

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

FIRST BRANDS CORPORATION

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

Docket C-3358. Complaint, Jan. 3, 1992 -- Decision, Jan. 3, 1992

This consent order prohibits, among other things, the Connecticut manufacturer of Glad plastic bags from representing that any of its plastic bags offer any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondent: *William Blumenthal and Michael L. Denger, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that First Brands Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent First Brands Corporation is a Delaware corporation with its office and principal place of business located at 83 Wooster Heights Road, Danbury, Connecticut.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed plastic trash bags to the public under such trade names as Glad Bags.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Glad Bags, including, but not necessarily limited to, the attached Exhibits A, B, and C.

The aforesaid package labeling includes one or all of the following statements on the front of the package:

IMPROVED
DEGRADABLE
SAFE FOR THE ENVIRONMENT

The aforesaid package labeling includes the following statements on the bottom of the package:

SAFE FOR THE ENVIRONMENT
GLAD Bags are well suited for their role in the environment. ... And now GLAD Bags are more photodegradable than ever, thanks to a new additive that promotes degradation without sacrificing strength.

GLAD Bags are photodegradable thanks to an additive that promotes degradation without sacrificing strength.

Are degradable in the sunlight.

Act as a non-contaminating inert material in a landfill.

PAR. 5. Through the statements referred to in paragraph four and others in package labeling not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Compared to untreated plastic bags, Glad Bags offer a significant environmental benefit when consumers dispose of them as trash; and
2. Glad Bags will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

PAR. 6. Through the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondent has represented, directly or by implication, that at

the time it made such representations, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 7. In truth and in fact, at the time respondent made such representations, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

1

Complaint

EXHIBIT B

EXHIBIT B

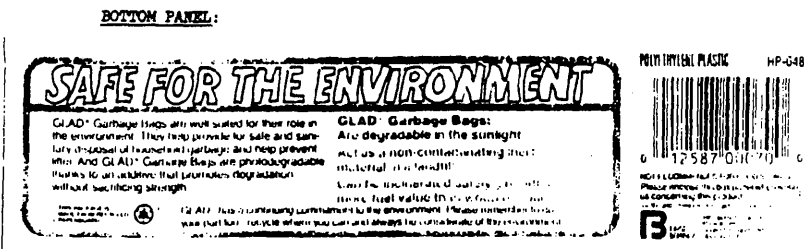
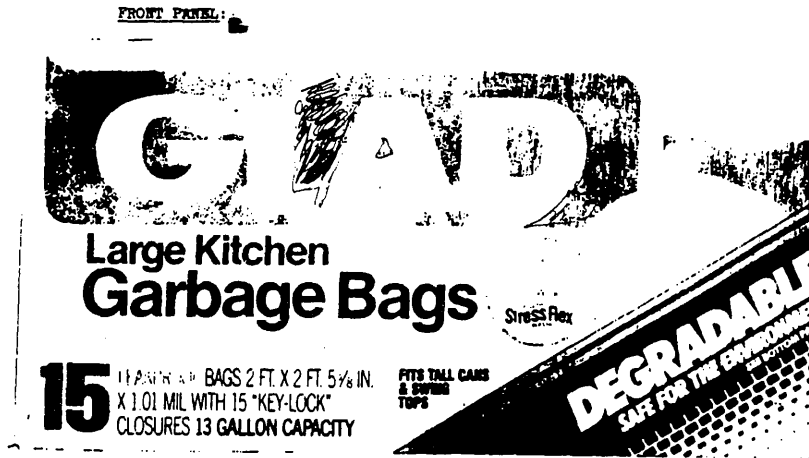
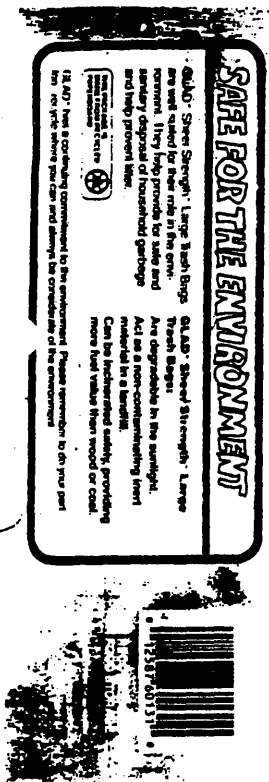


EXHIBIT C

EXHIBIT C



BOTTOM PANEL:



SAFE FOR THE ENVIRONMENT

GLAD's Super Strength Large Trash Bags are well suited for their role in the environment. They help provide for safe and sanitary disposal of household garbage and help prevent leaks.

GLAD's Super Strength Large Trash Bags are designed to be sunlight and tear resistant. They are made of a non-combusting, non-toxic material in a landfill. Can be incinerated safely, providing more fuel value than wood or coal.

GLAD's has a continuing commitment to the environment. Please remember to do your part and recycle where you can and always be considerate of the environment.



100% Recycled Plastic



1258760131

DECISION AND ORDER

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

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

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

1. Respondent First Brands Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. First Brands has its offices and principal place of business at 83 Wooster Heights Road, Danbury, Connecticut.

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

DEFINITION

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

"*First Brands plastic bag*" means any plastic grocery sack, or any plastic "disposer" bag, including but not limited to trash bags, lawn bags, and kitchen bags, that is offered for sale, sold, or distributed to the public by respondent, its successors and assigns, under the "Glad" bags brand name or any other brand name of respondent, its successors and assigns; and also means any such plastic bag sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I.

A. *It is ordered*, That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic bag is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefits when disposed of as trash in a sanitary landfill,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substan-

tiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however,* respondent will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic bags, if it truthfully represents that its plastic bags are designed to degrade or break down, and become part of usable compost along with the bag's contents, when disposed of in programs that collect yard or other waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such bags and any advertising referring to the degradability of such bags discloses clearly, prominently, and in close proximity to such representation:

- (1)(a) That such bags are not designed to degrade in landfills, or
- (1)(b) In those states in which composting facilities are required for yard waste, that composting bags are only designed to degrade in such composting facilities; and further discloses
 - (2)(a) That yard waste composting programs may not be available in the consumer's area, or
 - (2)(b) The approximate percentage of the U.S. population having access to yard waste composting programs.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package. If such representation appears in more than one place on a package, it shall be sufficient if

the above-required disclosures appear only on the principal display panel of the package, as "principal display panel" is defined in the Fair Packaging and Labeling Act, 15 U.S.C. 1459(f) (1988).

If the advertising and labeling of respondent's plastic bags otherwise complies with Subpart A of Part I of this order, respondent will not be in violation of this order if it does not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising or labeling of any First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "safe for the environment," "no harm to the environment," "no injury to the environment," "no risk to the environment," "friendly to the environment," or any rearrangement of such terms, *e.g.*, "environmentally safe," "environmentally harmless," "environmentally risk-free" or "environmentally friendly," unless: (1) respondent discloses clearly, prominently, and in close proximity thereto with reasonable specificity what is meant by such term, and (2) at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and

conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

Nothing in this order shall prevent respondent from using any of the terms cited in Parts I and II, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is further ordered, That respondent may continue to deplete its existing inventory of composting bag packaging in the normal course of business without violating this order.

V.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

VI.

It is further ordered, That respondent shall distribute a copy of this order within sixty (60) days after service of this order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling

and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this order.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

VIII.

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

Commissioner Yao not participating.

IN THE MATTER OF

THE KOBACKER COMPANY

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

Docket C-3359. Complaint, Jan. 3, 1992--Decision, Jan. 3, 1992

This consent order requires, among other things, the Ohio corporation to comply with the consumer disclosure provisions of the Fair Credit Reporting Act for job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondent with the reports.

Appearances

For the Commission: *Cynthia S. Lamb and David Medine.*

For the respondent: *Mike Allen, Columbus, OH.*

COMPLAINT

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

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections

603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent The Kobacker Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at P. O. Box 16751, 6606 Tussing Road, Columbus, Ohio.

PAR. 2. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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

PAR. 4. Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment with respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has failed to advise consumers of name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in, paragraph four, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioner Yao not participating.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted to accept the consent orders, which prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, that the orders make the proposed consumer redress -- free copies of credit reports -- more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on a credit report, consumers must depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the Kobacker, McDonnell Douglas and Macy's orders and the same paragraph in the Keystone order raises a question about fairness to respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years for Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violation of Section 615 (a) of the Fair Credit

Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

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

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

1. Respondent The Kobacker Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at P.O. Box 16751, 6606 Tussing Road, Columbus, Ohio.

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

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondent The Kobacker Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report to each applicant who was denied employment by The Kobacker Company between November 30, 1989 and October 22, 1990, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letter attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent The Kobacker Company has previously given the applicant notification that complies in all respects with the provisions of paragraph I. 1. of this order.

II.

It is further ordered, That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this order and all notices provided to consumers pursuant to any provisions of this order.

III.

It is further ordered, That for a period of four (4) years after the date of service of this order, respondent shall deliver a copy of this order to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

It is further ordered, That respondent shall, for a period of four (4) years from the date of this order, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondent shall, within one hundred twenty (120) days of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Yao not participating.

APPENDIX A

Dear _____ :

At some point in time between November 1989 and October 1990, you applied to The Kobacker Company for employment. To help us in considering your eligibility for employment, we requested a consumer report from the consumer reporting agency identified below:

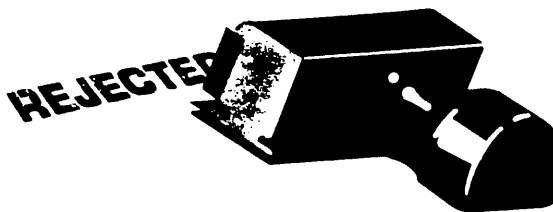
Name of Agency
Street Address
City, State Zip
Telephone Number

Under the Fair Credit Reporting Act, you may learn what information is in your credit file by contacting this consumer reporting agency. Federal law entitles you to review your credit file for free if you were denied employment based on information in your credit file and you ask to review the file within thirty (30) days of receiving this notice. An extra copy of this notice is enclosed so that you may give it to the agency, should you decide to review your file.

Sincerely,

The Kobacker Company
Human Resources Department

APPENDIX B



Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRAs." The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRAs. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRAs:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you

FEDERAL TRADE COMMISSION BUREAU OF CONSUMER PROTECTION



receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative consumer report*. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- bankruptcy information can be reported for 10 years;
- information reported because of an application for a job with a salary of more than \$20,000 has no time limitation;
- information reported because of an application for more than \$50,000 worth of credit or life insurance has no time limitation;
- information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor *must* tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Federal Trade Commission
Washington, D.C. 20580

Official Business. Penalty
For Private Use: \$300

FIRST CLASS MAIL
POSTAGE & FEES PAID
Federal Trade Commission
Permit No. G-62

Complaint

115 F.T.C.

IN THE MATTER OF

KEYSTONE CARBON COMPANY

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

Docket C-3360. Complaint, Jan. 3, 1992 -- Decision, Jan. 3, 1992

This consent order requires, among other things, the Pa. corporation to comply with the consumer disclosure provisions of the Fair Credit Reporting Act for job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondent with the reports.

Appearances

For the Commission: *Cynthia S. Lamb* and *David Medine*.

For the respondent: *Gary H. McQuone*, *Buchanan*, *Ingersoll*,
Pittsburgh, PA.

COMPLAINT

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

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections

603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent Keystone Carbon Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at St. Marys, Pennsylvania.

PAR. 2. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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

PAR. 4. Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment with respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in, paragraph four, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioner Yao not participating.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted to accept the consent orders, which prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, that the orders make the proposed consumer redress -- free copies of credit reports -- more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on a credit report, consumers must depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the Kobacker, McDonnell Douglas and Macy's orders and the same paragraph in the Keystone order raises a question about fairness to respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years for Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violation of Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

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

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

1. Respondent Keystone Carbon Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at St. Marys, Pennsylvania.

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

ORDER

For the purpose of this order, the terms "consumer," "consumer report", and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondent Keystone Carbon Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order to mail two (2) copies of either Appendix A or Appendix B, attached hereto, as completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial of employment with respondent based wholly or partly on information contained in the report, to each applicant who was denied employment by Keystone Carbon Company between January 1, 1990, and the date this order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix C, copies of which are to be provided by respondent. Copies of the letters attached as Appendix A and Appendix B need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Keystone Carbon Company has previously given the

applicant notification that complies in all respects with the provisions of paragraph I.1 of this order.

II.

It is further ordered, That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this order, all notices provided to consumers pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That for a period of four (4) years after the date of service of this order, respondent shall deliver a copy of this order to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

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

V.

It is further ordered, That respondent shall, within one hundred twenty (120) days of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Yao not participating.

APPENDIX A

Dear Employment Applicant:

Our records show that sometime within the last two years, Keystone Carbon Company denied your application for employment. The federal Fair Credit Reporting Act gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

[name of Consumer Reporting Agency]
[Street Address]

You should contact the credit bureau to learn what information is in your file. You may obtain this information without charge if you contact the credit bureau within 30 days. An extra copy of this notice is enclosed so that you may give it to the credit bureau when you request to review your file.

The information in your credit report led us, at least in part, to deny your application for the following reason(s):

- no credit file
- unable to verify references
- delinquent past or present obligations with others
- excessive obligations in relation to income
- garnishment, attachment, foreclosure, repossession, collection action, or judgment
- bankruptcy
- other: _____

A brochure explaining your rights under the federal credit laws is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

APPENDIX B

Dear Employment Applicant:

Our records show that sometime within the last two years, Keystone Carbon Company denied your application for employment. Your application, however, remains on file for further consideration. The federal Fair Credit Reporting Act gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

[name of Consumer Reporting Agency]
[Street Address]

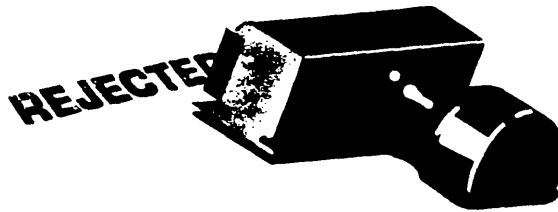
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- garnishment, attachment, foreclosure, repossession, collection action, or judgment
- bankruptcy
- other: _____

A brochure explaining your rights under the federal credit laws is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.



Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRAs." The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRAs. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRAs:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you

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receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applications different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- bankruptcy information can be reported for 10 years;
- information reported because of an application for a job with a salary of more than \$20,000 has no time limitation;
- information reported because of an application for more than \$50,000 worth of credit or life insurance has no time limitation;
- information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Federal Trade Commission
Washington, D.C. 20580

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Permit No. G-62

IN THE MATTER OF

MCDONNELL DOUGLAS CORPORATION

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

Docket C-3361. Complaint, Jan. 3, 1992--Decision, Jan. 3, 1992

This consent order requires, among other things, the Missouri-based corporation to comply with the consumer disclosure provisions of the Fair Credit Reporting Act for job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondent with the reports.

Appearances

For the Commission: *Cynthia S. Lamb* and *David Medine*.

For the respondent: *Kenneth Heininger*, St. Louis, MO.

COMPLAINT

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

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections

603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

PARAGRAPH 1. Respondent McDonnell Douglas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and a principal place of business located at P. O. Box 516, Saint Louis, MO.

PAR. 2. Respondent, in the ordinary course and conduct of its business, uses information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondent.

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

PAR. 4. Respondent, in the ordinary course and conduct of its business, has denied applications or rescinded offers for employment with respondent based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in paragraph four, respondent has violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondent with violation of Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

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

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

1. Respondent McDonnell Douglas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and a principal place of business located at P.O. Box 516, Saint Louis, MO.

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

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondent McDonnell Douglas Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial of employment with respondent based wholly or partly on information contained in the report, to each applicant who was denied employment by McDonnell Douglas Corporation between June 1, 1989, and the date this order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first

class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondent. Copies of the letter attached as Appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent McDonnell Douglas Corporation has previously given the applicant notification that complies in all respects with the provisions of paragraph I. 1 of this order.

II.

It is further ordered, That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of Part I of this order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this order, all notices provided to consumers pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That respondent shall deliver a copy of this order at least once per year for a period of four (4) years from the date of this order, to all persons responsible for the respondent's compliance with Section 615(a) of the Fair Credit Reporting Act.

IV.

It is further ordered, That respondent shall, for a period of four (4) years from the date of this order, notify the Federal Trade

Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondent shall, within one hundred twenty (120) days of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Yao not participating.

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Decision and Order

APPENDIX A

Date

Jane Doe
Street Name
City, State, 00000

Dear Ms. Doe:

Sometime since June 1989, (MDC Component) ceased further processing of your employment application. This letter is to advise you that information contained in a consumer credit report may have been used, among other factors, in the decision by (MDC Component) to cease further processing of your employment application. (MDC Component) obtained your consumer credit report from:

Name,
Address,
Telephone Number of consumer reporting agency furnishing the report.

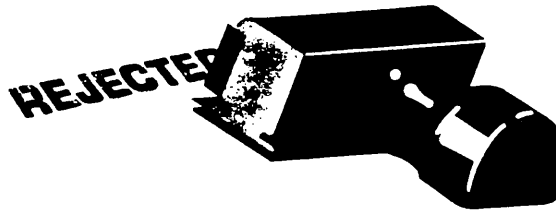
Please contact the agency listed above if you would like to learn more about the information contained in your file there.

Federal law entitles you to review your credit file for free if you were denied employment and you ask to review the file within thirty (30) days of receiving this notice. A brochure explaining your rights under the Fair Credit Reporting Act is enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Sincerely,

Name
Component Employment Manager

APPENDIX B



Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRAs." The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRAs. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRAs:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

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Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

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receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

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How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

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Are there other laws I should know about?

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You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Federal Trade Commission
Washington, D. C. 20580

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CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted to accept the consent orders, which prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, that the orders make the proposed consumer redress -- free copies of credit reports -- more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on a credit report, consumers must depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the Kobacker, McDonnell Douglas and Macy's orders and the same paragraph in the Keystone order raises a question about fairness to respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years to Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

IN THE MATTER OF

MACY'S NORTHEAST, INC., ET AL.

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

Docket C-3362. Complaint, Jan. 3, 1992--Decision, Jan. 3, 1992

This consent order requires, among other things, the respondents to comply with the consumer disclosure provisions of the Fair Credit Reporting Act for job applicants, and to mail to applicants denied employment, based on a consumer report from a consumer credit reporting agency, letters stating the name and address of the consumer reporting agency that supplied the respondent with the reports.

Appearances

For the Commission: *Cynthia S. Lamb* and *David Medine*.
For the respondents: *Herbert M. Hellman*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc., and Macy's Data and Credit Services Corp., corporations (hereinafter sometimes referred to as "respondents" or as "the named subsidiaries"), wholly owned subsidiaries of R. H. Macy & Co., Inc., a Delaware corporation, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

For the purposes of this complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d) and 1681a(f). The term "consumer reporting agency" shall include retail loss prevention organizations or associations that compile and disseminate consumer reports on theft incidents. The term "consumer report" shall include reports disseminated by loss prevention organizations or associations.

PARAGRAPH 1. Respondent Macy's Northeast, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 151 West 34th Street, New York, NY.

Respondent Macy's South, Inc. is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 180 Peachtree Street, N.W., Atlanta, GA.

Respondent Macy's California, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 O'Farrell, San Francisco, CA.

Respondent I. Magnin, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 135 Stockton Street, San Francisco, CA.

Respondent Macy's Data and Credit Services Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 61 Myrtle Street, Cranford, NJ.

PAR. 2. Respondents, in the ordinary course and conduct of their businesses, use information in consumer reports obtained from consumer reporting agencies in the consideration, acceptance, and denial of applicants for employment with respondents.

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

PAR. 4. Respondents, in the ordinary course and conduct of their businesses, have denied applications or rescinded offers for employment with a respondent based in whole or in part on information supplied by a consumer reporting agency, but have failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications or offers for employment, and have failed to advise consumers of the name and address of the consumer reporting agency that supplied the information.

PAR. 5. By and through the use of the practices described in paragraph four, respondents have violated the provisions of Section 615(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681m(a).

PAR. 6. By their aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondents have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

Commissioner Yao not participating.

CONCURRING STATEMENT OF COMMISSION MARY L. AZCUENAGA

I have voted to accept the consent orders, which prohibit Kobacker and Macy's from violating Section 615(a) of the Fair Credit Reporting Act. I would have preferred, however, that the orders make the proposed consumer redress -- free copies of credit reports -- more clearly available.

Under the Act, a consumer may obtain a free copy of his or her credit report if the credit report was the basis for adverse employment action. Without this link, the credit reporting agencies are permitted by the Act to "impose a reasonable charge." Because neither Kobacker nor Macy's is required by the order to tell consumers that adverse action may have been based on a credit report, consumers must depend on the willingness of the reporting agencies voluntarily to provide free copies.

The difference between Paragraph IV in the Kobacker, McDonnell Douglas and Macy's orders and the same paragraph in the

Keystone order raises a question about fairness to respondents. Certain reporting requirements that are standard in Commission orders are limited to four years for Kobacker and McDonnell Douglas and to six years for Macy's, but Keystone's obligation is not limited in time. There is no apparent justification for treating these similarly situated respondents differently. This inconsistency, with its potential for unfairness to respondents, is just one of the costs of treating standard Commission order provisions as negotiable.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violation of Section 615(a) of the Fair Credit Reporting Act and Section 5(a) of the Federal Trade Commission Act; and

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

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

1. Respondent Macy's Northeast, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 151 West 34th Street, New York, NY.

Respondent Macy's South, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 180 Peachtree Street, N.W., Atlanta, GA.

Respondent Macy's California, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 O'Farrell, San Francisco, CA.

Respondent I. Magnin, Inc. is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 135 Stockton Street, San Francisco, CA.

Respondent Macy's Data and Credit Services Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 61 Myrtle Street, Cranford, NJ.

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

ORDER

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d) and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(c), 1681a(d), and 1681a(f).

I.

It is ordered, That respondents Macy's Northeast, Inc., Macy's South, Inc., Macy's California, Inc., I. Magnin, Inc. and Macy's Data and Credit Services Corp, their successors and assigns and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. A respondent shall not be held liable for a violation of Section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with Section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this order, to mail two (2) copies of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency from which a report was obtained, to each job applicant who was denied employment by a respondent between January 1, 1990, and the date of service of this order, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Such copies of the letter shall be sent by first class mail to the last known address of the applicant that is reflected in the files of the applicable respondent, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as Appendix B, copies of which are to be provided by respondents. Copies of the letter attached as Appendix A need not be sent to any applicant who was denied employment with a respondent during the time period specified above if the respondent demonstrates that it had

previously given the applicant notification that complies in all respects with the provisions of paragraph I.1 of this order.

II.

It is further ordered, That for the first six (6) years, commencing with the service of this order, respondents, their successors, and assigns shall maintain for at least one (1) year, and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with this order, such documents to include, but not be limited to, all written employment evaluation criteria relating to consumer reports, written instructions given to employees regarding compliance with the provisions of this order, all notices or a written notation of the description of the form of notice and the date such notice was provided to each job applicant pursuant to any provisions of this order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered, That respondents shall, for a period of four years after the date of service of this order, deliver a copy of this order at least once per year to all employees responsible for respondents' compliance with Section 615(a) of the Fair Credit Reporting Act in respect of the use of consumer reports for employment purposes.

IV.

It is further ordered, That respondents shall, for a period of six (6) years from the date of service of this order, notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate structure of respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or

divisions, or any other change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondents shall, within one hundred twenty (120) days of the date of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Yao not participating.

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Decision and Order

APPENDIX A

Dear _____:

Our records show that you applied for employment to (insert name of applicable respondent) at sometime after January 1 1990. In considering your job application, we obtained information from the consumer reporting agency identified below.

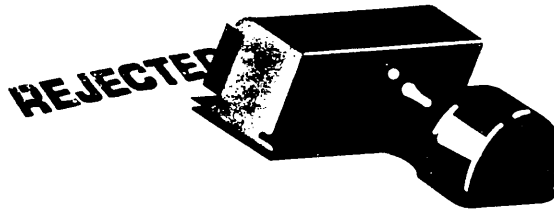
Credit Bureau of X
1234 Main Street
Anytown, USA Zip
(AC) Telephone number

Under the federal Fair Credit Reporting Act, you may learn what information is in your file by contacting this consumer reporting agency. You may obtain this information without charge if you contact the agency within the next 30 days. An extra copy of this notice is enclosed so that you may give it to the agency, should you decide to review your file.

Yours truly,

Director of Personnel

APPENDIX B



Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRAs." The most common type of CRA is the credit bureau. The information sold by CRAs to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRAs. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRAs:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you

FEDERAL TRADE COMMISSION/BUREAU OF CONSUMER PROTECTION

FTC
BCP

receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- bankruptcy information can be reported for 10 years;
- information reported because of an application for a job with a salary of more than \$20,000 has no time limitation;
- information reported because of an application for more than \$50,000 worth of credit or life insurance has no time limitation;
- information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act requires creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go to the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, D.C. 20580.

Federal Trade Commission
Washington, D.C. 20580
Official Business, Penalty
For Private Use: \$300

FIRST CLASS MAIL
POSTAGE & FEES PAID
Federal Trade Commission
Permit No. G-62

IN THE MATTER OF

DR. SCOTT M. ROSS

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

Docket C-3363. Complaint, January 9, 1992--Decision, January 9, 1992

This consent order requires, among other things, a Minneapolis cosmetic surgeon, d/b/a Mpls. Center for Cosmetic and Laser Surgery, to disclose in certain advertisements the existence of risks from -- and the expected recovery period following -- his cosmetic surgery services, and to have scientific evidence supporting results claims.

Appearances

For the Commission: *Richard Kelly, Walter C. Gross, III, and Melissa Feinberg.*

For the respondent: *James Taylor, Jr., Dorsey & Whitney, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, ("respondent" and "MPLS"), has violated certain provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41 *et. seq.*, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, is a resident of Minnesota with his principal office and place of business located at 910 E. 26th Street, Suite 425, Abbott Northwestern Medical Campus, Minneapolis, Minnesota.

PAR. 2. Respondent is a medical doctor who is currently, and has for some time, engaged in the sale and the offering for sale of

services in connection with liposuction and other cosmetic surgery procedures.

PAR. 3. Respondent has placed, or caused to be placed, advertisements for MPLS in various periodicals that are in general circulation to the public, including but not limited to the advertising material referred to in paragraphs five through ten of this complaint, to promote his services in liposuction to patients and prospective patients.

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

PAR. 5. MPLS's advertisements contain representations as to the safety and efficacy of liposuction for patients who purchase MPLS's services. Typical of these advertisements, but not necessarily all-inclusive thereof, is an advertisement that respondent ran in newspapers of general circulation under the headline, "LIPO (FAT) SUCTION." The ad prominently features two side-by-side rear view photographs of the buttocks, hips and thighs of an unidentified person or persons with the statement "43 years" appearing directly under the left photograph and the statement "25 minutes" directly underneath the right photograph, and further contains the following statement:

"It's a fact; the unwanted fat that we all get as we age on our hips, waist, thighs, knees, stomach, ankles and chin, can be removed safely and permanently in a matter of minutes."

PAR. 6. Through the use of the photographs and statements referred to in paragraph five, respondent has represented, directly or by implication, that the difference between the configurations depicted in the two side-by-side photographs fairly represents the results that can be typically achieved in an actual 25 minute liposuction procedure.

PAR. 7. In truth and in fact the difference between the configurations depicted in the two side-by-side photographs does not fairly represent the results that can be typically achieved in an actual 25 minute liposuction procedure.

PAR. 8. Through the use of the statements and representations referred to in paragraphs five and six, respondent has represented, directly or by implication, that at the time respondent made those

representations, respondent possessed and relied upon a reasonable basis for said representations.

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

PAR. 10. Through the use of the photographs and statements referred to in paragraph five, respondent has further represented, directly or by implication, that liposuction of the hips or thighs is a minor medical procedure, with no risk of serious adverse complications and not involving significant discomfort or the need for a lengthy recovery period.

PAR. 11. In truth and in fact, liposuction of the hips or thighs is an invasive, surgical procedure with potential serious adverse complications and risks that include shock, infection, and embolism as well as the risks that accompany any procedure that involves the use of anesthesia, and, furthermore, there is usually significant discomfort and the need for a recovery period of several weeks.

PAR. 12. Accordingly, the representations set forth in paragraph five were and are false and misleading.

PAR. 13. The acts and practices of respondent alleged in this complaint constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

Commissioner Yao not participating.

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth

in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent Scott M. Ross, M.D. is a Minnesota resident doing business as the Mpls. Center for Cosmetic and Laser Surgery, with his principal place of business located at: 910 E. 26th Street, Suite 425, Abbott Northwestern Medical Campus, Minneapolis, Minnesota.
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

DEFINITION

For purposes of this order, the phrase, "advertising, promotion or offering for sale," does not include any statement made by respondent or his representatives, agents or employees to a patient after the patient has agreed to purchase the service represented.

I.

It is ordered, That respondent, Dr. Scott M. Ross, d/b/a Mpls. Center for Cosmetic and Laser Surgery, and his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising,

promotion, or offering for sale of liposuction or any surgical procedures, do forthwith cease and desist from:

(1) Representing, directly or by implication, that results depicted in advertising are typical of results that can actually be obtained through a cosmetic surgery procedure unless such is the case;

(2) Representing, directly or by implication, through any advertisement containing before-and-after photographs, that said photographs accurately depict the results of actual surgical procedures unless he possesses a reasonable basis for such representation, which shall, at a minimum, consist of documentary evidence that the photographs appearing in the advertisement depict actual results of surgical procedures, without enhancement through makeup, padding or other non-surgical improvements in the photographs;

(3) Otherwise misrepresenting, in any manner, directly or by implication, the results that can be achieved with liposuction or any other cosmetic surgical procedure;

(4) Representing, through any advertisement, directly or by implication, that liposuction, or any other cosmetic surgery procedure that entails risk of serious medical complications, is safe unless said representation is accompanied by a clear and prominent disclosure that the procedure is a surgical procedure involving the risk of adverse medical complications;

(5) Representing, through any advertisement, directly or by implication, that any cosmetic improvement through surgery can be obtained in any specified period of time unless said representation includes the length of the typical post-operative recovery period or is accompanied by a clear and prominent disclosure of the typical length of said recovery period; and

(6) Otherwise misrepresenting, in any manner, directly or by implication, either the recovery times or the likelihood of serious adverse complications associated with liposuction or any other cosmetic surgery procedure.

II.

It is further ordered, That respondent shall distribute a copy of this order to all of respondent's present and future officers, agents, representatives, and employees of respondent having responsibilities with respect to the subject matter of this order.

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in his possession or control or of which he has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business and, for a period of five (5) years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

V.

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

Commissioner Yao not participating.

IN THE MATTER OF

THE PINKERTON TOBACCO COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF
1986 AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket, C-3364. Complaint, Jan. 9, 1992--Decision, Jan. 9, 1992

This consent order prohibits, among other things, the Virginia-based company from advertising any smokeless tobacco product on any broadcast medium, including television, in connection with the broadcast of any Pinkerton-sponsored event, and requires the respondent to distribute a copy of the order to each operating division, manager, officer, agent, or employee engaged in advertising or sponsorship activities, the production of sponsored events, or other sales materials.

Appearances

For the Commission: *Anne Maher and Judy Wilkenfeld.*

For the respondent: *William C. McClure, III, Richmond, VA.
James R. Loftis, III and T. Michael Jankowski, Collier, Shannon &
Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the Pinkerton Tobacco Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent the Pinkerton Tobacco Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Pinkerton's office and principal place of business is located at 6630 W. Broad Street, P. O. Box 1158, Richmond, VA.

PAR. 2. Respondent, at all times mentioned herein, has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent the Pinkerton Tobacco Company advertises, offers for sale, and sells tobacco products, including but not limited to Red Man brand smokeless tobacco to consumers throughout the United States.

PAR. 4. In the course and conduct of its business the Pinkerton Tobacco Company has sponsored various sporting events, including, but not limited to, the Redman Pulling Series, a series of truck and tractor events, which are attended and patronized by consumers throughout the United States.

PAR. 5. TNT Productions, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky. TNT Productions organized, promoted and produced various sporting events. From 1986 until 1990, TNT promoted and produced the Redman Pulling Series. In 1990, TNT Productions was disbanded.

PAR. 6. Through its control of TNT Productions, Inc., as well as through other activities in connection with its sponsorship of events, the Pinkerton Tobacco Company has allowed the various, sponsored events as described in paragraph four to be filmed for broadcast on a medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

PAR. 7. In the course and conduct of its business in order to induce sales of its tobacco products, the Pinkerton Tobacco Company directly or indirectly paid for display of its product's brand name, logo, or selling message during the broadcast of various sponsored events as described in paragraphs five and six. Typical and illustrative, but not necessarily all-inclusive thereof, of the manner of display of the smokeless tobacco brand name, logo, or selling message are the following:

During a pulling event, the sled which is pulled by each of the competing vehicles, and is therefore prominent throughout the broadcast of the event, contains flags and signage bearing smokeless tobacco brand names, logos, or selling messages, including but not limited to the name "Red Man," the Red Man Indian

head logo, and such selling messages as "CHEWING TOBACCO" and "AMERICA'S BEST CHEW;"

During an event, banners, line markers, and other signage bearing the Red Man name and logo are arranged in and around the track;

During an event, workers, competitors, and other participants who are out on the track, some of whom are interviewed on the broadcast, wear hats and uniforms bearing the Red Man brand name, logo, or selling message;

Televised commercials for Pinkerton-sponsored events include on-screen display of the Red Man Indian head logo;

Televised program identifiers, occurring at the beginning or end of an event or before or after a commercial break include on-screen display of the Red Man Indian head logo;

PAR. 8. Through the activities described in paragraphs four through seven and others not specifically set forth herein, respondent advertises or has advertised smokeless tobacco products on a medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

PAR. 9. The acts and practices of respondent, as herein alleged, have constituted, and now constitute, a violation of the Comprehensive Smokeless Tobacco Health Education Act of 1986, and by virtue of Section 5 thereof, Section 5 of the Federal Trade Commission Act.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Comprehensive Smokeless Tobacco Health Education Act of 1986, and by virtue of Section 5 thereof, a violation of Section 5 of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an

admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules.

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

1. Respondent the Pinkerton Tobacco Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6630 W. Broad Street, P.O. Box 1158, Richmond, VA.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

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

1. The term "*event*" means any type of gathering for public entertainment with or without an audience, including, but not limited to, any athletic or sporting activity (such as tractor pulls and monster truck events, racing, rodeo, wrestling, or fishing) or musical, artistic, or nightclub activity.
2. The term "*broadcast*" refers to appearances on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.
3. The term "*smokeless tobacco product*" means smokeless tobacco as defined in Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. 4408(1).

PART I.

It is ordered, That respondent the Pinkerton Tobacco Company, a corporation, and its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with a broadcast of any event which it sponsors, do forthwith cease and desist from advertising any smokeless tobacco product on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission;

Provided however, that in connection with a broadcast of a sponsored event, nothing in this order shall prohibit:

A. The use of a brand name of a smokeless tobacco product as the name of the sponsored event provided that the logo, selling message, color, or design feature of the product or its packaging is not used, however:

1. The brand name as qualified above may be used as part of a program identifier at the beginning or end of a program or before or after a commercial break;

2. The brand name as qualified above may be used within advertising by the broadcaster for the program so long as the advertising is not directly or indirectly placed or made by respondent;

B. Any incidental or de minimis broadcast of a brand name, logo, selling message, or event name so long as the brand name, logo, selling message or event name does not appear:

1. On signage in an area on which cameras routinely focus during an event (*e.g.*, the starting and finishing line in a truck or tractor pull);

2. On signage on competing vehicles or other event equipment upon which cameras routinely focus (*e.g.*, the weighted sled pulled during a truck or tractor event); or

3. On clothing of event officials, commentators, competitors, or participants, if provided to them directly or indirectly by respondent.

Provided further, that this order shall not cover :

C. The first broadcast of an event which had never before been broadcast, if respondent could not have reasonably foreseen the broadcast of this type of event; or

D. Any films or video tapes of any event in existence at the time the parties enter this agreement over which respondent has no control, *provided however*, that respondent shall send a copy of this order to each and every entity that it knows possesses such a film or tape.

PART II.

It is further ordered, That within thirty (30) days after service of this order, respondent, its successors and assigns, shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising, sponsorship activities, production of sponsored events, or other sales material covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

PART III.

It is further ordered, That respondent, its successors and assigns, for three (3) years after the date of entry of this order, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records, including, but not limited to, sponsorship agreements, trademark license agreements, and films or video tapes of sponsored events covered by Part I of this order.

PART IV.

It is further ordered, That respondent, its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution,

assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

PART V.

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

Commissioner Yao not participating.

IN THE MATTER OF

NESTLE FOOD COMPANY

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

Docket C-3365. Complaint, Jan. 21, 1992--Decision, Jan. 21, 1992

This consent order prohibits, among other things, the California-based marketer of Carnation Coffee-mate Liquid from misrepresenting the amount of total fat, saturated fat, or cholesterol in Coffee-mate Liquid or any other milk product or non-dairy substitute, relative to the serving size depicted in its advertisements or promotional materials.

Appearances

For the Commission: *Anne V. Maher* and *C. Lee Peeler*.

For the respondent: *Sara Holtz* and *Randall Boyce*, San Francisco, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Food Company, formerly known as Carnation Company ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a Delaware corporation with offices and principal place of business located at 800 North Brand Boulevard, Glendale, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed food products, including Coffee-mate Liquid, a non-dairy liquid creamer. Coffee-mate Liquid is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Responsibility for advertising, sale and distribution of Coffee-mate

Liquid has been transferred to Nestle Beverage Company. Both respondent and Nestle Beverage Company are wholly owned subsidiaries of Nestle Holdings, Inc.

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

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Coffee-mate Liquid, including but not necessarily limited to the advertisements attached as Exhibits A and B. Specifically, the aforesaid advertisements contain the following statements and depictions:

a. Enjoy the rich, creamy taste of new Coffee-mate Liquid in more than just coffee. Try it on fruit, cereal, or in your favorite recipe. It's low in fat, lactose-free, and has no cholesterol. [Depiction of carton of Coffee-mate Liquid, a cup of coffee, a bowl of cereal, and a bowl of fruit.] (Exhibit A).

b. I like rich, creamy tasting things, but I also like to stay away from cholesterol and saturated fat. I found a smart new way to do both. New Coffeemate Liquid non-dairy creamer. All the rich, creamy taste of half & half but 75% less saturated fat and no cholesterol. In coffee, over fruit and cereal, Coffee-mate Liquid is a smart new way to have the taste you like without the fat and cholesterol you don't. [Depiction of Coffee-mate Liquid being poured first over bowl of fruit and cereal, then into a cup of coffee, and then again over a bowl of fruit.] (Exhibit B).

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that Coffee-mate Liquid is a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

PAR. 6. In truth and in fact, Coffee-mate Liquid is not a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking. Therefore, the representation as set forth in paragraph five was and is false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by

implication, that Coffee-mate Liquid is lower in fat than other foods, such as whole milk or low-fat (2%) milk, for which it would be a substitute when used on cereal, on fruit or in cooking.

PAR. 8. In truth and in fact, Coffee-mate Liquid is not lower in fat than other foods, such as whole milk or low-fat (2%) milk, for which it would be a substitute when used on cereal, on fruit or in cooking. A one-half cup serving of Coffee-mate Liquid has 8.5 grams of fat, which represents nearly twice the amount of fat in a one-half cup serving of whole milk (4.4 grams) and nearly four times the amount of fat in a one-half cup serving of low-fat (2%) milk (2.3 grams). Therefore, the representation as set forth in paragraph seven was and is false and misleading.

PAR. 9. The acts or practices of respondent, as alleged in this complaint, constitute unfair or deceptive acts or practices in or affecting commerce and the making of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into certain acts and practices of the respondent named in the caption hereof, and the respondent and Nestle Beverage Company, both of which are wholly owned subsidiaries of Nestle Holdings, Inc., having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, Nestle Beverage Company and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent and Nestle Beverage Company of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent or Nestle Beverage Company that the law has been

violated as alleged in such complaint, and waivers of other provisions as required by the Commission's Rules; and

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

1. Respondent Nestle Food Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with offices and its principal place of business located at 800 North Brand Boulevard, Glendale, California.

Nestle Beverage Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with offices and its principal place of business located at 345 Spear Street, San Francisco, California.

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

ORDER

DEFINITIONS

For purposes of this order, the term "*milk product*" shall mean any product for which a federal standard of identity has been established under 21 CFR 131 as currently in effect as of the date of this order.

For purposes of this order, the term "*non-dairy substitute*" shall mean any product which is commonly used as a substitute for a milk product which, for purposes of this order, shall include but not be limited to any non-dairy creamer.

I.

It is ordered, That Nestle Food Company, formerly known as Carnation Company, and Nestle Beverage Company (collectively "the companies"), their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any food, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of total fat, saturated fat or cholesterol in any milk product or any non-dairy substitute; and

B. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute relative to the serving size or amount customarily consumed for any particular use being advertised or promoted.

Provided, however, that nothing in provisions A and B above shall prohibit any representation as to the amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act.

II.

This order shall not apply to an unaffiliated purchaser of the assets of the dairy currently owned by Nestle Food Company and located in Phoenix, Arizona, provided that the sale of such dairy's assets are conducted in a manner consistent in all material respects with the description and terms of that sale as set forth in the attached

letter, dated October 16, 1991, from Nestle Food Company to Federal Trade Commission staff, and provided further that Nestle Food Company shall remain responsible under the terms of this order for any representation made, as covered by Part I of this order, for any milk product or non-dairy substitute marketed under a trademark of Nestle Food Company.

III.

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

A. All materials that were relied upon by the companies in disseminating any representation covered by this order; and

B. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question any representation that is covered by this order.

IV.

It is further ordered, That the companies shall notify the Commission at least thirty (30) days prior to any proposed change in the companies, 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 companies which may affect compliance obligations arising out of this order.

V.

It is further ordered, That the companies shall, within thirty (30) days after service upon them of this order, distribute a copy of this order to each of their operating divisions, to each of their managerial employees, and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this order.

VI.

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

Decision and Order

115 F.T.C.

ATTACHMENT

NESTLE USA, INC.

October 16, 1991

Michelle Rusk, Esq.
Anne Maher, Esq.
Federal Trade Commission
Washington, D.C. 20680

Dear Ms. Rusk and Ms. Maher:

I am representing Nestle Food Company in the sale of the assets of its Phoenix dairy operation. The following is some information about the proposed sale of the dairy which we believe is relevant to excluding it from the proposed order.

First, and perhaps most importantly, Nestle Food Company is only selling assets of the dairy located in Phoenix, Arizona to an unaffiliated entity. Those assets are valued at less than 1% of the total value of the Nestle Food Company.

Secondly, to assist in promoting a smooth transition of the sale of the assets by the Nestle Food Company to the unaffiliated entity, Nestle Food Company will be licensing the new owner to use certain of its trademarks for a limited period of time. Under the terms of the trademark license, Nestle will have the ability to reasonably control the labeling and advertising of products that display a Nestle trademark.

Thirdly, the dairy operation is a regional stand-alone business. It manufactures milk, sour cream, cottage cheese and the like. The dairy does not manufacture any of the products promoted in the alleged violative advertising.

Fourthly, while a minority of the shareholders of the proposed purchaser include a present and a former Carnation employee, none of the shareholders had any responsibility or involvement in the alleged violative advertising.

Lastly, we wish to stress that the sale of the assets of the dairy is purely the result of a business decision by Nestle Food Company to discontinue its involvement with this type of business operation, and is not motivated in any way by an attempt to circumvent the order.

Yours very truly,

/S/

Mark Evans

EXHIBIT A

New Carnation Coffee-mate Liquid

Pour on the flavor and save 80¢.

Enjoy the rich, creamy taste of new Coffee-mate Liquid in more than just coffee. Try it on fruit, cereal, or in your favorite recipe. It's low in fat, lactose-free, and has no cholesterol.

NEW
NO CHOLESTEROL
LOW IN SATURATED FAT
100% LACTOSE FREE

Carnation.
Coffee-mate
LIQUID
NON-DAIRY CREAMER

NEW
Use in coffee, cereals, desserts and cooking.

30¢ **save 30¢**
on one 16-oz carton of Coffee-mate Liquid non-dairy creamer only

50¢ **save 50¢**
on one 32-oz carton of Coffee-mate Liquid non-dairy creamer only

IN THE DAIRY CASE

EXHIBIT A

Decision and Order

115 F.T.C.

EXHIBIT B

CARNATION COFFEE-MATE LIQUID
"SMART WAY"

CLIENT: Carnation Company
COMMERCIAL NO.: CMCM 9023

EXHIBIT B

LENGTH: 30 Seconds



WOMAN: I like rich, creamy tasting things



But I also like to stay away



from cholesterol



and saturated fat



I found a smart new way to do both



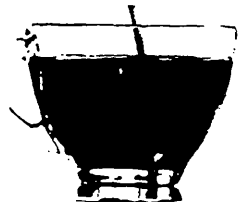
New Coffee-mate Liquid non-dairy creamer



As the rich, creamy taste of half & half



but 75% less saturated fat and no cholesterol



in coffee



over fruit or cereal



Coffee-mate Liquid is a smart new way to have the taste you like without the fat and cholesterol you don't



ANNCR...VO: Rich, creamy and smart. New Coffee-mate Liquid from Carnation. In your grocer's dairy case.

IN THE MATTER OF

ST. IVES LABORATORIES, INC.

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

Docket C-3366. Complaint, Jan. 24, 1992--Decision, Jan. 24, 1992

This consent order prohibits, among other things, a California company from representing that its skin cream or any other non-prescription skin cream is, contains, or has the same wrinkle-removing effect as the prescription drug tretinoin or from representing that its cosmetic products are, contain, or have the same effect as another manufacturer's prescription drug. Respondent also is prohibited from representing that its skin product is new or that it helps reduce the visible signs of aging. In addition, respondent is required to pay \$100,000 to be deposited into the United States Treasury.

Appearances

For the Commission: *Pamela J. Wood.*

For the respondent: *James B. Swire, Townley & Updike, New York, N.Y.*

COMPLAINT

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

PARAGRAPH 1. Respondent St. Ives Laboratories, Inc. is a Delaware corporation, with its office or principal place of business located at 8944 Mason Avenue, Chatsworth, California.

PAR. 2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 3. Respondent has advertised, offered for sale, sold or distributed health and beauty aids and cosmetics, including a skin care product known at different times as "Retinyl-A" or "St. Ives A® Retinyl Palmitate Treatment Cream" ("St. Ives A® skin cream").

PAR. 4. St. Ives A® skin cream is a "cosmetic" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 5. Respondent has disseminated or caused to be disseminated advertisements for St. Ives A® skin cream by various means in or affecting commerce, including magazines and newspapers distributed across state lines, for the purpose of inducing the purchase of St. Ives A® skin cream by members of the public.

PAR. 6. Between April and December 1988, respondent marketed two different styles of bottles of St. Ives A® skin cream before introducing the current style of bottle. Photocopies of the front and back labels of the two different styles of bottles at issue in this complaint appear in Exhibit A. (The current style of bottle is not the subject of this complaint.)

PAR. 7. Respondent's advertisements, packaging, and promotional material for St. Ives A® skin cream, including the bottles shown in Exhibit A and the advertisements attached as Exhibits B and C, portray the product with a large red "A" next to the words "RETINYL PALMITATE," with "RETINYL" enlarged and "PALMITATE" reduced. In addition, on the original package the product is actually called "Retinyl-A" on the back label. Respondent's advertisements, packaging, and promotional material use the explicit or implied name "Retinyl A" in conjunction with representations that the product is "a breakthrough in skin care!", "new", an "advance", and that it "helps reduce the visible signs of aging."

PAR. 8. Through the use of the explicit or implied name "Retinyl A" in conjunction with the statements and depictions referred to in paragraph seven (including package design), among others, respondent has represented, directly or by implication, that St. Ives A® skin cream is the same as, contains, or has the same wrinkle-removing effect as, the prescription drug tretinoin (currently marketed as Retin-A).

PAR. 9. In truth and in fact, St. Ives A® skin cream is not the same as, does not contain, and does not have the same effect on wrinkles as, the prescription drug tretinoin. Therefore, the representations set forth in paragraph eight are false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constituted and now constitute unfair and deceptive acts or practices in or affecting commerce and false advertising in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Yao not participating.

77

Complaint

EXHIBIT A

EXHIBIT A

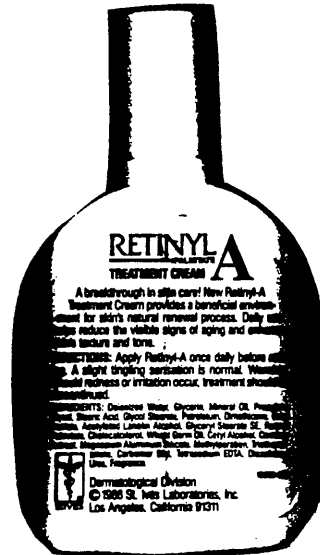


EXHIBIT B

1... book at 88

EXHIBIT B

An Advance in Skin Care

From ST. IVES LABORATORIES



Helps reduce the visible signs of aging

*Not for use on...
 St. Ives Laboratories, Inc. - Palm Beach, Florida, U.S.A.
 89441 Nelson Avenue, Cheney, Wash.
 19615*

DECISION AND ORDER

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

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

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

1. Respondent, St. Ives Laboratories, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8944 Mason Avenue, Chatsworth, California.
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 St. Ives Laboratories, Inc., a corporation, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of "ST. IVES A® Retinyl Palmitate Treatment Cream" (hereinafter referred to as "ST. IVES A®") or any other non-prescription skin cream in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from representing in any manner, contrary to fact, directly or by implication, that such product is, contains, or has the same wrinkle-removing effect as the prescription drug tretinoin (currently known as "Retin-A"). As used in this paragraph, the term "representing" shall not apply to the act, without more, of manufacturing products for third parties.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of ST. IVES A® or any successor product, do forthwith cease and desist from creating a direct visual association between the terms "RETINYL" or "RETINOL" and "A" in such a way that the term "RETINYL" or "RETINOL" immediately precedes the term "A", through the use of any design features (including without limitation spacing, letter size, color, or capitalization).

III.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or

through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling or distributing of ST. IVES A® or any successor product where the words "RETINYL" or "RETINOL" are prominently featured on the package, in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, do forthwith cease and desist from claiming or representing, directly or by implication, that such product is "new," that it is a "breakthrough" or "advance" in skin care, or that it "helps reduce the visible signs of aging."

IV.

It is further ordered, That respondent, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promoting, offering for sale, selling, or distributing of any product which is solely a cosmetic in or affecting commerce, as "cosmetic" and "commerce" are defined in Sections 4 and 15 of the Federal Trade Commission Act, 15 U.S.C. 44 and 55, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that its cosmetic product is, contains, or has the same effect as another manufacturer's prescription drug. As used in this paragraph, the term "representing" shall not apply to the act, without more, of manufacturing products for third parties.

V.

It is further ordered, That respondent, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from distributing or selling any package of ST. IVES A® that displays the labeling or packaging shown in Exhibit A attached hereto.

VI.

It is further ordered, That respondent and its successors and assigns shall deliver to the Federal Trade Commission a certified check for One Hundred Thousand Dollars (\$100,000) payable to the "Treasurer of the United States" within ten calendar days of written notice of this order. This amount shall be deposited into the United States Treasury. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

VII.

It is further ordered, That respondent and its successors and assigns shall distribute a copy of this order to all present and future officers, to each of its operating divisions, and to each and every employee involved in managerial or marketing activities in connection with the sale of cosmetics in any business organization owned, directed or controlled, directly or indirectly, by respondent for a period of five (5) years from the date of entry of this order.

VIII.

It is further ordered, That for a period of five (5) years from the date of entry of this order, respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IX.

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

Commissioner Yao not participating.

PAR. 2. Respondents are now, and at all times relevant to this complaint have been, engaged in the advertising, promotion, offering for sale, sale, or distribution of automobiles.

PAR. 3. Respondents have disseminated or caused to be disseminated advertisements for automobiles by various means in or affecting commerce, including but not limited to national magazines and television broadcasts across state lines.

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

PAR. 5. Typical and illustrative of respondents' advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A and B. These advertisements depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars with the exception of a Volvo 240 station wagon, which remains intact.

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five (hereinafter, "the monster truck advertisements"), and others in advertisements not specifically set forth herein, respondents have represented, directly or by implication, that the monster truck event included unaltered cars, which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions.

PAR. 7. In truth and in fact, the monster truck event did not include unaltered cars subjected to equal treatment and the results shown did not accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. Among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subjected to less severe treatment than the competing cars by the monster truck. Therefore, the representations set forth in paragraph six were, and are, false and misleading.

PAR. 8. The dissemination of the aforesaid false and misleading representations by respondents as alleged in this complaint

constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act .

Commissioner Yao not participating.

DECISION AND ORDER

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

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

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

1. Volvo North America Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 535 Madison Avenue, New York, NY.

Volvo Cars of North America is a division of Volvo North America Corporation, with its headquarters located at Rockleigh Industrial Park, Northvale, New Jersey.

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

ORDER

For purposes of this order, "*automobile*" shall mean any automobile or light truck, including but not limited to any pick-up truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I.

It is ordered, That respondents Volvo North America Corporation, a corporation, and Volvo Cars of North America, a division of Volvo North America Corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile or automobile part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;

2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;

3. The use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or

4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

II.

It is further ordered, That within five (5) days of the date of service of this order, respondents, their successors and assigns, shall pay \$150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall also pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III.

It is further ordered, That within fifteen (15) days of the date of service of this order, respondents shall distribute a copy of this order to each of their operating divisions engaged in the advertising, offering for sale, sale or distribution of any automobile or automobile part, to each of their officers, and to each of their agents, represent-

atives or employees who perform discretionary functions and are engaged in the preparation or placement of advertising or other materials covered by this order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the order.

IV.

It is further ordered, That respondents, their successors and assigns, for three (3) years after the date of the last dissemination of the representation, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondents to a television network or to any other individual or entity, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondents, their successors and assigns, for three (3) years after the date of service of this order, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation or division which may affect compliance obligations arising out of this order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

VI.

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

Commissioner Yao not participating.

EXHIBIT A

VOLVO

EXHIBIT A

TITLE: "BEAR FOOT"
LENGTH: 25/30 SECONDS

PRODUCT: CORE VALUES
CODE NO.: OVSM1632/1623



(SFX-CROWD CHEERS) P A
ANNCR: We're getting ready



for a wild and exciting



day out here



as he brings it to the line.



(SFX-ENGINE REVVING TIRES
SCREECHING)



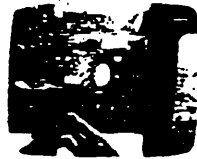
There he goes!



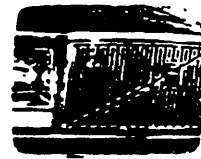
He's off and running



(SFX-CRASH-GLASS BREAKING)



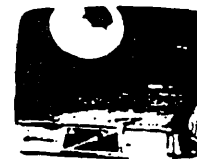
Whoa! We've got one car



still standing out there.



(SFX-CRASH-CROWD SCREAMS)



That car refuses to go down.



(SFX-CROWD BOOS-SCREAMS)



ANNCR (VO) Apparently, not
everyone appreciates the
strength



of a Volvo

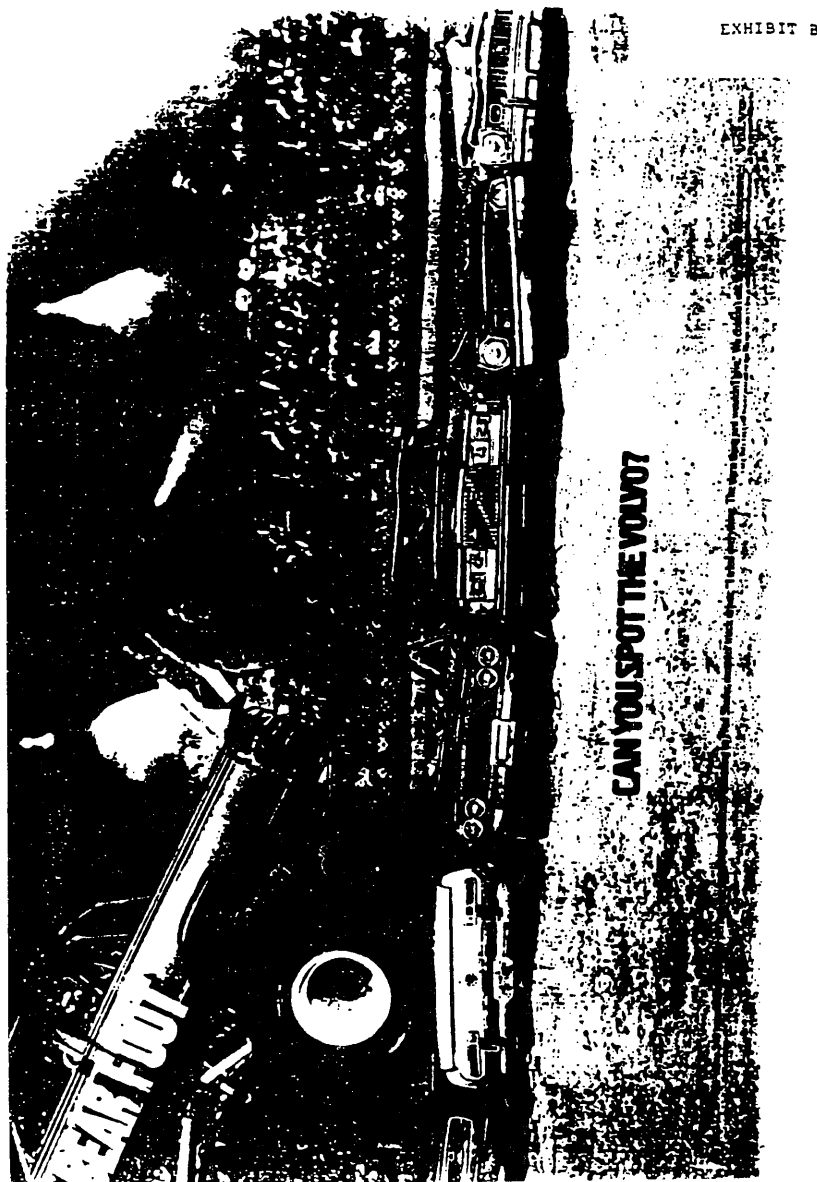


(SILENT)

(ALSO AVAILABLE IN 45

100010

EXHIBIT B



IN THE MATTER OF

SCALI, MCCABE, SLOVES, INC.

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

Docket C-3368. Complaint, Jan. 28, 1992 -- Decision, Jan. 28, 1992

This consent order requires, among other things, the New York advertising agency of Volvo North America Corporation to pay \$150,000 to the U.S. Treasury as disgorgement, and prohibits respondent from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or auto part, or the safety of a vehicle occupant in a collision.

Appearances

For the Commission: *Lisa B. Hellerman and Joel Winston.*

For the respondent: *Lewis R. Clayton, Paul, Weiss, Rifkind, Wharton & Garrison, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Scali, McCabe, Sloves, Inc. has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a New York corporation, with its principal office and place of business at 800 Third Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Volvo North America Corporation, and prepared and disseminated advertisements to promote the sale of Volvo automobiles.

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

PAR. 4. Typical and illustrative of respondent's advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A and B. These advertisements depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars with the exception of a Volvo 240 station wagon, which remains intact.

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four (hereinafter, "the monster truck advertisements"), and others in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that the monster truck event included unaltered cars, which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions.

PAR. 6. In truth and in fact, the monster truck event did not include unaltered cars subjected to equal treatment and the results shown did not accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. Among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subjected to less severe treatment than the competing cars by the monster truck. Therefore, the representations set forth in paragraph 5 were, and are, false and misleading.

PAR. 7. The dissemination of the aforesaid false and misleading representations by respondent as alleged in this complaint constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption

hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

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

1. Scali, McCabe, Sloves, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 800 Third Avenue, New York, NY.

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

For purposes of this order, "*Automobile*" shall mean any automobile or light truck, including but not limited to any pick-up

truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I.

It is ordered, That respondent Scali, McCabe, Sloves, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;
2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;
3. The undisclosed use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or
4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

II.

It is further ordered, That within five (5) days of the date of service of this order, respondent, its successors and assigns, shall pay \$150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondent shall also pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III.

It is further ordered, That within fifteen (15) days of service of this order, respondent shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees who are engaged in managerial or creative functions in the preparation or placement of advertising or other materials covered by this order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the order.

IV.

It is further ordered, That respondent, its successors and assigns, for three (3) years after the date of the last dissemination of the

representation, shall maintain and make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondent to a television network or to any other individual or entity, other than counsel for respondent, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondent, its successors and assigns, for three (3) years after the date of service of this order, shall maintain and make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V.

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

VI.

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

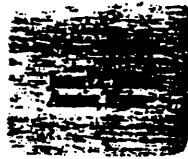
Commissioner Yao not participating.

EXHIBIT A

VOLVO

TITLE: "BEAR FOOT"
LENGTH: 25/30 SECONDS

PRODUCT: CORE VALUES
CODE NO.: OVSM1632/1623



(SFX-CROWD CHEERS) P.A. ANNCR: We're getting ready



for a wild and exciting



day out here



as he brings it to the line.



(SFX-ENGINE REVVING, TIRES SCREECHING)



There he goes!



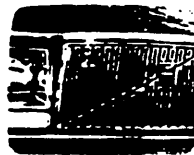
He's off and running.



(SFX-CRASH-GLASS BREAKING)



Wheee! We've got one car



still standing out there.



(SFX-CRASH-CROWD SCREAMS)



That car refuses to go down.



(SFX-CROWD BOOS, SCREAMS)



ANNCR (VO) Apparently, not everyone appreciates the strength



of a Volvo



(SILENT)

EXHIBIT A

ALSO AVAILABLE IN 45

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EXHIBIT B



EXHIBIT B

IN THE MATTER OF

THE MONEY STORE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3369. Complaint, Feb. 6, 1992--Decision, Feb. 6, 1992

This consent order requires, among other things, a New Jersey-based company and its subsidiaries to pay injured consumers redress totaling more than \$1 million, and prohibits them from violating certain provisions of the Truth in Lending Act.

Appearances

For the Commission: *Chris M. Couillou.*

For the respondents: *Joseph Lefkoff, Lefkoff, Duncan, Grimes & Dermer, P.C., Atlanta, GA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., corporations, ("respondents") have violated Sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18(d),(g), and 226.22, and it appearing

to the Commission that a proceeding by it in respect thereof would be in the public interest, issues this complaint pursuant to Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and alleges:

PARAGRAPH 1. The Money Store Inc. is a New Jersey corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 2. The Money Store is a New Jersey corporation, with its principal place of business at 294 Morris Avenue, Springfield, New Jersey.

PAR. 3. The Money Store/California Inc. is a California corporation, with its principal place of business at 17530 Ventura Blvd., Suite 101, Encino, California.

PAR. 4. The Money Store/Connecticut Inc. is a Connecticut corporation, with its principal place of business at 1025 Silas Deane Hwy., Wethersfield, Connecticut.

PAR. 5. The Money Store/D.C. Inc. is a Virginia corporation with its principal place of business at 3750 University Blvd., Suite 2B, Kensington, Maryland.

PAR. 6. The Money Store/Delaware Inc. is a Delaware corporation, with its principal place of business at 4512 Kirkwood Highway, Wilmington, Delaware.

PAR. 7. The Money Store/Empire State Inc. is a New York corporation, with its principal place of business at 265 Glen Cove Road, Carle Place, New York.

PAR. 8. The Money Store Financial Co. Inc. is a Pennsylvania corporation, with its principal place of business at Trevose Corporate Center, 4612 Street Road, Trevose, Pennsylvania.

PAR. 9. The Money Store/Georgia Inc. is a Georgia corporation, with its principal place of business at 1165 Northchase Pkwy., Suite 100, Marietta, Georgia.

PAR. 10. The Money Store Home Equity Corp. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

PAR. 11. The Money Store/Kentucky Inc. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

PAR. 12. The Money Store/Maine Inc. is a Maine corporation, with its principal place of business at 201 Main Street, Westbrook, Maine.

PAR. 13. The Money Store/Maryland Inc. is a Maryland corporation, with its principal place of business at 920 Providence Road, Suite 101, Towson, Maryland.

PAR. 14. The Money Store/Massachusetts Inc. is a Massachusetts corporation, with its principal place of business at 389 Worcester Road, 2nd Floor, Framingham, Massachusetts.

PAR. 15. The Money Store/New Hampshire Inc. is a New Hampshire corporation, with its principal place of business at 981 Second Street, Manchester, New Hampshire.

PAR. 16. The Money Store/North Carolina Inc. is a North Carolina corporation, with its principal place of business at 6525 Morrison Blvd., Suite 408, Charlotte, North Carolina.

PAR. 17. The Money Store/Rhode Island Inc. is a Rhode Island corporation, with its principal place of business at 1071 Park Avenue, Cranston, Rhode Island.

PAR. 18. The Money Store/Vermont Inc. is a Vermont corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 19. M Mortgage Inc. is a South Carolina corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

PAR. 20. The Money Store/Michigan Inc. is a Michigan corporation, with its principal place of business at 16801 Newburgh Road, Suite 103, Livonia, Michigan.

PAR. 21. In the course and conduct of their businesses, directly or through subsidiaries, respondents regularly extend credit to consumers primarily for personal, family or household purposes (hereinafter referred to as "consumer credit"), which credit is subject to a finance charge or payable by written agreement in more than four installments (not including down payment) and with regard to which consumers are initially obligated to repay respondents.

PAR. 22. In the course of extending consumer credit, respondents, directly or through subsidiaries, have failed to properly disclose the payment schedule as required by Section 226.18(g) of Regulation Z, 12 CFR 226.18(g). For example and without limitation,

respondents have disclosed a monthly payment computed using the 360/360 method or similar method, although respondents frequently amortize their loans using the 365/360 method. As a result, the disclosed payments are insufficient to fully repay the extension of credit in the time period disclosed, and greater payments would be required to repay the credit extension.

PAR. 23. In the course of extending consumer credit, respondents, directly or through subsidiaries, have disclosed finance charges to consumers that were more than \$10 below the exact finance charge in transactions involving amounts financed of more than \$1000 (hereinafter referred to as "finance charge disclosure errors") in violation of Section 226.18(d) of Regulation Z, 16 CFR 226.18(d). Repayment of these extensions of consumer credit would require payment of finance charges greater than those disclosed.

PAR. 24. In the course of extending consumer credit, respondents, directly or through subsidiaries, have disclosed annual percentage rates to consumers that were more than 1/8 of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22 (hereinafter referred to as "annual percentage rate disclosure errors"). These extensions of consumer credit did not include one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment). Repayment of these extensions of consumer credit would require payment at annual percentage rates greater than those disclosed.

PAR. 25. The finance charge and annual percentage rate disclosure errors committed by respondents resulted from a clear and consistent pattern or practice of violations.

PAR. 26. Respondents' acts or practices as alleged herein were in violation of Sections 106, 107 and 128 of the Truth in Lending Act, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, 12 CFR 226.17, 226.18(d), (g), and 226.22.

PAR. 27. Pursuant to Sections 106, 107, 108(c) and 128 of the Truth in Lending Act 15 U.S.C. 1605, 1606, 1607 (c) and 1638, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Sections 106, 107 and 128 of the Truth in Lending Act, as amended, 15 U.S.C. 1605, 1606 and 1638, and Sections 226.17, 226.18(d) and (g), and 226.22 of Regulation Z, as amended, 12 CFR 226.17, 226.18(d),(g), and 226.22, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45;

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

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

1. The Money Store Inc. is a New Jersey corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.
2. The Money Store is a New Jersey corporation, with its principal place of business at 294 Morris Avenue, Springfield, New Jersey.

3. The Money Store/California Inc. is a California corporation with its principal place of business at 17530 Ventura Blvd., Suite 101, Encino, California.

4. The Money Store/Connecticut Inc. is a Connecticut corporation, with its principal place of business at 1025 Silas Deane Hwy., Wethersfield, Connecticut.

5. The Money Store/D.C. Inc. is a Virginia corporation, with its principal place of business at 3750 University Blvd., Suite 2B, Kensington, Maryland.

6. The Money Store/Delaware Inc. is a Delaware corporation, with its principal place of business at 4512 Kirkwood Highway, Wilmington, Delaware.

7. The Money Store/Empire State Inc. is a New York corporation, with its principal place of business at 265 Glen Cove Road, Carle Place, New York.

8. The Money Store Financial Co. Inc. is a Pennsylvania corporation, with its principal place of business at Trevoise Corporate Center, 4612 Street Road, Trevoise, Pennsylvania.

9. The Money Store/Georgia Inc. is a Georgia corporation, with its principal place of business at 1165 Northchase Pkwy., Suite 100, Marietta, Georgia.

10. The Money Store Home Equity Corp. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

11. The Money Store/Kentucky Inc. is a Kentucky corporation, with its principal place of business at 6100 Dutchman's Lane, Suite 901, Louisville, Kentucky.

12. The Money Store/Maine Inc. is a Maine corporation, with its principal place of business at 201 Main Street, Westbrook, Maine.

13. The Money Store/Maryland Inc. is a Maryland corporation, with its principal place of business at 920 Providence Road, Suite 101, Towson, Maryland.

14. The Money Store/Massachusetts Inc. is a Massachusetts corporation, with its principal place of business at 389 Worcester Road, 2nd Floor, Framingham, Massachusetts.

15. The Money Store/New Hampshire Inc. is a New Hampshire corporation, with its principal place of business at 981 Second Street, Manchester, New Hampshire.

16. The Money Store/North Carolina Inc. is a North Carolina corporation, with its principal place of business at 6525 Morrison Blvd., Suite 408, Charlotte, North Carolina.

17. The Money Store/Rhode Island Inc. is a Rhode Island corporation, with its principal place of business at 1071 Park Avenue, Cranston, Rhode Island.

18. The Money Store/Vermont Inc. is a Vermont corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

19. M Mortgage Inc. is a South Carolina corporation, with its principal place of business at 2840 Morris Avenue, Union, New Jersey.

20. The Money Store/Michigan Inc. is a Michigan corporation, with its principal place of business at 16801 Newburgh Road, Suite 103, Livonia, Michigan.

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

ORDER

I.

It is ordered, That respondents The Money Store Inc., The Money Store, The Money Store/California Inc., The Money Store/Connecticut Inc., The Money Store/D.C. Inc., The Money Store/Delaware Inc., The Money Store/Empire State Inc., The Money Store Financial Co. Inc., The Money Store/Georgia Inc., The Money Store Home Equity Corp., The Money Store/Kentucky Inc., The Money Store/Maine Inc., The Money Store/Maryland Inc., The Money Store/Massachusetts Inc., The Money Store/New Hampshire Inc., The Money Store/North Carolina Inc., The Money Store/Rhode Island Inc., The Money Store/Vermont Inc., M Mortgage Inc., and The Money Store/Michigan Inc., their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension of credit to any consumer primarily for personal, family or household purposes (hereinafter

referred to as "consumer credit"), which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the dollar amount the credit will cost the consumer and the cost of credit expressed as a yearly rate as required by Section 128(a)(3)-(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)-(4), and Sections 226.18(d)-(e) and 226.22 of Regulation Z, 12 CFR 226.18(d)-(e) and 226.22, and from failing to use the term "finance charge" to describe the dollar amount the credit will cost and the term "annual percentage rate" to describe the cost of credit expressed as a yearly rate, as required by Section 128(a)(3)-(4) of the Truth in Lending Act, 15 U.S.C. 1638(a)(3)-(4), and Section 226.18(d)-(e) of Regulation Z, 12 CFR 226.18(d)-(e).

II.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to disclose clearly, conspicuously and accurately the number, amounts, and timing of payments scheduled to repay the obligation, as required by Section 128(a)(6) of the Truth in Lending Act, 15 U.S.C. 1638(a)(6), and Section 226.18(g) of Regulation Z, 12 CFR 226.18(g).

III.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, in connection with the extension of consumer credit, which credit is subject to a finance charge or payable by written agreement in more than four installments, do forthwith cease and desist from failing to make all disclosures in accordance with Section 128 of the Truth in Lending Act, 15 U.S.C. 1638, and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18.

IV.

It is further ordered, That as used in this order "365/360 method" refers to amortization of a credit extension by applying 1/360th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year, "360/360 method" refers to amortization of a credit extension assuming 12 equal months of 30 days and applying 1/360th of the annual interest rate to each of those days, and "365/365 method" refers to amortization of a credit extension by applying 1/365th of the annual rate of interest to the balance of the credit extension during each of the calendar days of the year.

V.

It is further ordered, That, within thirty days of the date of service of this order, respondents and their successors and assigns shall make adjustments for each of their customers who received an extension of consumer credit that was amortized for at least some period of time using the 365/360 method, that was not extinguished before February 20, 1990, and on which disclosures of finance charges did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges. The total adjustments for all these customers shall be \$1,112,000, and the adjustment for each customer shall be in the same proportion to the total adjustment of \$1,112,000 as the number calculated for each such customer, based on Appendix A's formula, is to the sum of the numbers calculated for all such customers, based on Appendix A's formula.

VI.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, do forthwith cease and desist from using the 365/360 method to amortize the extensions of consumer credit in which disclosures of finance charges were made that did not take into account the effect that the use of the 365/360 method would have in increasing the finance charges, and that respondents, their successors

and assigns, and their officers, agents, subsidiaries, representatives and employees, shall use in place of the 365/360 method in amortizing those extensions of consumer credit either the 360/360 method or the 365/365 method.

VII.

It is further ordered, That respondents and their successors and assigns shall make adjustments pursuant to this order by mailing a check in the amount of the adjustment due to the current or last known address of each customer who is to receive an adjustment under paragraph V unless the customer is delinquent in his or her loan payments. If the customer is delinquent, the amount of the adjustment shall be credited to the customer's account. For purposes of this order, respondents shall not be required to make adjustments where the amount of the adjustment is less than one dollar. The checks mailed to customers shall be accompanied by one of two letters. If the credit extension to the customer has not expired, the following letter shall be used:

Dear Customer:

We have enclosed a check for you because you may have been charged more interest on your loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire. You may wish to use the enclosed amount to reduce the balance of your loan. If you wish to use the check to reduce your loan balance, please endorse the check, write above your endorsement "Pay to the order of The Money Store", and return the check to the address stated below along with your next scheduled payment.

[ADDRESS TO BE INSERTED]

If you do not wish to use the check to reduce your loan balance, you may cash it as you would any other check.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

If the credit extension to the customer has expired, the following letter shall be used:

Dear Former Customer:

We have enclosed a check for you because you may have been charged more interest on your past loan with The Money Store than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that requires the enclosed amount be sent to you. This check is yours to keep and use as you desire.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

In the case of customers who are delinquent in their loan payments and whose adjustments are made by account credits, the following letter shall be mailed to the customer at the time the adjustment is made along with a receipt indicating the customer's name, loan or account number, and the amount of the adjustment credited to the customer's account:

Dear Customer:

We have enclosed a receipt stating an amount that has been credited to your loan account with The Money Store because you may have been charged more interest on your loan than you were told. The Money Store has voluntarily agreed to an order by the Federal Trade Commission that required this credit be made; this has reduced the amount you owe on your loan.

If you should have any questions about this letter, please call [NAME OF AN EMPLOYEE OF THE MONEY STORE INC. TO BE INSERTED] at the following toll free number: [NUMBER TO BE INSERTED]. Thank you for your attention.

Very truly yours,
The Money Store

Each envelope containing a letter to a customer pursuant to this paragraph shall bear the following legend in red, 14 point print on its face: IMPORTANT NOTICE OF INTEREST REFUND ENCLOSED.

VIII.

It is further ordered, That, to the extent checks mailed under this order are returned as undeliverable or are not cashed within one hundred and forty days of the date of service of this order, respondents and their successors and assigns shall make a certified check payable to the Federal Trade Commission for an amount equal to the total of the checks that have been returned as undeliverable and the checks that have not been cashed and shall deliver that certified check to the following person and address within two hundred days of the date of service of this order:

William S. Sanger
Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission/S-4631
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

At the time of delivering the certified check, respondents shall also deliver to the foregoing person a list, in both hard copy and computer readable form, of the names and addresses of each customer whose account was credited under paragraph VII and of each customer to whom the respondents mailed a check under paragraph VII. As to each customer whose account was credited, the list shall indicate the amount of the credit. As to each customer who was mailed a check, the list shall indicate the amount of the check mailed to that customer and whether the check was cashed. Customers who were mailed a check that was not cashed shall be listed separately. The Commission in its sole discretion shall determine whether the amount of money remaining undistributed is sufficient to make practical further distribution of adjustments by the Commission to customers. If the Commission determines, at any time, that further distribution of adjustments is impractical, any remaining undistributed funds shall be sent to the U.S. Treasury.

IX.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this order.

X.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, subsidiaries, representatives and employees, shall distribute a copy of this order to each of their officers.

XI.

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

XII.

It is further ordered, That respondents and their successors and assigns shall, within two hundred days after the date of service of this order, and at such other times as the Federal Trade Commission may by written notice require, file with the Commission a report, in writing, setting forth in detail the manner in which they have complied with this order, including, but not limited to, a full accounting of the customers to whom adjustments have been made and the amounts of such adjustments.

APPENDIX A

The number calculated for each customer described in paragraph V of the order shall be calculated using the following formula:

Number = $P \times (A + B \times C)$ where

$$A = (1 + si)^n - (1 + I)^n$$

$$B = \frac{(1 + I)^T}{(1 + I)^T - 1}$$

$$C = (1 + I)^n - 1 - \frac{[(1 + si)^n - 1]}{s}$$

$$I = \frac{\text{Annual interest rate on promissory note evidencing credit extension to customer}}{12}$$

n = Number of payments made by customer through August 1990

P = Beginning principal amount of customer's credit extension

$$s = \frac{365}{360}$$

T = Term of customer's credit extension expressed as a number of months