation, et al., September 2, 1977</i>]	988
Notice required by Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses (16 CFR 433) must be inserted in the consumer credit contract at the time it is taken or received by the seller. Affixing the Notice immediately prior to negotiation to a third party is unacceptable [<i>File No. 783 7001, Montgomery Ward & Co., Incorporated, October 27, 1977</i>]	990