

IN THE MATTER OF

J. WALTER THOMPSON COMPANY

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

Docket 9104. Complaint, Nov. 4, 1977 — Decision, Aug. 23, 1979

This consent order, among other things, requires a New York City advertising agency to cease disseminating advertisements which contain unsubstantiated performance claims for any "product," as the term "product" is defined in the order.

Appearances

For the Commission: *Robert Barton, Ronald Bogard, L. Hahn, Louise Kotoshirodo and Mitchell Paul.*

For the respondent: *Arthur Medow, Chicago, Ill., Donald Green, Wald, Harkrader & Ross, Washington, D.C., Howard Abrahams, New York City and Burton Y. Weitzenseld, Arnstein, Gluck, Weitzenseld & Minow, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sears, Roebuck and Co., and J. Walter Thompson Company, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sears, Roebuck and Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at Sears Tower, Chicago, Illinois.

PAR. 2. Respondent J. Walter Thompson Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 420 Lexington Ave., New York, New York.

PAR. 3. Respondent Sears, Roebuck and Co., now, and for some time last past has been, engaged in the distribution, sale, and advertising of portable and undercounter dishwashers and other consumer products to the public.

PAR. 4. Respondent Sears, Roebuck and Co. causes the said products, when sold, to be transported from its places of business in various

States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent Sears, Roebuck and Co. at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of dishwashers and other consumer products.

PAR. 6. Respondent J. Walter Thompson Co. is now, and for some time last past has been, an advertising agency of respondent Sears, Roebuck and Co., and now and for some time past has prepared and placed for dissemination, advertising material to promote the sale of various consumer products including Sears dishwashers.

PAR. 7. Respondent J. Walter Thompson Co. at all times mentioned herein has been, and is now, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses, and for the purpose of inducing the sale of Sears dishwashers and other consumer products of respondent Sears, Roebuck and Co., respondents have disseminated and caused the dissemination of advertising in national magazines distributed by the mail and across state lines, and in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines. In addition, respondent Sears has disseminated across state lines advertising in newspapers and in catalogs distributed by the mail, and by other means, and through various other outlets including point of sale.

PAR. 9. Typical of advertisements so disseminated or caused to be disseminated by respondents are the advertisements attached as Exhibits A (print ad) and B (television ad).

PAR. 10. Said Exhibits A and B and others, represent, directly or by implication, that the Sears Lady Kenmore dishwasher will completely remove, without prior rinsing or scraping, all residue and film from dishes and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers, when such dishes, pots and pans are placed in the bottom rack of the dishwasher for one complete set of washing and rinsing cycles.

PAR. 11. At the time that respondents made the representations alleged in Paragraph Ten, they did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 12. In truth and in fact, contrary to respondents' representations in Paragraph Ten, the Sears Lady Kenmore dishwasher will not completely remove, without prior rinsing or scraping, all residue and film from all dishes, and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers, when such dishes, pots and pans are placed in the bottom rack of the dishwasher for one complete set of washing and rinsing cycles. Therefore, said advertisements are deceptive or unfair.

PAR. 13. Said Exhibit A, and others represent directly or by implication, that dishes in the top rack of the dishwasher will get as clean as those on the bottom rack after one complete set of washing and rinsing cycles, without prior rinsing or scraping.

PAR. 14. In truth and in fact, at the time respondents made the representations as alleged in Paragraph Thirteen, the respondents had no reasonable basis for making said representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 15. Said Exhibit A and others, by stating that the "Sani-Wash" cycle gets dishes, pots and pans hygienically clean by giving them an extra hot 155° final rinse, represents, directly or by implication, that this cycle destroys all harmful and other bacteria and microorganisms on the dishes, pots and pans.

PAR. 16. At the time respondents made the representations alleged in Paragraph Fifteen, they did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 17. In truth and in fact, contrary to respondents' representations in Paragraph Fifteen, the "Sani-Wash" cycle does not destroy all harmful and other bacteria and microorganisms on dishes, pots and pans. Therefore, the said advertisements are deceptive or unfair.

PAR. 18. Said Exhibits A and B and others represent directly or by implication, that the demonstrations depicted and referred to in Exhibit A and Exhibit B prove that Sears Lady Kenmore dishwashers will completely remove, without prior rinsing or scraping, all residue and film remaining on all dishes, pots and pans after cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers.

PAR. 19. In truth and in fact, the said demonstrations do not prove that the Sears Lady Kenmore will completely remove, without prior rinsing or scraping, all residue and film from all dishes, and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably

encountered by consumers. Therefore, the said advertisements are deceptive or unfair.

PAR. 20. As alleged in Paragraph Ten of this complaint, said Exhibits A and B and others represent, directly or by implication, that it is unnecessary to scrape or rinse dishes, pots or pans prior to washing them in the Sears Lady Kenmore. In contrast, the Sears owners manual, which is provided to consumers after they purchase a Sears dishwasher, instructed the user to pre-soak or scour firmly cooked or baked-on foods.

PAR. 21. (a) Such instructions are a material fact in light of the representation made in advertising as set forth in Paragraph Ten. Said advertisements fail to reveal a fact material in light of the representation made, and are therefore deceptive or unfair. (b) Such instructions are materially inconsistent with the advertising representation set forth in Paragraph Ten. Therefore, the said advertisements are deceptive or unfair.

PAR. 22. Said Exhibits A and B and others, represent directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraphs Ten, Thirteen and Fifteen whereas in truth and in fact respondent had no reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 23. The use by respondents of the aforesaid false, misleading, deceptive or unfair statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of dishwashers sold by respondent Sears by reason of said erroneous and mistaken belief.

PAR. 24. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

Exhibit A

This demonstration represents the powerful cleaning capability of Sears Lady Kenmore Dishwasher. Certified by the National Consumer Testing Institute.



Sears Lady Kenmore. The do-it-itself dishwasher.

No scraping. No pre-rinsing. Lady Kenmore has 6 powerful hot water jets for the bottom rack, surging hot water with enough force to scrub every dish, pot and pan really clean. Even baked-on food comes off.

And the dishes on top get as clean as those on the bottom. Because every cup and glass is scoured inside and out by a field of eight upper jets.

Then there's Lady Kenmore's protected pulverizer for leftovers. It's kind of a mini-grinder with 12 stainless steel teeth that grind soft foods into tiny particles that wash right down the drain. (Of course, water is always

fresh and clean—the water that rinses your dishes hasn't washed them.)

And our 8 different cycles include Sani-wash, which gives your dishes an extra-hot 155° final rinse. So everything is hygienically clean.

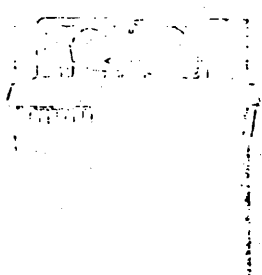
What's more, Sears Lady Kenmore is built to perform.

But if you ever do have a problem, you can rely on Sears service.

Sears Lady Kenmore does just about everything, itself. So you really do have freedom from scraping and pre-rinsing. That's why we call it The Freedom Maker. The

Freedom Maker, both built-in and portable, is

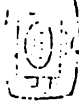
available at Sears, Roebuck and Co. stores and through the catalog.



Sears

The Freedom Maker

1. WALTER THOMPSON COMPANY
675 NORTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60611



TELEVISION COMMERCIAL

<p>FILE CODE: 2694 CLIENT: SEARS, ROEBUCK AND COMPANY PRODUCT: LADY KEMMERE DISHWASHER DATE: "A" 6/5/72</p>	<p>Exhibit B</p> <p>TITLE: "BIRTHDAY CAKE" LENGTH: 30 SECONDS STATUS: AS FILMED SEARS #: R6-1072-6530</p>
<p><u>VIDEO</u></p> <p>MOTHER FINISHES FROSTING A CAKE. LITTLE GIRL LICKS FROSTING FROM CU DISHES GOING INTO DISHWASHER.</p> <p>INSIDE SHOT OF DISHWASHER CLEANING. SUPER: DEMONSTRATION CERTIFIED BY NATIONAL CONSUMER TESTING INSTITUTE.</p> <p>CU DISHWASHER, SUPER: THE FREEDOM MAKER</p> <p>CU LOTHER, LITTLE GIRL AND CAKE.</p>	<p><u>AUDIO</u></p> <p>(MUSIC)</p> <p>ANNCR (VO): Sears Lady Kemmere Dishwasher gives you freedom from scraping and freedom from pre-rinsing. Because it has two hot water jets that scour dishes and a stainless steel pulverizer for soft food waste. We call Sears Lady Kemmere THE FREEDOM MAKER. Because it gives you freedom to do more important things.</p>

Complaint

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DECISION AND ORDER

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

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

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

1. Respondent J. Walter Thompson 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 a principal place of business located at 420 Lexington Ave., New York, New York.

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

ORDER

PART I

It is ordered, That respondent J. Walter Thompson Company (hereafter "J. Walter Thompson" or "JWT"), a corporation, its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, distribution or sale of the products as defined in Part II, paragraph 3 of this order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that any product will clean, without prior rinsing or scraping, all dishes, pots and pans used

in cooking and baking according to normal consumer recipes and under circumstances normally and expectably encountered by consumers, unless JWT has a reasonable basis for such representation.

2. Making any statement or representation directly or by implication concerning the performance of the product, unless JWT has a reasonable basis for such statement or representation.

It shall be an affirmative defense to any compliance action alleging a violation of paragraphs 1 or 2 of Part I of the order for JWT to show that, prior to disseminating an advertisement containing the statement or representation challenged in such compliance action, JWT submitted to its client in writing all the performance claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that the advertiser possessed and relied upon a reasonable basis for those claims.

3. Advertising any such product by referring to or presenting evidence, including a test, experiment, demonstration, study, survey or report, which evidence is represented, directly or by implication, as showing or proving the performance of the product, when such evidence does not show or prove such performance.

It shall be an affirmative defense to any compliance action alleging a violation of paragraph 3 of Part I of this order for JWT to show that, prior to disseminating an advertisement containing the reference or presentation of evidence challenged in such compliance action, JWT submitted to its client in writing all the performance claims which it reasonably believed were shown or proven by the reference or presentation of such evidence in advertising prepared by it and exercised due care to assure itself that this evidence did show or prove such performance claims.

4. Making any statement or representation, directly or by implication, in connection with the advertisement of any such product which it knows or has reason to know is inconsistent in any material respect with any statement or representation concerning the performance of the product made, directly or by implication, in post-purchase material(s) supplied to the purchaser of such product. For purposes of this order, post-purchase material(s) is defined as any product operating manuals and other written material typically made available by JWT's client to an individual who purchase the model of product identified in the advertising prepared by JWT; provided that this paragraph shall only appeal to JWT during the time the advertisement is created and first placed by JWT.

Provided, however, that nothing in this order shall be deemed to deny or limit JWT with respect to any right, defense, or other affirmative

defense to which JWT may otherwise be entitled by law in a compliance action or any other action; nor shall any inference adverse to JWT be drawn in any case from its failure to invoke the affirmative defenses provided in this Part or to rely on the procedures provided herein.

PART II

For purposes of this order, each of the terms listed below, as applied to an advertising agency, is defined as follows:

1. A "reasonable basis" shall consist of a competent and reliable scientific test or tests, or other competent and reliable evidence including competent and reliable opinions of scientific, engineering, or other experts who are qualified by professional training and experience to render competent judgments in such matters.

2. A competent and reliable "scientific test" is one in which one or more persons, qualified by professional training, education and experience, formulate and conduct a test and evaluate its results in an objective manner using testing procedures which are generally accepted in the professions to attain valid and reliable results. The test may be conducted or approved by (a) a reputable and reliable organization which conducts such tests as one of its principal functions, (b) by an agency or department of the government of the United States, or (c) persons employed or retained by JWT's client if they are qualified (as defined above in this paragraph) and can conduct and evaluate the test in an objective manner.

3. The term "product" shall be defined as follows:

(a) dishwashers; and

(b) for paragraphs 2, 3 and 4 of Part I, and for Part II and Part III, the major home appliances identified in the Stipulation of Fact attached hereto, entered on June 7, 1978 (and incorporated herein by reference), but only in the event and to the extent that the Commission hereafter enters an order to cease and desist against Sears in this matter covering each of these products and said order becomes final.

4. The term "performance of the product" shall be defined as follows:

(a) cleaning performance; and

(b) for paragraphs 2, 3 and 4 of Part I, and for Part II and Part III, all other performance claims of the major home appliances identified in the Stipulation of Fact attached hereto, entered on June 7, 1978 (and incorporated herein by reference), but only in the event and to the extent that the Commission hereafter enters an order to cease and

Stipulation of Fact

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desist against Sears in this matter covering such other performance claims of these products and said order becomes final.

PART III

It is further ordered, That:

For the period of three years after JWT last placed the advertisements for dissemination, JWT shall retain all tests results, data, and other documents on which it relied for advertisements of products covered by this order which were in its possession during either creation or placement by JWT of the advertisements.

JWT 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 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.

JWT shall forthwith distribute a copy of this order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements of the products covered by this order.

JWT shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

STIPULATION OF FACT

Undersigned complaint counsel and counsel for J. Walter Thompson Company ("JWT") stipulate as follows:

(1) Between January 1, 1971 and December 31, 1975 J. Walter Thompson prepared and disseminated advertisements for Sears, Roebuck and Co. ("Sears") featuring the following major home appliances: air conditioning units (room or built-in), disposers, dishwashers and trash compactors.

(2) JWT was not involved in the preparation or dissemination of any other advertisement featuring any other Sears major home appliance between January 1, 1971 and December 31, 1975.

(3) For purposes of Part II, paragraph 3(b) of the Agreement Containing Consent Order To Cease And Desist, covering JWT in this proceeding, the major home appliances are all makes of air conditioning units (room or built-in), disposers, dishwashers and trash compactors.

The above Stipulation Of Fact is entered solely and exclusively for purposes of this proceeding and for any Federal Trade Commission order that may issue in this proceeding.

/s/ Robert Barton
Complaint Counsel

/s/ Mark Schattner
Counsel for
J. Walter Thompson Company

Dated: June 7, 1978

IN THE MATTER OF
LONE STAR INDUSTRIES, INC., ET AL.

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

Docket 9122. Complaint, Jan. 25, 1979 — Decision, Aug. 23, 1979

This consent order requires a Greenwich, Conn. manufacturer of portland cement and masonry cement, and the Keystone Portland Cement Co., an Allentown, Pa. competitor, among other things, to provide the Commission with evidence that their acquisition agreement has been terminated, and all non-public documents exchanged during negotiations returned. Respondents are also required to provide the Commission with 60 days' advance notice and liberal discovery rights, should merger plans be resumed before Dec. 31, 1981.

Appearances

For the Commission: *Bert L. Slonim* and *Nicholas P. Kostopoulos, Jr.*

For the respondents: *Melvin C. Garbow* and *D. Bonderman*, *Arnold & Porter*, Washington, D.C. for Lone Star Industries, Inc. and *Ralph W. Brenner* and *T. Michael Mather*, *Montgomery, McCracken, Walker & Rhodes*, Philadelphia, Pa. for Keystone Portland Cement Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into a merger agreement, which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

a. The term "portland cement" means Types I through V of portland cement as specified by the American Society for Testing Materials.

b. The term "masonry cement" means masonry cement as defined by the American Society for Testing Materials.

c. The term "three-state regional market" refers to Eastern Pennsylvania, New Jersey and Delaware.

d. The term "Eastern Pennsylvania" refers to that part of Pennsylvania identified by the Bureau of Mines as Eastern Pennsylvania.

II. LONE STAR INDUSTRIES, INC.

2. Lone Star Industries, Inc. ("Lone Star") is a corporation organized and existing under the laws of the State of Delaware with its principal office at One Greenwich Plaza, Greenwich, Connecticut.

3. Lone Star manufactures and sells a variety of construction-related products, including cement, concrete, home improvement fixtures and lumber.

4. In 1977, Lone Star, the nation's largest cement producer, operated (domestically) nine cement production plants in eight states, including a plant in Nazareth, Pennsylvania.

5. In the fiscal year ending December 31, 1977, Lone Star had total assets of \$667,538,000 and total net sales of \$864,905,000, which generated a net income of \$29,710,000.

III. KEYSTONE PORTLAND CEMENT CO.

6. Keystone Portland Cement Company ("Keystone") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office at 2200 Hamilton St., Allentown, Pennsylvania.

7. Keystone is a one-plant company with a 660,000-ton cement production facility located at Bath, Pennsylvania, which is four miles away from Lone Star's Nazareth plant. Keystone manufactures and sells cement and also sells construction aggregates and coal.

8. In the fiscal year ending December 31, 1977, Keystone had total assets of \$16,817,444 and total net sales of \$16,673,677, which generated a net income of \$176,992.

IV. JURISDICTION

9. At all times relevant herein, Lone Star and Keystone have been engaged in the production and sale of portland cement and masonry cement in or affecting interstate commerce and said companies are engaged in or are affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce, as "commerce" is

defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

V. THE MERGER AGREEMENT

10. On or about October 20, 1978, Lone Star and Keystone entered into a merger agreement whereby Keystone's assets would be sold to Lone Star for \$7.5 million plus an assumption of Keystone's disclosed liabilities. The merger is scheduled for consummation on January 30, 1979.

VI. TRADE AND COMMERCE

11. The relevant lines of commerce are the manufacture and sale of portland cement and the manufacture and sale of masonry cement.

12. The relevant sections of the country are the areas of present competition between Lone Star and Keystone, including but not limited to the three-state regional market.

13. The manufacture and sale of portland cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 50.5%.

14. The manufacture and sale of masonry cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 68.8%.

VII. ACTUAL COMPETITION

15. Lone Star and Keystone are presently and have been for many years actual competitors in the manufacture and sale of portland cement and masonry cement within certain geographic markets and submarkets thereof, including but not limited to the three-state regional market.

VIII. EFFECTS: VIOLATIONS CHARGED

16. The effects of the agreement, if consummated, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. actual competition between Lone Star and Keystone in the manufacture and sale of portland cement and masonry cement will be eliminated;
- b. actual competition between competitors generally in the manu-

facture and sale of portland cement and masonry cement may be lessened;

c. Keystone will be eliminated as an actual substantial independent competitor in the manufacture and sale of portland cement and masonry cement;

d. concentration in the manufacture and sale of portland cement and masonry cement will be increased, and the possibilities for eventual deconcentration may be diminished; and

e. mergers or acquisitions between other portland cement and masonry cement producers may be fostered, thus causing a further substantial lessening of competition in the manufacture and sale of portland cement and masonry cement.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

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

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

1. Respondent Lone Star Industries, 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 One Greenwich Plaza, in the City of Greenwich, State of Connecticut.

2. Respondent Keystone Portland Cement Co., is a corporation

organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 2200 Hamilton St., in the City of Allentown, Commonwealth of Pennsylvania.

3. 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 Lone Star Industries, Inc. ("Lone Star") and Keystone Portland Cement Company ("Keystone") shall forthwith provide evidence that the acquisition agreement between them has been and is terminated and further, that any and all non-public documents provided by either Lone Star or Keystone to the other in connection with the acquisition agreement be returned. This paragraph shall not relieve any party from any obligation of confidentiality imposed by agreement between them or by operation of law.

II

It is further ordered, That until December 31, 1981 neither Lone Star nor Keystone shall acquire, directly or indirectly, all or any part of the assets (except in the ordinary course of business), or securities of the other until sixty (60) days following the receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If during the first thirty (30) days of the aforesaid sixty (60) day period, the Commission staff has issued any discovery request (including requests for the production of documents or witnesses) to either Lone Star or Keystone to which a complete response has not been made on or before the fiftieth (50th) day of the aforesaid sixty (60) day period, then the proposed acquisition shall not be consummated until ten (10) days after a complete response to such discovery request has been made. Neither the aforesaid sixty (60) day period nor the discovery provisions of this paragraph are in derogation of any of the rights conferred upon the Commission by statute or rule, and shall not be construed as supplanting any of these rights.

III

It is further ordered, That Lone Star and Keystone each shall notify the Commission at least (30) days prior to any proposed corporate

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, which may affect compliance obligations arising out of this order.

IV

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

Commissioners Clanton and Pitofsky did not participate.

IN THE MATTER OF
ITT CONTINENTAL BAKING COMPANY, INC.

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

Docket C-2989. Complaint Aug. 24, 1979 — Decision, Aug. 24, 1979

This order, among other things, requires a Rye, N.Y. manufacturer and seller of bakery products to cease disseminating advertisements which contain unsubstantiated comparative claims regarding the dietary fiber content of "Fresh Horizons" bread and other such food products; or which fail to include a statement disclosing that fiber ingredient in Fresh Horizons is derived from tree pulp. Such statement is required for two and one-half years in all advertisements for food products containing wood fiber. The order also prohibits the company from representing that an ingredient in Fresh Horizons or in other food products has been recommended or approved by a doctor or scientist unless that party has been fully informed of the ingredient's identity and derivation. Additionally, respondent is required to review and conform to the terms of the order all advertising claims for bakery and/or cereal-based products prepared or financed by its corporate parent.

Appearances

For the Commission: *Maryanne S. Kane, Robert L. Patterson and Sandra N. Hammer.*

For the respondent: *Gordon Thomas, Rye, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that ITT Continental Baking Company, Inc. ("ITT Continental"), a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. ITT Continental 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 on Halstead Ave., Rye, New York.

PAR. 2. Respondent ITT Continental, a wholly-owned subsidiary of International Telephone and Telegraph Corporation, is now and has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a bakery product designated by the trade name,

"Fresh Horizons." This product as advertised, is a "food" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. In the course and conduct of its business, respondent ITT Continental causes its food product, Fresh Horizons when sold, to be transported from respondent's places of business located in various States of the United States to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent ITT Continental maintains, and at all times mentioned herein has maintained, a substantial course of trade in its bakery products, including Fresh Horizons. The volume of business for Fresh Horizons alone, in or affecting such commerce, has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated or caused the dissemination of various advertisements for Fresh Horizons by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in magazines and newspapers and also advertisements broadcast by television and radio stations located in various States of the United States and in the District of Columbia that have sufficient power to carry such broadcasts across state lines into other States of the United States. The purpose of all of these advertisements has been to induce, directly or indirectly, the purchase of Fresh Horizons and it is likely that these advertisements have succeeded in inducing consumers to purchase this product.

PAR. 5. Typical of the statements and representations in said advertisements are those found in Exhibits A-F attached to this complaint.

PAR. 6. Through the use of said advertisements referred to in Paragraphs Four and Five, and other advertisements not specifically set forth herein, and because of the nature of the Fresh Horizons product, respondent has represented and now represents, directly or by implication, that

a. Fresh Horizons is a product made only with ingredients commonly used in the manufacture of bread or that it does not contain any major ingredient not commonly used, or anticipated by consumers to be commonly used, in bread;

b. The fiber in Fresh Horizons is the same kind of fiber as that in whole wheat bread or 100% all-bran cereal.

PAR. 7. Through the use of said advertisements referred to in Paragraphs Four and Five, and other advertisements not specifically

set forth herein, respondent ITT Continental has represented and now represents directly or by implication, that

- a. Fresh Horizons, in a one slice serving, contains five times the amount of fiber contained in one slice of 100% whole wheat bread; and
- b. Fresh Horizons, in a one slice serving, contains as much fiber as one serving of 100% all-bran cereal.

PAR. 8. In truth and in fact:

- a. Fresh Horizons is not made only with ingredients commonly used in the manufacture of bread, but rather contains as one of its major ingredients fiber derived from wood, an ingredient not commonly used, nor anticipated by consumers to be commonly used, in bread;
- b. Fresh Horizons, in a one slice serving, does not contain five times the amount of fiber contained in one slice of 100% whole wheat bread; and
- c. Fresh Horizons, in a one slice serving, does not contain as much fiber as one serving of 100% all-bran cereal.

Respondent's statements and representations as set forth in Paragraphs Six and Seven are false, deceptive, and misleading. These representations, rendered and now renders the advertisements referred to in Paragraphs Four and Five false, deceptive, misleading and unfair. These advertisements constituted and now constitute false advertisements.

PAR. 9. Furthermore, respondent marketed and advertised Fresh Horizons without disclosing to the purchasing public through its advertising that the product is made with fiber derived from wood or that its extra fiber is fiber derived from wood.

PAR. 10. Respondent's failure to identify the fiber found in Fresh Horizons is misleading in a material respect, in that disclosure of this fact to consumers would be likely to affect their decisions of whether or not to purchase said product. Since consumers would not expect to find fiber derived from wood as an ingredient in a bread or bakery product, respondent's failure to disclose this material fact rendered and now renders, the advertisements referred to in Paragraphs Four and Five false, deceptive, misleading and unfair.

PAR. 11. Furthermore, through the use of said advertisements referred to in Paragraphs Four and Five and other advertisements not specifically set forth herein, respondent ITT Continental has represented directly or by implication, that three out of five doctors recommend Fresh Horizons for its fiber alone.

PAR. 12. At the time of the first dissemination of the representation

contained in Paragraph Eleven, respondent ITT Continental did not possess and rely upon a reasonable basis for making this representation. Therefore, the making and dissemination of this representation, as alleged, without a reasonable basis therefor, constituted and now constitutes unfair or deceptive acts or practices in or affecting commerce.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent ITT Continental has been, and now is, in substantial competition in commerce, with various corporations, firms, and individuals engaged in the sale of food products of the same general kind and nature as those advertised and/or sold by respondent.

PAR. 14. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of said food product by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Commissioner Clanton did not participate.

Complaint

WILD BATES & COMPANY
Advertising
CLIENT: ITC CONTINENTAL BAKING CO.
PRODUCT: FRESH HORIZONS
AS FILMED TV COMM/L'NO: ITC-H050
TITLE: "NEWS"

DATE: 5/7/76
LENGTH: 30 SECONDS



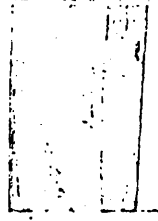
1. (SFX) SPOKESMAN:
IT'S BEEN IN NEWS-
PAPERS.



2. (SFX) medical publi-
cations,



3. (SFX) and on TV news.



4. (DV) Now, it's here.
(VO) New Fresh
Horizons.



5. **30% fewer calories**

A major break-through
in bread making. New
calories, 30% lower than
white.



6. **5 times the fiber**

higher in fiber, 5 times the
fiber than 100% whole
wheat.



7. **As much fiber per ounce,**
as 100% all-bran cereal.



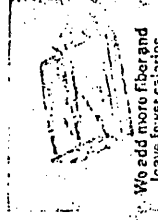
8. **No other bread makes
all these claims. Com-
pare.**



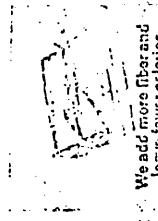
9. (VO) New Fresh Horizons,



10. White or Wheat.



11. **We add more fiber and
leave fewer calories.**



12. **We add more fiber and
leave fewer calories.**

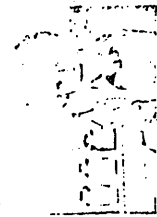
12. and leave fewer
calories.

TED BATES & COMPANY

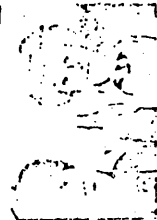
Advertising

CLIENT: ITT CONTINENTAL BAKING CO.
PRODUCT: FRESH HORIZONS
AS FILMED BY COMM. CO. ITB/C013
TITLE: "TWO LADIES/NEW PACKAGE"

DATE: 8/4/76
LENGTH: 30 SECONDS



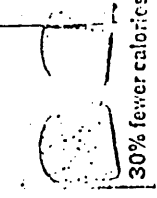
1. WOMAN 1: I won't give up bread, but I'd like one with fewer calories.



2. WOMAN 2: I don't eat bran cereal, but I do need more fiber.

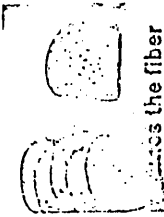


3. ANNCR: (VO) Introducing Fresh Horizons bread.

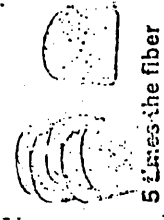


30% fewer calories

4. Lower in calories, 30% lower than white



5. Because it's higher in fiber,



5 times the fiber



5 times the fiber of whole wheat.



7. WOMAN 1: 30% fewer calories.

8. I just changed my bread.

9. WOMAN 2: 5 times the fiber.

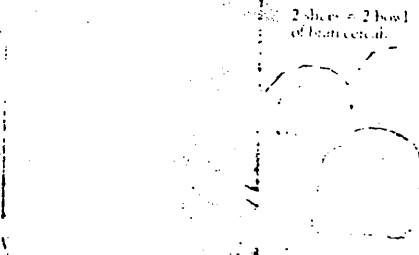
10. I just changed my bread.

11. ANNCR: (VO) To new Fresh Horizons, white or wheat.

12. We add fiber and take out calories.

Complaint

Two slices of Fresh Horizons® have as much crude fiber or roughage as two bowls of 100% bran cereal.



David Shaub, North Truro, Mass.

Two slices of Fresh Horizons® have as much crude fiber or roughage as two bowls of 100% bran cereal. As much crude fiber as 6 cups of raw celery. Now your family can get the fiber you want them to have in a food they'll want to eat—delicious Fresh Horizons. Wheat and White.

Fresh Horizons.
We add fiber and take out calories.

SEAFARER'S SUPPER

- 2 (10½-ounce) cans condensed Manhattan-style clam chowder
- 2 soup cans water
- ¼ pound fillet of white fish, cut in 2-inch pieces
- 1 (8-ounce) can whole kernel golden corn, undrained
- ¼ cup fine noodles
- ¼ cup green pepper strips
- ¼ teaspoon hot pepper sauce

In a saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 10 minutes, stirring occasionally. Serves 5.

HEARTY VEGETABLE SOUP

- 1 (10½-ounce) can condensed beef broth
- 1 (10½-ounce) can condensed vegetable soup
- 2 soup cans water
- 2 cups cabbage, cut in long thin shreds
- 1 cup cooked beef, cubed
- 1 (8-ounce) can tomatoes, cut up
- ½ cup small shell macaroni, uncooked
- 1 medium onion, sliced
- 2 tablespoons Parmesan cheese, grated
- 1 medium clove garlic, minced
- ¼ teaspoon caraway seeds

In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 30 minutes, stirring occasionally. Serves 5.

30 FAMILY HEALTH

GULF GUMBO

- 1 (10½-ounce) can condensed chicken broth
- 1 (10½-ounce) can condensed turkey vegetable soup
- 2 soup cans water
- 1½ cups cooked chicken, cubed
- 2 cups raw potato, shredded
- 1 (10-ounce) package frozen mixed vegetables
- 1 large onion, chopped
- 1 medium green pepper, cut in 1-inch squares
- ¼ teaspoon dried savory leaves, crushed
- ¼ teaspoon pepper

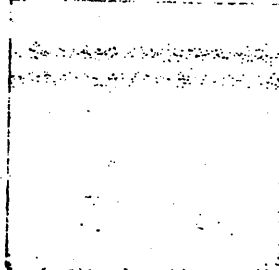
In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Cover and simmer for about 20 minutes, stirring often. Serves 5.

SOUTHERN POTPOURRI

- 1 (10½-ounce) can condensed chicken broth
- 1 (10½-ounce) can condensed turkey vegetable soup
- 2 soup cans water
- 1½ cups cooked ham, diced
- 1 cup quick-cooking rice, uncooked
- 1 (10-ounce) package frozen peas
- 1 (2-ounce) can sliced mushrooms, drained
- ¼ teaspoon rubbed sage

In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 5 minutes, stirring occasionally. Serves 5.

"Fewer calories than yogurt? I just changed my bread!"



2 slices of Fresh Horizons® have fewer calories than a cup of yogurt.

Judy Stewart, La Mesa, California

Two slices of Fresh Horizons® have fewer calories than a cup of unflavored, low-fat yogurt. Fewer than a cup of plain gelatin, or a half-cup of creamed cottage cheese. With Fresh Horizons you don't have to give up bread. All you give up is calories. Wheat and White.

Fresh Horizons.
We add fiber and take out calories.

Complaint

94 F.T.C.

TED BATES & COMPANY
Advertisement
 CLIENT: ITT CONTINENTAL BAKING
 PRODUCT: FRESH HORIZONS
 AS FILLED TO COMPL. LOG. ITBHC090
 TITLE: "TWO PERSONS"

DATE: 6-9-77
 LENGTH: 30 SECONDS



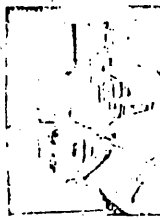
1. WOMAN: A bread with fewer calories than yogurt.



2. ANNCR: (VO) Two slices of Fresh Horizons have fewer calories than a cup of plain yogurt.



3. ANNCR: (VO) Two slices of Fresh Horizons have as much cruce fiber as two slices of Fresh Horizons.



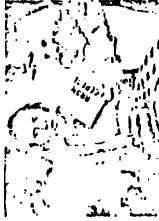
4. MAN: A bread with as much cruce fiber as bran cereal.



5. or gelatin.



6. WOMAN: Fewer calories than yogurt. MAN: Much more cruce fiber as bran cereal.



7. MAN: A bread with as much cruce fiber as bran cereal.



8. ANNCR: (VO) Two slices of Fresh Horizons have as much cruce fiber as two slices of Fresh Horizons.



9. or all this celery.



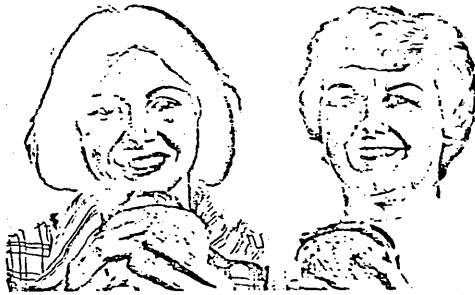
10. WOMAN: Fewer calories than yogurt. MAN: Much more cruce fiber as bran cereal.



11. ANNCR: (VO) Fresh Horizons, Wheat and White.



12. We add fiber and take out calories.



"30% fewer calories than white bread? I just changed my bread."

Sandra Baynard, St. Petersburg, Fla.

"Five times the fiber of whole wheat bread? I just changed my bread."

Beverly Sees, Independence, Mo.

Why are so many women like these changing their family's bread to Fresh Horizons?

30% fewer calories than white bread.

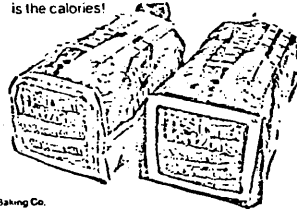
In fact, 2 full slices of Fresh Horizons[®] have fewer calories than a cup of gelatin or a cup of plain yogurt. Fewer than a half cup of creamed cottage cheese. Now you don't have to give up bread. With Fresh Horizons, all you give up is calories.

Five times the crude fiber of whole wheat bread.

You get as much crude fiber or roughage in 2 slices of Fresh Horizons as you get in 2 bowls of bran cereal. Now your family can get the fiber many authorities agree they need in a food they'll like to eat—delicious Fresh Horizons bread!

A taste the whole family likes.

The many women who bought Fresh Horizons for the calories and the fiber found their families liked Fresh Horizons for the taste. That goes for both wheat and white. With Fresh Horizons you get all the fiber, all the taste you want. All you give up is the calories!

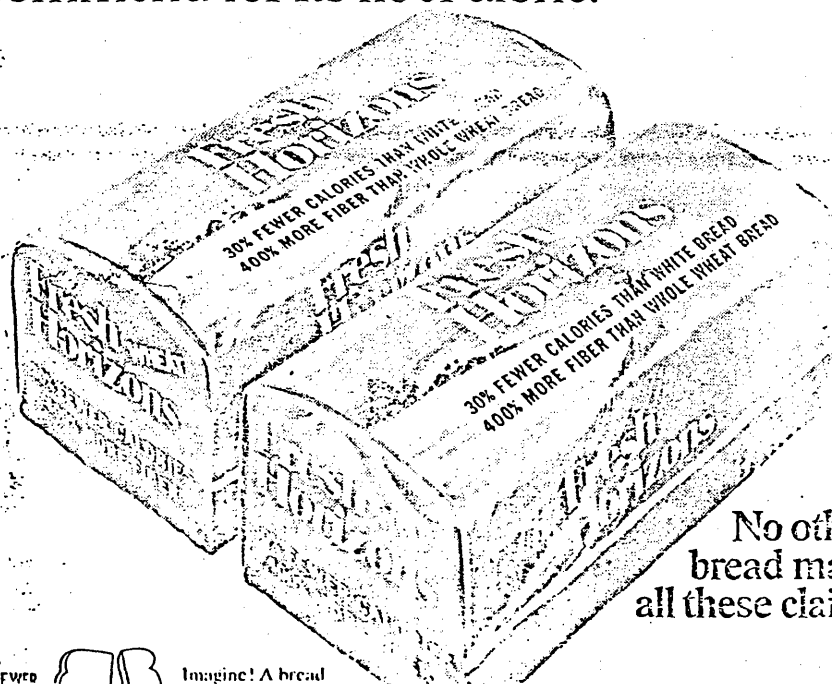


© 1977, Continental Baking Co.
 ® Fresh Horizons is a registered trademark of ITT Continental Baking Co.

Introducing
 the bread with 30% fewer calories than white,
 and 400% more fiber than whole wheat.

Fresh Horizons.

A new kind of bread 3 out of 5 doctors
 recommend for its fiber alone.



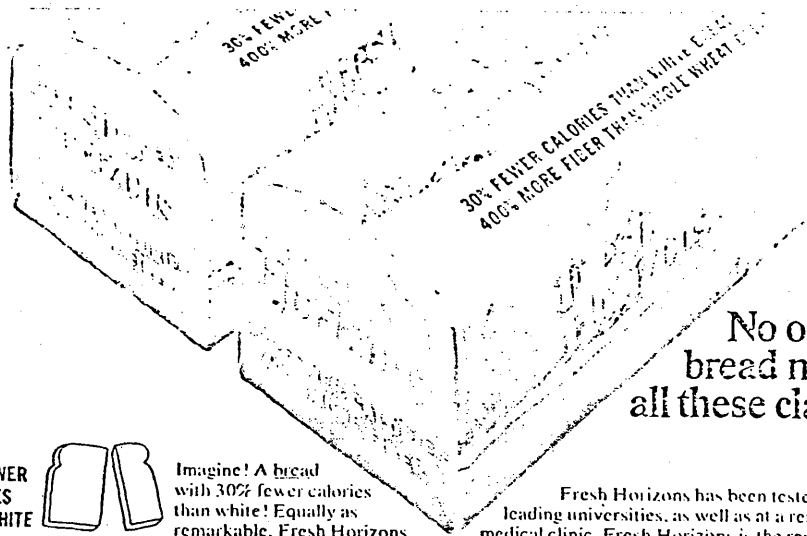
No other
 bread makes
 all these claims!

30% FEWER



Imagine! A bread

Complaint



No other bread makes all these claims!

NER
ES
HITE



Imagine! A bread with 30% fewer calories than white! Equally as remarkable, Fresh Horizons

has 400% more fiber than any other bread, almost any other food. It tastes delicious. Compared to whole wheat bread, Fresh Horizons has 30% fewer calories and 400% more fiber in a serving of 100% All-Bran Cereal. Yet Fresh Horizons gives you 30% fewer calories than white bread. Incredible? Yes! In a nationwide survey of doctors, 3 out of 5 said they would recommend Fresh Horizons bread for its fiber alone.

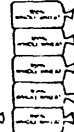
Fresh Horizons has been tested at two leading universities, as well as at a renowned medical clinic. Fresh Horizons is the result of a long search for a high-fiber food with reduced calories that looks and tastes good. And it's here now!

Now's the time to try it. With the store coupon below, you can save on your first loaf of white or wheat.

Fresh Horizons. The bread with 30% fewer calories, 400% more fiber. A new kind of bread 3 out of 5 doctors recommend for its fiber alone.

400%
MORE
FIBER

A new kind of bread 3 out of 5 doctors recommend for its fiber alone.

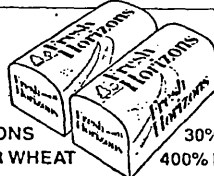


Save

15¢

STORE COUPON

15¢



FRESH HORIZONS
- WHITE OR WHEAT

30% FEWER CALORIES
400% MORE FIBER

Mr. Green: You are authorized as our agent to redeem this coupon for 15¢ on the purchase of one Fresh Horizons Bread. We will pay you 15¢ plus 5¢ handling charge for each of these coupons, redeemed in accordance with the terms of this offer. To obtain payment, send to Fresh Horizons, P.O. Box 1354, Clinton, Iowa 52733. Coupons will not be honored and will be void if presented through outside agencies.

brokers or others who are not retail distributors of our merchandise unless specifically authorized by us. Customer must pay any sales tax involved in purchase of sufficient stock to cover coupons presented for redemption must be shown on request. Coupon void where taxed, restricted or prohibited by law. Cash value - 1/20¢. Expires April 30, 1977.

A NEW KIND OF BREAD 3 OUT OF 5 DOCTORS RECOMMEND FOR ITS FIBER ALONE

Ad No. 206-16-001A REV. 1 8/13/76
This ad prepared by
GREY ADVERTISING, INC.

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

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

The Commission having considered the 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. Respondent ITT Continental Baking Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located on Halstead Ave., Rye, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent ITT Continental Baking Company, 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 a bakery product called Fresh

Horizons or any other food product, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce which, directly or indirectly:

A. Makes any comparative claim regarding the amount of fiber in any such product, as compared with that in any other food product, unless the claim is based on measurement of "dietary fiber" by the neutral detergent fiber method with an amylase modification. The neutral detergent fiber method with an amylase modification shall be used until such time as the Food and Drug Administration officially adopts a method for measuring dietary fiber in foods. At that time, the officially approved method for measuring dietary fiber shall be used for comparative quantity claims.

B. Makes any representation regarding the fiber content of any such product, unless respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence for each such representation.

II

It is further ordered, That respondent ITT Continental Baking Company, 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 a bakery product called Fresh Horizons or any other food product, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce which, directly or indirectly, makes any representation that any such product or any ingredient in such product has been recommended or approved by any doctor(s) or scientist(s), unless:

A. Before giving such recommendation or approval for such product, the doctor(s) or scientist(s) had been fully informed of the identity and derivation of all of the ingredients in such product, except those incidental ingredients which are added to assist in the food processing function which amount to less than 2% each of the final product on a weight basis, or

B. Before giving such recommendation or approval for any such ingredient, the doctor(s) or scientist(s) had been fully informed of the identity and derivation of that ingredient.

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 advertising, offering for sale, sale or distribution of the bakery product called Fresh Horizons or any other bread product containing alpha cellulose derived from wood, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce, which fails to disclose clearly and conspicuously in each advertisement in the *exact* language listed below for two and one-half years from the effective date of this order:

The source of (this/the) fiber is wood; or
Contains fiber derived from pulp of trees.

Upon the expiration of this two and one-half year period respondent shall disclose clearly and conspicuously in each such advertisement for such bakery product in no more than ten (10) words that the source of the fiber in such product is wood or that such product contains fiber derived from the pulp of trees.

Either of these disclosures shall be required so long as wood continues to be a fiber component of such product.

Coupons without any advertising claims and point of purchase advertising without general text are exempt from the requirements of this provision. Advertisements which make advertising claims and also contain a coupon are subject to the requirements of this order.

IV

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any bakery product or cereal-based product do forthwith cease and desist from disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce, which represents directly or by implication that such product contains only ingredients commonly used, or anticipated* by

* An ingredient shall be considered "commonly used or anticipated" for purposes of this order:

(1) if it is enumerated under 21 C.F.R. 170.3(n) or,

(2) if it is included under 21 C.F.R. 170.3(o) and meets the requirements of the definition of common usage,

Provided that for substances containing an ingredient which is included under 21 C.F.R. 170.3(o) to be considered "commonly used or anticipated," such substances must be used in amounts which do not exceed levels of common usage when performing the same function in other foods.

(Continued)

347

Decision and Order

consumers to be commonly used, in the making of such a product, unless

- A. such is the case;
- B. the total of the unanticipated and uncommonly used ingredients in the final product is 4 percent or less by weight;** or
- C. the presence, identity, and source of each unanticipated or uncommonly used ingredient is disclosed clearly and conspicuously when the total of the unanticipated and uncommonly used ingredients in the final product is greater than 4 percent of that product by weight.**

V

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device review and conform all advertising claims for any bakery and/or cereal-based product prepared and/or financed by the International Telephone and Telegraph Corporation, its subsidiaries or divisions, to the provisions of this order.

VI

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

VII

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

VIII

It is further ordered, That the respondent shall within sixty (60) days after service of this order, submit to the Commission a report, in

For purposes of this order, common usage shall mean a history of consumption of a substance by a significant number of consumers in the United States.

** For purposes of cumulating the 4% threshold:

(a) when a subsection (o) substance is used to perform a function for which there is no common usage of that substance for that function in foods, the entire amount of the substance shall be cumulated;

(b) when a subsection (o) substance is used to perform a function for which there is common usage of that substance for that function in foods, the amount which exceeds the highest previous level which has been commonly used to perform that function shall be cumulated.

writing, setting forth in detail the manner and form in which it has complied with this order. The effective date of Parts I-VI shall be the sixtieth day after service of this order.

IX

It is further ordered, That the respondent maintain all files and records related to the requirements of Parts I-V of this order for a period of three (3) years after the dissemination of any advertisement of any product covered by this order, and that such material shall be made available to the Federal Trade Commission or its staff for inspection and copying upon reasonable demand.

Commissioner Clanton did not participate.

IN THE MATTER OF

BANKERS LIFE AND CASUALTY COMPANY, ET AL.

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

Docket 9075. Complaint, Feb. 26, 1976 — Decision, Aug. 27, 1979

This consent order, among other things, requires Bankers Life and Casualty Company (Bankers Life), an individual, and eleven corporate associates, all engaged in the advertising, promotion and sale of undeveloped land, to cease misrepresenting that undeveloped land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order requires that all advertising, promotional materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of utilities; and the identity of lots in flood plain areas. Respondents must provide purchasers with cooling-off periods and information regarding their right to cancellation and refund. The firms are also prohibited from mortgaging any subdivision in the future, without ensuring that paid-up purchasers of lots in that subdivision will receive their warranty deeds, and be permitted to retain their rights. Additionally, the order requires respondents to make prescribed restitution to eligible purchasers who defaulted on their payments; and provide all active and paid-in-full purchasers, who had contracted for land at particular subdivisions during a certain time period, with an opportunity to cancel their contracts and receive specified refunds. The order holds Bankers Life responsible for assuring that proper restitution is made.

Appearances

For the Commission: *Gerald H. Jagers, William K. Hickey, John T. Hankins and Jay W. Madden.*

For the respondents: *William T. Kirby and James T. Griffin, Hubachek, Kelley, Rauch & Kirby, Chicago, Ill. for Bankers Life and Casualty Company, Robert D. Inman, Inman & Flynn, Denver, Colo. for San Luis Valley Ranches, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., Materic, Inc., G-R-P Corporation, and Richard Greenberg, Alan H. Bucholtz, Quiat, Bucholtz, Bull & Laff, Denver, Colo. for Colorado Properties, Inc. and Milco Associates, Inc., J. Wallace Adair and John F. Bruce, Howrey & Simon, Washington, D.C. for Southern Realty & Utilities Corporation, Hartsel Ranch Corporation and Estates of the World, Inc. and Jeffrey P. Berg, Berg & Spire, Beverly Hills, Calif. for Alice Holguin.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as

Complaint

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amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties as set forth in the caption hereof, hereinafter sometimes referred to as respondents, have violated provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect in the enumerated paragraphs below.

Allegations in the enumerated paragraphs of respondents' present acts and practices include respondents' past acts and practices. Allegations in said paragraphs of respondents' representations include such representations in advertising, promotional materials or sales communications made orally, visually or in writing, directly or by implication.

PARAGRAPH 1. Respondent Bankers Life and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 4444 West Lawrence Ave., Chicago, Illinois. It also conducts business at 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company dominates and controls the acts and practices of respondents Southern Realty & Utilities Corp., Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Southern Realty & Utilities Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Southern Realty & Utilities Corp.

Respondent Hartsel Ranch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 1001 Park Ave., Lake Park, Florida. It is a wholly-owned subsidiary of respondent Southern Realty & Utilities Corp.

Respondent Estates of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business located at 4810 North Kenneth Ave., Chicago, Illinois. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Estates of the World, Inc.

Respondent John D. MacArthur is an individual and an officer, former officer or Chairman of the Board of Directors of corporate respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., and Hartsel Ranch Corporation. He owns all of the outstanding stock of Bankers Life and Casualty Company. He

dominates and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 101 Ocean Ave., Palm Beach Shores, Florida.

Respondent Larwill Costilla Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Rio Grande Ranches of Colorado, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Larwill Costilla Ranches, Inc.

Respondent Trustees of Colorado Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Top of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Trustees of Colorado Properties, Inc.

Respondent Milco Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is the sales agent or broker for respondents Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Irving E. Miller is an individual and an officer of Milco Associates, Inc. He owns all of the stock in respondents Milco Associates, Inc., Trustees of Colorado Properties, Inc., and Larwill Costilla Ranches, Inc. He formulates, directs and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 2601 Biscayne Boulevard, Miami, Florida.

Respondent San Luis Valley Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado. It is the sales agent or broker for respondent Larwill Costilla Ranches, Inc.

Respondent G-R-P Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located in Blanca, Colorado. It is the sales agent or broker for respondents Rio Grande Ranches of Colorado, Inc. and Top of the World, Inc.

Respondent Materic, Inc. is a corporation organized, existing and

doing business under and by virtue of the laws of the State of California, with its principal place of business located at 8648 Wilshire Boulevard, Beverly Hills, California. It is the advertising agent for respondents Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc. and San Luis Valley Ranches, Inc.

Respondents Albert R. Linnick and Richard Greenberg are individuals and officers, directors or principal stockholders in respondents San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc. They formulate, direct and control the acts and practices of the said corporate respondents. Their address is 8648 Wilshire Boulevard, Beverly Hills, California.

PAR. 2. Respondents cooperate and act together in effecting the acts and practices as hereinafter set forth.

PAR. 3. Respondents are engaged, directly or through their wholly-owned subsidiaries, agents and other devices, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale and selling said lots to the public. Respondents are in substantial competition with corporations, firms and individuals in the sale of land.

PAR. 4. Respondents' volume of business is substantial and their acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the conduct of their aforesaid business, respondents represent that the lots which respondents offer for sale are good investments and that there is little or no financial risk involved in the purchase of said lots.

PAR. 6. In truth and in fact, a significant number of the aforesaid lots are not good investments involving little or no financial risk to purchasers from respondents. Therefore, the acts and practices described in Paragraph Five are unfair or deceptive.

PAR. 7. In the further conduct of their aforesaid business, respondents offer for sale and sell lots in their subdivisions without disclosing to prospective purchasers that the purchase of said lots is a risky investment in that, *inter alia*, the future value of said lots is uncertain and the purchaser will probably be unable to resell his or her lot at or above the purchase price. Therefore, respondents have failed to disclose material characteristics of their lots which would be likely to affect the consideration by purchasers of whether or not to purchase a lot from respondents. The failure to disclose such information is an unfair or deceptive act or practice.

PAR. 8. In the further conduct of their aforesaid business, respon-

dents represent that the value of the undeveloped land and lots in their subdivisions is growing at a rate which corresponds to the growth rate of the value, at the undeveloped stage, of land and lots in more fully developed and populated areas.

PAR. 9. In truth and in fact, the growth rate of the value of the undeveloped land and lots in respondents' subdivisions does not correspond to the growth rate of the value, at the undeveloped state, of land and lots in more fully developed and populated areas referred to in Paragraph Eight. Therefore, the acts and practices described in Paragraph Eight are unfair or deceptive.

PAR. 10. In the further conduct of their aforesaid business, respondents represent that the lots in respondents' subdivisions are useable as homesites.

PAR. 11. In truth and in fact, all or most of the aforesaid lots are not useable as homesites because of, *inter alia*, the lack or unreasonable cost of utilities, the difficulty in obtaining home construction financing, the remote location of the property and the poor quality of the land. Therefore, the acts and practices described in Paragraph Ten are unfair or deceptive.

PAR. 12. In the further conduct of their aforesaid business, respondents offer for sale and sell lots in their subdivisions without disclosing to prospective purchasers the total cost of all utilities, that one or more utility services may not be available and that home construction financing is difficult to obtain. Therefore, respondents have failed to disclose material characteristics of their lots which would be likely to affect the consideration by purchasers of whether or not to purchase a lot from respondents. The failure to disclose such information is an unfair or deceptive act or practice.

PAR. 13. In the further conduct of their aforesaid business, respondents represent that the land in their subdivisions will soon be unavailable and that prospective buyers must purchase lots immediately or risk being unable to do so.

PAR. 14. In truth and in fact, respondents' land is not selling at such a rate that prospective buyers cannot wait a substantial period of time and still be able to obtain land in the subdivision being offered. Therefore, the acts and practices described in Paragraph Thirteen are unfair or deceptive.

PAR. 15. In the further conduct of their aforesaid business, respondents represent that the money paid to respondents by purchasers is fully protected or "Guaranteed" by respondents' refund plan.

PAR. 16. In truth and in fact, the money paid to respondents by purchasers is not fully protected or "Guaranteed" by respondents' refund plan because of the conditions required of purchasers to get

refunds including, but not limited to, the conditions that purchasers must bear the cost of traveling to the property and that purchasers must request a refund immediately upon completion of a required company guided tour when it may not be possible for purchasers to determine if the property is as represented at that time. Therefore, the Acts and practices described in Paragraph Fifteen are unfair or deceptive.

PAR. 17. In the further conduct of their aforesaid business, respondents represent that their subdivision land and the area in which said land is located is similar or comparable to urban, metropolitan and industrial areas as well as to mountain resort areas and recreation areas.

PAR. 18. In truth and in fact, respondents' land is not similar or comparable either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas. Therefore, the acts and practices described in Paragraph Seventeen are unfair or deceptive.

PAR. 19. In the further conduct of their aforesaid business, respondents use land sales contracts which contain declarations that the contract contains the entire agreement of the parties and that no representations were made to the lot purchaser to induce said purchaser to enter into the contract other than those representations expressed in the contract.

PAR. 20. Use by respondents of the contract declarations described in Paragraph Nineteen is an unfair or deceptive act and practice because respondents and their agents make representations which differ in material respects from, or which obscure, the rights and obligations of purchasers and respondents under said contracts.

PAR. 21. In the further conduct of their aforesaid business, respondents use land sales contracts which contain a provision that defaulting purchasers forfeit all payments previously made to respondents under the contract. When purchasers default and forfeit previously made payments, respondents retain and fail to offer refunds of those amounts of the purchasers' total payments which exceed respondents' reasonable damages caused by the defaults.

PAR. 22. Use by respondents of the contract provision described in Paragraph Twenty-One and the retaining by respondents of purchasers' payments in excess of reasonable damages are unfair acts or practices.

PAR. 23. In the further conduct of their aforesaid business, respondents use land sales contracts which contain a provision that prevents purchasers from acquiring title to the lot being purchased until said purchasers have paid the full purchase price of the lot. Further, respondents enter into mortgages and other security agreements

among themselves in which the subdivision land is the security and which contain default provisions giving the secured party respondent the right to repossess the subdivision land and its title from the respondent nominally selling the subdivision while not requiring the secured party respondent either to honor the land sales contracts of the individual lot purchasers or to notify said purchasers that the subdivision selling respondent has lost its right or interest in the land. Thus, the interest in the land that lot purchasers may have can be cut off by implementation of the said security agreements among the respondents. The failure by respondents to protect the interest of lot purchasers is an unfair or deceptive act or practice.

PAR. 24. In the further conduct of their aforesaid business, respondents induce members of the public through the unfair and deceptive acts and practices, described in the enumerated paragraphs above, to pay to them, in advance of the passage of title, substantial sums of money toward the purchase of lots located within respondents' subdivisions. Said lots are of little or no use or value to purchasers as investments or as homesites. Respondents retain said sums of money.

PAR. 25. Respondents' retaining of the sums of money obtained through the acts and practices described in Paragraph Twenty-Four is an unfair act and practice.

PAR. 26. The use by respondents of the aforementioned unfair or deceptive statements, representations, and practices has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and to cause the purchase of substantial numbers of respondents' lots because of said mistaken and erroneous belief.

PAR. 27. The aforementioned acts and practices, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Bankers Life and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 4444 West Lawrence Ave., Chicago, Illinois.

Respondent Southern Realty & Utilities Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1301 Copans Road, Pompano Beach, Florida.

Respondent Hartsel Ranch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 1301 Copans Road, Pompano Beach, Florida.

Respondent Estates of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business located at 4810 North Kenneth Ave., Chicago, Illinois.

Respondent San Luis Valley Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Larwill Costilla Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Rio Grande Ranches of Colorado, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Top of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado.

Respondent Materic, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 2049 Century Park East, Los Angeles, California.

Respondent G-R-P Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2049 Century Park East, Los Angeles, California.

Respondent Trustees of Colorado Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Milco Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Richard Greenberg is an individual whose address is 2049 Century Park East, Los Angeles, California.

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

ORDER

For purposes of this order, unless otherwise provided, the following definitions shall be applicable:

"Purchaser" shall mean a person to whom a respondent offers to sell or sells one or more lots in a subdivision; *provided, however*, that a "purchaser" shall not include a person who purchases land in a single transaction for a sum in excess of \$25,000.

"Land" or "subdivision" shall mean any real property which is divided or proposed to be divided into 50 or more units, whether contiguous or not, for the purpose of sale or lease to purchasers as part of a common promotional plan.

"Contract" shall mean a written agreement for the sale of land to purchasers.

"Business day" shall mean any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washing-

ton's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

"Property Report" includes documents sometimes referred to as an Offering Statement or Prospectus.

"Respondent which sold the lot" shall mean the title owner or his sales agent.

"Inconsistent" shall mean mutually repugnant or contradictory one to the other.

For purposes of this order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or indirectly. For purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

I.

It is ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing:

1. That land or lots are a good or safe investment, or that the purchase of a lot is a good or safe investment.
2. That there is little or no financial risk involved in the purchase of lots.
3. That the resale of a purchased lot is not difficult.
4. That the value of, or demand for, any land, including lots being offered for sale or previously sold, has increased, or will increase, or that purchasers have made, or will in the future make, a profit by reason of having purchased such land.
5. That the prices of lots periodically rise or that prices of said lots are increasing, have increased or will increase, without disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases of lots do not in any way relate to the value of said lots.

6. That the purchase of a lot is a way to achieve financial security or prosperity, to deal with inflation or to become wealthy.

7. That the land in any subdivision will soon be unavailable or that prospective purchasers must purchase a lot in a subdivision immediately to ensure that such lot will be available.

8. That subdivision land and the area surrounding it are comparable, similar or analogous either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas.

9. That the growth in land values or potential growth in land values at a subdivision corresponds to or will correspond to the growth in land values at any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

Provided, however, it shall be a defense that at the time a representation was made, it was true and the maker of the representation possessed data substantiating the representation. Such substantiating data shall be maintained for at least three years from the making of the representation it substantiates and shall be made available to the Commission upon request.

B. Including in any contract for the sale of subdivision land, or in the documents shown or provided to purchasers or prospective purchasers of subdivision land:

1. Language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of such land, other than those set forth in the contract.

2. Language to the effect that upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, the respondent which sold the lot shall be entitled to retain sums previously paid thereunder by the purchaser, except as provided in Section V of this order.

3. Any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this order, except as such waiver, limitation or condition is expressly allowed by this order.

C. Misrepresenting the right of a purchaser under any provision of this order or any applicable statute or regulation to cancel a transaction or receive a refund.

D. Making misrepresentation concerning the rights or obligations of a respondent or purchaser which differs in any respect from the rights or obligations of the parties as stated in the contract or Property Report.

E. Making any statement or representation concerning the proxim-

ity to any subdivision of any existing or future city, place, facility, body of water or road without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement of representation, the approximate distance to the nearest two (2) miles in road miles from the center of the subdivision to the downtown or geographical center of the city, place or facility referred to, or in the case of a body of water or a road, to the nearest point at which such body of water or road is accessible to entry and use by purchasers.

F. Making any statement or representation concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers from the respondent which sold the lot unless such is a fact and unless any conditions or limitations attached to such credit, refund, benefit or remuneration are disclosed.

II.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith:

A. Set forth in all sales and promotional material and advertising relating to the sale of land, except billboards, the following statement:

Risk Factor: Since land values are uncertain, you should consult a qualified professional before purchasing.

B. Set forth as the title on the first page of any contract for the sale of land in 12-point boldface type "CONTRACT FOR THE PURCHASE OF LAND."

C. Set forth on the first page of all contracts for the sale of land in 10-point boldface type the following statement:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND.

THE FUTURE VALUE OF THIS LAND, AS WELL AS ALL UNDEVELOPED REAL ESTATE, IS UNCERTAIN. YOU SHOULD NOT ASSUME THAT THE VALUE OF LAND WILL INCREASE. DO NOT ASSUME THAT YOU WILL BE ABLE TO RESELL YOUR LAND WITHOUT SIGNIFICANT COMMUNITY DEVELOPMENT AND POPULATION GROWTH.

D. Set forth on the first page of all contracts for the sale of lots such of the following statements as are applicable:

1. For contracts for the sale of lots where the respondent which sold the lot is not obligated to provide electricity, water, and sewage disposal by central systems, but where all such utilities are available by other means, the following statement:

This undeveloped land has been planned for use as a vacation homesite. Electricity, water, and sewage disposal are available at the purchaser's expense. Electricity is obtainable by generator, water by well, and sewage disposal by septic tank. Access will be by unpaved roads.

Provided that, if a central system is provided instead of a generator or well or septic tank, then the above statement may be modified only to the extent necessary to so indicate.

Provided further that, if paved roads are provided, then the above statement may be modified only to the extent necessary to so indicate.

Provided further that, if roads are county accepted, then the above statement may be modified only to the extent necessary to so indicate.

2. For contracts for the sale of lots where the respondent which sold the lot is not obligated to provide any utilities and where utilities are not known to be available, the following statement in lieu of the above statement:

This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision other than county-approved and maintained roads. No representation is made as to the availability of water or sewer.

Provided that, if the roads are not county-approved and maintained, this statement shall be modified to disclose the status of the roads if any.

E. Set forth the following statement in any contract for land requiring a Property Report; immediately below the statement required by paragraph D. above.

Note to Buyer: See page [insert page number] of the Property Report for statements relating to the additional expense for improvements.

F. Set forth in any contract for the sale of land which does not require a Property Report, immediately below the statements required by paragraph D. above, a statement providing the cost of improvements.

G. Whenever prospective buyers are provided with a contract for the sale of land by any means other than by mailing said contract directly to such purchasers:

1. Furnish each purchaser, at the time the purchaser signs a contract for the sale of land, with two copies of a form, captioned in

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boldface type "NOTICE OF CANCELLATION," which shall contain in boldface type the following information and statements:

NOTICE OF CANCELLATION

Date of Transaction

Contract Number

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT ISSUED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent which sold the lot], AT [address of said respondent's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THIS TRANSACTION (EACH PURCHASER MUST SIGN THIS NOTICE.)

Signature of Purchaser

Date

Signature of Purchaser

Date

2. Before furnishing copies of the above "Notice of Cancellation" to the purchaser, complete both of the copies by entering the name of the respondent which sold the lot, the address of said respondent's place of business, the date of the transaction, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the tenth business day following the date of the transaction.

3. Where a timely notice of cancellation is received and said notice is not properly signed and the respondent which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

4. Where the signature of a prospective purchaser is solicited

during the course of a sales presentation, inform each person orally, at the time he signs the contract, of his right to cancel as stated in paragraph II.G.5. of this order.

5. Include clearly and conspicuously in each contract for the sale of land the following statement in boldface type:

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT. SEE THE ATTACHED "NOTICE OF CANCELLATION" FOR AN EXPLANATION OF THIS RIGHT.

6. Within twenty business days after the receipt of a timely notice of cancellation signed by a purchaser, refund all payments made under the contract, and cancel and return any monies paid by the purchaser in connection with the contract.

H. Furnish any report required to be furnished to a purchaser at or before the signing of a contract by Federal or State law or by this order (i) with the first written materials furnished to a prospective purchaser in connection with the sale of a lot or (ii) during the first contact which the prospective purchaser has with any agent or employee of the respondent which is offering the lot for sale, in connection with the sale of a lot.

I. Inform all prospective purchasers that a bank or other lender located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to finance the building of a house on that land.

J. If a refund is offered contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

1. Provide the purchaser three business days after taking said tour or making said inspection within which to request a refund.

2. Include in any contract with the original purchaser, in immediate proximity to the provision setting forth the availability of a refund upon the completion of a company-guided tour or registered inspection of the property, the following statements:

If you take a company-guided tour of the property within [designate time period] months of your purchase and you have not been declared in default, you will have three days after the tour to cancel your purchase and get your money back.

You, the purchaser, pay your own expenses for travel to the property in order to take the tour.

3. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF

CANCELLATION," which shall contain in boldface type the following statements:

NOTICE OF CANCELLATION

Date of Company-Guided Inspection Tour
or Registered Inspection of Property

Contract Number

YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TWENTY BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent which sold the lot], AT [address of said respondent's place of business] NOT LATER THAN MIDNIGHT OF [date].

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE.)

Signature of Purchaser

Date

Signature of Purchaser

Date

4. Before furnishing copies of the above "Notice of Cancellation" to purchaser, complete both copies by entering the name of the respondent which sold the lot and the address of said respondent's place of business, the date of the company-guided inspection tour or the registered inspection of the property, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the third business day following the date of said tour or inspection.

5. Where a timely notice of cancellation is received but said notice is not properly signed and the respondent which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the

seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

K. Disclose in each instance where all or part of any printed article, publication, endorsement or testimonial is used, published or referred to, the date when such article, publication, endorsement or testimonial was originally published or made and the source of such article, publication, endorsement or testimonial.

L. Notify prospective purchasers of any lot offered for sale in a flood plain area that said lot is in a flood plain area.

III.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any land may be used now or in the future:

A. As a homesite, unless the contracts or Property Reports accurately set forth:

1. That water is available to the purchaser by drilling a well or by central water system.

2. That sewage disposal is available to purchasers by installation of a septic tank or by hook-up to a central sewage system.

3. That electricity will be available to the purchaser from a utility company.

B. As a vacation homesite, unless the contracts or Property Reports set forth:

1. That water is available to the purchaser by drilling a well.

2. That percolation on the property purchased is sufficient to support a septic tank.

3. That electricity is available to the purchaser by installing a generator.

IV.

It is further ordered, That, where applicable, each of the respondents, Bankers Life and Casualty Company, Southern Realty &

Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., corporations, and their officers, successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, which has or obtains, prior to the payment by the purchaser of the total purchase price, either a security interest or title in the land:

A. Shall execute and record a covenant providing that, if the purchaser pays the total purchase price pursuant to the terms of a contract for the purchase of land, then a general warranty deed free of liens will be delivered conveying title in accordance with said contract.

1. With respect to land in which it has a security interest or title as of the effective date of this order, within 90 days of the effective date of this order.

2. With respect to land in which it obtains a security interest or title after the effective date of this order, at the same time such security interest or title is recorded.

B. Shall not grant a lien or security interest on land to any third party unless it is provided in the instrument granting said lien or security that, if the purchaser pays the total purchase price pursuant to the terms of the contract for the purchase of land, then a general warranty deed free of liens will be delivered conveying title.

V.

For purposes of Section V of this order, the following shall be applicable:

The subdivision land to be covered is presently known as Hartsel Ranch, Estates of the World, Rio Grande Ranches, Larwill Costilla Ranches, Top of the World, and San Luis Valley Ranches.

It is further ordered, That:

A. Each of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., with respect to the refund of monies to each purchaser who entered into a contract for the purchase of land in its own subdivision between January 1, 1971 and January 1, 1974, who was an active or deeded account and had not been notified of a default on his present contract as of the date the agreement containing this order was accepted by the Commission, shall:

1. Within ninety (90) days of the effective date of this order cause a

letter to be sent by first class mail to all such purchasers, said letter to be in the form as set forth in Exhibit A attached hereto.

2. In the event that the letter referred to in subparagraph 1 above is returned undelivered, promptly review its files and make other reasonable efforts such as contacting credit bureaus, telephone and utility companies, in order to obtain the present address of each such purchaser whose letter was not delivered, and to those purchasers for whom a present address is obtained by these means or otherwise, send the letter required by subparagraph 1 above within sixty days of obtaining the purchaser's present address; *provided, however*, that all obligations to send the letter required by subparagraph 1 above shall terminate twenty-four months after the effective date of this order.

3. Cause refunds to be made in accordance with the terms of the letter sent pursuant to subparagraphs 1 and 2 above. *Provided, however*, that refunds under this subparagraph may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

4. Maintain, for three years after the effective date of this order or three years after the last refund payment is made, whichever occurs last, records which are adequate to disclose said respondent's compliance with subparagraph 3 above, such records to be furnished by said respondent to the Federal Trade Commission upon request.

B. Each of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., and San Luis Valley Ranches, Inc., with respect to the refund of monies to defaulted purchasers who entered into contracts for the purchase of land in its own subdivision between January 1, 1971 and January 1, 1974 shall:

1. Compile a list of the names and last-known addresses of all identifiable such purchasers, who defaulted on said contracts prior to the date the Agreement containing this order was accepted by the Commission and who forfeited payments in excess of 30% of the cash purchase price.

2. Send a letter within six months of the effective date of this order, by first class mail, to each purchaser referred to in subparagraph 1 above, advising him of his right to a refund, the approximate time period and manner in which such refund will be made, the need to execute and return within 30 days the enclosed quit-claim deed, release or similar document, if such is required for the purchaser to obtain a refund, and the need for notifying said respondent of any future change of residence or address where such refund can be delivered.

3. Enclose with the letter referred to in subparagraph 2 above a form for notification of any change of the purchaser's address and any quit-claim deed, release or other document which is required to be executed by the purchaser for the purchaser to receive a refund.

4. In the event that the letter referred to in subparagraph 2 above is returned undelivered, promptly review its files and make other reasonable efforts such as contacting credit bureaus, telephone and utility companies, in order to obtain the present address of each such purchaser whose letter was not delivered, and to those purchasers for whom a present address is obtained by these means or otherwise, send the letter required by subparagraph 2 above within sixty days of obtaining the present address; *provided, however*, that all obligations to send the letter required by this subparagraph shall terminate twenty-four months after the effective date of this order.

5. Refund to each purchaser, for whom a current mailing address has been obtained pursuant to subparagraph 2 or 4 above, all payments paid by such purchaser in excess of 30% of the cash purchase price disclosed in the contract. *Provided, however*, that refunds under this subparagraph may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

6. Refund the amount due under subparagraph 5 above between 12 months and 24 months after the effective date of this order.

7. Maintain, for three years after the effective date of this order or three years after the last refund payment is made, whichever occurs last, records which are adequate to disclose said respondent's compliance with subparagraph 5 above, such records to be furnished by said respondent to the Federal Trade Commission upon request.

C. Respondent Bankers Life and Casualty Company shall guarantee that the refunds required by Paragraphs A and B above are made in the time required therein.

D. With respect to purchasers who contract to buy land after the effective date of this order, the sales contract shall contain a provision that in the event purchaser thereafter defaults, if purchaser's total payments exceed 40% of the cash purchase price, purchaser shall be entitled to receive a refund of 65% of payments made in excess of 40% of the cash purchase price. *Provided, however*, that refunds hereunder may be conditioned upon purchaser's execution of a quit-claim deed, release or other document necessary to free any and all liens or encumbrances to effect a full release of any interest or right whatsoever flowing from the terms of the contract.

VI.

For purposes of Section VI of this order, the following definitions shall be applicable:

"Subdivision business" shall mean the acquiring of land for subdividing, the dividing of land into subdivision lots, or the advertising, promotion or selling of subdivided lots to purchasers.

It is further ordered, That respondent Richard Greenberg, individually or as officer, director, stockholder, employee, agent or manager, of any corporation or other entity does forthwith cease and desist from engaging in the subdivision business unless such subdivision business is conducted with or through entities which agree to be bound by and which act in accordance with the Agreement Containing Consent Order to Cease and Desist entered in this proceeding between the Commission and Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc.

VII.

It is further ordered, That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701-20 (1970), or any regulation that has been or may be promulgated pursuant thereto requires an act or practice that is prohibited by any provision of this order, or prohibits an act or practice that is required by any such provision, or is otherwise inconsistent with any such provision of this order, any such provision of this order shall be without legal force or effect.

VIII.

It is further ordered, That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondents' sale of land, then to the extent there are any inconsistencies between this order and such Rule, the Trade Regulation Rule will govern.

IX.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill

Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc.:

1. Deliver, by hand or by certified mail, a copy of Sections I, II, and III of this order to each of their present or future employees and salesmen, and independent brokers, who sell or promote the sale of land to purchasers.

2. Provide each person so described in Paragraph 1 above with a form, returnable to said respondents, clearly stating such person's intention to be bound by and to conform his sales practices to the requirements of this order.

3. Inform each person described in Paragraph 1 above that said respondents shall not use any such person, or the services of any such person, unless such person agrees to and does file notice with said respondents that such person will be bound by the provisions contained in this order.

4. That in the event such person will not agree to so file notice with said respondents and to be bound by the provisions of this order, said respondents shall not use such person, or the services of such person.

5. Inform the persons described in Paragraph 1 above that said respondents are obligated by this order to discontinue dealing with those persons who engage on their own in the acts and practices prohibited by this order.

6. Institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in Paragraph 1 above conform to the requirements of Sections I, II, and III of this order.

7. Discontinue dealing with any person described in Paragraph 1 above, revealed by the aforesaid program of surveillance, who repeatedly engages on his own in the acts or practices prohibited by Sections I, II, and III of this order; *provided, however*, that, in the event remedial action is taken, evidence of such dismissal or termination shall not be admissible against said respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

X.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., shall forthwith

distribute a copy of this Order to each of their subsidiaries engaged in the sale of land.

XI.

It is further ordered, That in the event that any of the respondents Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., transfers all or a substantial part of its subdivision land to any other corporation or to any other person engaged in subdivision land sales or transfers all or part of its ownership interest to wholly-owned subsidiaries, such respondent shall require the transferee to file promptly with the Commission a written agreement to be bound by all the terms of this Order; *provided,* that, if such respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said transferee, such respondent shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

XII.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation and Materic, Inc., notify the Commission at least thirty days prior to any proposed corporate 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 said respondent which may affect compliance obligations arising out of this order.

XIII.

It is further ordered, That each of the respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., Hartsel Ranch Corporation, Estates of the World, Inc., Milco Associates, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Trustees of Colorado Properties, Inc., Top of the World, Inc., San Luis Valley Ranches, Inc., G-R-P Corporation, Materic, Inc., and Richard Greenberg shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the

manner and form in which said respondent has complied with this order. Thereafter, each of said respondents, where applicable, will submit a supplemental compliance report on or before sixty (60) days after the date scheduled for the completion of the restitution provision of Section V.

EXHIBIT A

Dear [Customer Name]:

Our records show that you purchased Lot[s] ----- in Block ----- of Section ----- of [development name] on [date] for [contract price]. At the present time we show a balance owed of \$----- and a paid-in amount [principal and interest] of \$-----.

In settlement of litigation with the Federal Trade Commission, in which we admit no liability, we have agreed to offer you an opportunity to cancel your contract on the above lot on the following terms. If you elect to cancel your contract at this time you may obtain a 70% refund on [paid-in amount], or \$-----, which will be paid to you in four quarterly payments commencing [date to be set within 120 days after date letter sent]. Of course, if you elect to cancel the contract, you do not need to make any more payments.

If you decide to accept our offer, sign the enclosed [quit-claim deed] [rescission and release agreement], have it notarized and return it within 30 days of receiving this letter. Also you should fill in the enclosed change of address card and send it to us if your mailing address changes.

See Attached Fact Sheet.

FACT SHEET

WATER: The source of domestic water for the property is individual wells drilled by the owner at his expense. The cost of drilling a well is approximately [\$10 per foot [North]] [\$12 to \$16 per foot [South]] plus the cost of a pump; and water is generally available from approximately 100 feet to 300 feet, depending on its location.

SEWAGE DISPOSAL: Sewage disposal is handled by the use of individual septic tanks which for most pieces of property cost from approximately \$800 to \$1500. Percolation tests have shown that most of the properties are well suited for such a system.

ELECTRICITY: Electric power is available from local cooperative power associations. The cost of such electric power may be impractical because of the distance from the nearest power line. Generators can be purchased new by the owner of the property from approximately \$1,100 to \$2,500.

TELEPHONE: Telephone service is available but may be impractical because of the distance from existing telephone lines.

ROADS: Roads were built by the developer to give access to the property but have not been maintained in areas where no development has occurred. Some of the roads were dedicated to the county which is responsible for maintaining them on evidence of need. The other roads will be maintained by the developer on evidence of need until dedicated to the county.

With regard to the future value of land such as that which you bought, the

Department of Housing and Urban Development requires the following statement in all Property Reports:

The future value of land is uncertain; do not count on appreciation. You should consider the competition which you may experience from the developer in attempting to resell your lot and the possibility that real estate brokers may not be interested in listing your lot.

ORDER DISMISSING COMPLAINT AS TO RESPONDENT ALICE
HOLGUIN

By order of October 11, 1978, Administrative Law Judge Lewis F. Parker (the "ALJ") substituted Alice Holguin for Albert R. Linnick as a party in this proceeding. Respondent Holguin is executrix of the estate of Mr. Linnick, who died in January, 1978.

On January 3, 1979, the Commission entered an order affirming the ALJ's substitution of the executrix. The Commission's order of January 3 indicated that the purpose of substitution was to preserve access to the assets of the decedent as a potential source of redress for injured consumers.

On March 15, 1979, this case was withdrawn from adjudication as to all but one of the fifteen respondents, and on May 2, 1979, the Commission accepted an Agreement Containing a Consent Order covering thirteen respondents. The parties' Joint Motion for Withdrawal from Adjudication recorded the agreement of complaint counsel and the consenting respondents that the complaint should be dismissed as to Ms. Holguin. Furthermore, the Agreement provides that the relief set forth in the contemplated Order "fully satisfies any claim for consumer redress . . . arising out of the acts and practices alleged in the complaint . . ."

By its acceptance of the Agreement and by its issuance of the contemplated order, the Commission has foregone any claim for additional consumer redress arising out of the complaint in this matter. Since the purpose of substituting Ms. Holguin was to preserve access to a potential source of redress and since further redress is precluded, there is no reason to retain Ms. Holguin as a respondent. Accordingly,

It is ordered, That as to respondent Alice Holguin, the complaint in the above-captioned matter be, and it hereby is, dismissed.

Interlocutory Order

94 F.T.C.

IN THE MATTER OF

UNNAMED DEBT COLLECTION AGENCIES, CREDITORS OR OTHERS

*File No. 782 3078. Interlocutory Order, Aug. 31, 1979*ORDER DENYING MOTION TO REIMBURSE COSTS OF COMPLYING
WITH SUBPOENA DUCES TECUM

Creditors Service Bureau of El Paso, Inc. (CSB), moves that it be reimbursed for expenses incurred in complying with a subpoena duces tecum issued on January 22, 1979, which required the production of documents relating, *inter alia*, to the practices used by CSB to collect consumer debts. The instructions appended to the subpoena provided for the submission of verified copies in lieu of originals for any of the responsive documents.

A subpoena respondent is not automatically entitled to the reimbursement of expenses incurred in complying with Commission process. Rather, subpoenaed parties are expected to absorb reasonable expenses of compliance as a cost of doing business. *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1033 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 841 (1979); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881-82 (D.C. Cir.) (en banc), *cert. denied*, 431 U.S. 974 (1977) (modification of investigative subpoenas is not justified "unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business").

To justify its claim for reimbursement, CSB must demonstrate that the costs of complying with the Commission subpoena are unreasonable (see *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979); *United States v. Tivian Labs, Inc.*, 589 F.2d 49, 55 (1st Cir. 1978); *United States v. Davey*, 543 F.2d 996, 1000 (2d Cir. 1976)), and in determining whether a subpoena respondent has met that burden, we consider chiefly the costs of compliance in relation to the size and resources of the producing party. *E.g.*, *FTC v. Carter*, 464 F. Supp. 633, 641 (D.D.C. 1979), *appeal docketed*, No. 79-1331 (D.C. Cir. Mar. 27, 1979). The costs incurred by CSB in responding to the subpoena—\$847.37—seem minor in relation to the financial position of the firm. Moreover, we note that the subpoena calls in substantial part for the production of corporate, operating, and other business records which are incident to the conduct of CSB's business and under such circumstances, a claim for reimbursement is difficult to sustain. See *FTC v. Rockefeller, supra*, 591 F.2d at 191. Finally, CSB has not shown that its decision to incur copying expenses (\$100.00) was based on a business need for continued access to

the originals. See *SEC v. Arthur Young & Co.*, *supra*, 584 F.2d at 1033-34.¹

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

By order of the Commission.

¹ The cases cited by CSB, *United States v. Farmers & Merchants Bank*, 397 F. Supp. 418 (C.D. Cal. 1975), and *United States v. Friedman*, 532 F.2d 928 (3d Cir. 1976), provide no support for CSB's reimbursement claim. In *Farmers & Merchants Bank*, the court's decision to require reimbursement was based on the fact that the Internal Revenue Service subpoena was directed not to the target of an investigation (as here) but to the target's wholly uninvolved bank (a "mere [repository] of information performing a service for the government in complying with the [subpoena]", *FTC v. Rockefeller*, 591 F.2d 182, 191 (2d Cir. 1979)), and that compliance with the subpoena was "not predictably part of the banking business." 397 F. Supp. at 420. Moreover, other courts which have considered a bank's entitlement to reimbursement for costs incurred in complying with an IRS summons have disallowed such claims based on the reasonableness of the expenditures and the duty to comply with agency process. *E.g.*, *United States v. Continental Bank & Trust Co.*, 503 F.2d 45, 48 (10th Cir. 1974); *United States v. Covington Trust & Banking Co.*, 431 F. Supp. 352, 354-356 (E.D. Ky. 1977); *United States v. Mellon Bank*, 410 F. Supp. 1065, 1069-70 (W.D. Pa. 1976); *United States v. Bremicker*, 365 F. Supp. 701, 703 (D. Minn. 1973); *United States v. Jones*, 351 F. Supp. 132, 134 (M.D. Ala. 1972); *cf. California Bankers Ass'n. v. Shultz*, 416 U.S. 21, 50 (1974). In *Friedman*, the court stated that such claims require findings on the extent of the burden of the record search and observed: "A bank, whose business is the facilitation of financial transactions, and which keeps records of all customer dealings as a matter of course, if not law [footnote omitted], may be required [as part of the cost of doing business, to make an unreimbursed record search]." 532 F.2d at 937.

CSB also relies on 5 U.S.C. § 503 (1977), and Fed. R. Civ. P. 45 and 81(a)(3), none of which is applicable here. 5 U.S.C. § 503 applies only to allowances (*e.g.*, for the cost of travel) for witnesses who appear at agency hearings pursuant to subpoena, and not to the costs of searching for and reproducing subpoenaed materials. The Federal Rules of Civil Procedure apply only to proceedings in United States district courts and not to proceedings before administrative agencies. See *FTC v. Kujawski*, 298 F. Supp. 1288, 1289 (N.D. Ga. 1969); Fed. R. Civ. P. 1.

Complaint

94 F.T.C.

IN THE MATTER OF
LIQUID AIR CORPORATION OF NORTH AMERICA, ET
AL.

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

Docket C-2990. Complaint, Sept. 5, 1979 — Decision, Sept. 5, 1979

This consent order, among other things, requires a San Francisco, Calif. producer and seller of industrial gases, to divest as a unit within two years, specified air separation plants and other operations located in the areas of major competitive overlap between the firm and Chemetron Corporation, a Chicago, Ill. subsidiary of Allegheny Ludlum Industries, Inc. To promote the viability of the divested package and completely eliminate any possible overlap in the Southeast, the firm must also divest Chemetron's Knoxville acetylene plant and Chemetron's Chattanooga hydrogen plant. Liquid Air is further required to divest its Texas carbon dioxide operations and certain Chemetron retail stores, together with the distribution equipment; customer, dealer and distributor contracts; and customer lists associated with these enterprises. Additionally, the three companies are prohibited from acquiring any air separation production facilities for ten years.

Appearances

For the Commission: *Kenneth G. Starling, Stephen C. Garavito and Peter L. Feldman.*

For the respondents: *Miles W. Kirkpatrick, Morgan, Lewis & Bockius, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into an agreement which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45) and that said agreement therefore constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, and having found that a proceeding with respect to said violation is in the public interest, hereby issues its Complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows:

I. Definitions

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

(a) "Industrial gases" are gases, except for common fuel gases, sold in compressed, liquid, and solid form, including acetylene, carbon dioxide, carbon monoxide, argon, helium, hydrogen, nitrogen, oxygen, nitrous oxide, other medical gases, rare gases, and mixtures and combinations thereof.

(b) "Air separation gases" are oxygen, nitrogen and argon in gaseous or liquid form, or both.

(c) "Air separation gases producers" are those companies engaged in both (1) the production, and (2) the distribution and sale of the air separation gases.

(d) "Air separation plant" is a facility that produces air separation gases.

II. Liquid Air Corporation of North America

2. Liquid Air Corporation of North America (Liquid Air) is a Delaware corporation with its principal place of business at 1 Embarcadero Center, San Francisco, California.

3. In the United States, Liquid Air sells industrial gases, and diving and industrial safety equipment through subsidiaries. Liquid Air also sells gases in Canada and Brazil through subsidiaries.

4. In 1977, Liquid Air's total domestic sales were approximately \$157.3 million, its domestic air separation gases sales were approximately \$47.3 million and its domestic carbon dioxide sales were approximately \$8.2 million.

5. Approximately 79% of the common stock of Liquid Air is owned by L'Air Liquide S.A. (L'Air Liquide). L'Air Liquide is one of the largest industrial gases companies in the world. In 1977, L'Air Liquide's sales exceeded \$1.4 billion and its assets were over \$1.325 billion.

6. At all times relevant hereto, Liquid Air sold and shipped its products throughout the United States and engaged in business in or affecting commerce within the meaning of the Clayton Act, as amended, and engaged in business in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. Allegheny Ludlum Industries, Inc.

7. Allegheny Ludlum Industries, Inc. (Allegheny) is a corporation organized under the laws of Pennsylvania with its principal place of business at 2700 Two Oliver Plaza, Pittsburgh, Pennsylvania.

8. Allegheny is engaged primarily in the manufacture and sale of

FEDERAL TRADE COMMISSION DECISIONS

Complaint

94 F.T.C.

specialty steels and alloys, consumer products, industrial gases, welding products and other industrial products. Allegheny produces and sells industrial gases through Chemetron Corporation (Chemetron), a wholly-owned subsidiary that was acquired by Allegheny on November 30, 1977.

9. In 1977, Allegheny's total sales were approximately \$1.002 billion, its net earnings were approximately \$25.4 million, and its total assets were approximately \$1.075 billion.

10. At all times relevant hereto, Allegheny sold and shipped products throughout the United States and engaged in business in or affecting commerce within the meaning of the Clayton Act, as amended, and engaged in business in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV. Chemetron Corporation

11. Chemetron is a wholly-owned subsidiary of Allegheny. It is a Delaware corporation with its principal place of business at 111 East Wacker Drive, Chicago, Illinois. Chemetron is engaged primarily in the production and sale of industrial gases, welding products, piping components and specialty chemicals.

12. In 1977, Chemetron had total sales of \$494 million.

13. In the United States, Chemetron sells its industrial gases through its Industrial Gases Division (IGD) and its Carbon Dioxide Division (Cardox).

14. In 1977, IGD's total domestic sales were approximately \$83 million and its domestic air separation gases sales were approximately \$58.8 million.

15. In 1977, Cardox's domestic carbon dioxide sales were approximately \$41.8 million.

16. At all times relevant hereto, Chemetron sold and shipped products throughout the United States and engaged in business in or affecting commerce within the United States and engaged in business in or affecting commerce within the meaning of the Clayton Act, as amended, and engaged in business in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

Agreement

17. On or about June 5, 1978, Liquid Air, Allegheny and Chemetron entered into an agreement under which Liquid Air would acquire the total domestic industrial gases assets of IGD. In return, Allegheny would acquire 3.335 million shares of Liquid Air, approxi-

mately 33% of Liquid Air's total outstanding common shares. The value of the transaction, based on the selling price of Liquid Air stock on the date of the agreement, was approximately \$104 million.

18. Under the terms of the agreement, Allegheny would have four representatives out of fourteen on Liquid Air's Board of Directors.

VI. Trade and Commerce

19. The relevant lines of commerce are the production, distribution and sale of air separation gases by air separation gases producers, and the production, distribution and sale of carbon dioxide.

20. Barriers to entry are high in each of the relevant lines of commerce.

A. Air Separation Gases

21. The relevant sections of the country for the production, distribution and sale of air separation gases are Southern California, the Texas-Louisiana Gulf Coast, and the Middle Southeast.

22. The Southern California Air Separation Gases Market is the area within a 150 mile radius of Los Angeles.

23. The Texas-Louisiana Gulf Coast Air Separation Gases Market is the area encompassing the Gulf Coast concentration of air separation plants from Victoria, Texas to Lake Charles, Louisiana, and their normal marketing areas.

24. The Middle Southeast Air Separation Gases Market is the area encompassing the air separation plants in Tennessee, North Carolina, South Carolina, Georgia and northern Alabama, and their normal marketing areas.

25. Each of the relevant sections of the country for the production, distribution and sale of air separation gases is highly concentrated. Four-firm concentration in each section exceeds 84%.

26. Liquid Air and IGD occupy significant positions in each of the relevant sections of the country for the production, distribution and sale of air separation gases.

B. Carbon Dioxide

27. The relevant section of the country for the production, distribution and sale of carbon dioxide is the area south of a line which extends from Lake Charles, Louisiana across Beaumont, Texas, west through Austin and San Antonio to the Mexican Border (Carbon Dioxide Gulf Coast Market).

28. The Carbon Dioxide Gulf Coast Market is highly concentrated. Four-firm concentration was approximately 99% in 1977. Liquid Air and Cardox each accounted for more than 33% of carbon dioxide sales in the Carbon Dioxide Gulf Coast Market in 1977.

VII. Effects of the Proposed Transaction

29. The effects of the proposed transaction may be substantially to lessen competition or tend to create a monopoly in the relevant lines of commerce, in the relevant sections of the country, in the following ways, among others:

- (a) Substantial direct competition between Liquid Air and Chemetron in the relevant lines of commerce will be eliminated;
- (b) Already high concentration in the relevant lines of commerce will be increased;
- (c) High barriers to entry into the relevant lines of commerce will be further raised;
- (d) IGD will be eliminated as a significant independent competitive influence on the relevant lines of commerce;
- (e) The likelihood of eventual deconcentration of the relevant lines of commerce may be substantially lessened;
- (f) The likelihood of interdependent behavior among firms in the relevant lines of commerce will be substantially increased.

30. In addition to the effects alleged in Paragraph 29, the proposed acquisition is likely to produce anticompetitive effects in the production, distribution and sale of air separation gases, in geographic areas beyond the relevant sections of the country alleged in Paragraphs 22, 23 and 24.

VIII. Violations Charged

31. The proposed acquisition of Liquid Air stock, would, if consummated, constitute a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

32. The proposed acquisition of Chemetron assets would, if consummated, constitute a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

33. By entering into the agreement giving rise to the violations described in Paragraph 31 and 32 herein, Allegheny, Chemetron and Liquid Air have violated Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

DECISION AND ORDER

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

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

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

1. Respondent Liquid Air Corporation of North America 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 One Embarcadero Center, in the City of San Francisco, State of California.
2. Respondent Allegheny Ludlum Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 2 Oliver Plaza, in the City of Pittsburgh, Commonwealth of Pennsylvania.
3. Respondent Chemetron 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 111 E. Wacker Drive, in the City of Chicago, State of Illinois.

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

ORDER

For purposes of this order, the following terms shall have the following meanings:

a) "Liquid Air" shall mean Liquid Air Corporation of North America, and all subsidiaries which it controls.

b) "Allegheny" shall mean Allegheny Ludlum Industries, Inc., and all subsidiaries which it controls.

c) "IGD" shall mean the Industrial Gases Division of Chemetron Corporation, a wholly-owned subsidiary of Allegheny.

d) "Industrial gases" shall mean gases, except for common fuel gases, sold in compressed, liquid, and solid form, including acetylene, carbon dioxide, carbon monoxide, argon, helium, hydrogen, nitrogen, oxygen, nitrous oxide, other medical gases, rare gases, and mixtures and combinations thereof.

e) "Air separation gases" shall mean oxygen, nitrogen and argon in gaseous or liquid form, or both.

f) "Air separation plant" shall mean a facility that produces air separation gases.

g) "Air separation gases asset" shall mean any asset used in the production, distribution or sale of any air separation gas.

h) "Acetylene" shall mean the gas produced by the combination of calcium carbide and water.

i) "Acetylene plant" shall mean a facility that produces acetylene.

j) "Air separation gases producer" shall mean a person who is engaged in both (1) the production, and (2) the distribution and sale of two or more of the air separation gases.

k) "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

l) "Southern California" shall mean the area within a 150 mile radius of Los Angeles, California.

I

It is ordered, That within two (2) years from the date of service of this order upon respondents, Liquid Air shall divest absolutely all the assets and operations described below, as a unit, to an acquirer that shall be subject to the prior approval of the Federal Trade

Commission, so as to transfer these assets and operations as a going enterprise and a viable, competitive concern engaged in the production, sale and distribution of industrial gases, *provided, however*, that during such period Liquid Air may seek the approval of the Commission for the divestiture of such assets and operations to two or more acquirers.

Assets and Operations to be Divested

1. IGD's Mount Vernon, Indiana air separation plant;
2. IGD's Chattanooga, Tennessee air separation plant;
3. IGD's Richmond, Virginia air separation plant;
4. Liquid Air's La Porte, Texas air separation plant;
5. Liquid Air's Santa Fe Springs, California air separation plant;
6. IGD's Knoxville, Tennessee acetylene plant;
7. IGD's Chattanooga, Tennessee hydrogen plant;
8. IGD's six (6) retail stores in southern California, and one (1) retail store in Knoxville, Tennessee, and one (1) retail store in Richmond, Virginia.
9. IGD's existing customer, dealer and distributor contracts, customer lists, and distribution equipment associated with the Mount Vernon, Indiana, Richmond, Virginia, and Chattanooga, Tennessee air separation plants, Knoxville, Tennessee acetylene plant, and Chattanooga, Tennessee hydrogen plant.
10. IGD's existing customer contracts, customer lists and distribution equipment associated with the southern California, Knoxville, Tennessee, and Richmond, Virginia retail stores.
11. IGD's bulk liquid and cylinder customer and distributor contracts, customer lists and distribution equipment associated with:
 - (a) IGD's southern California bulk liquid and cylinder sales operations to be divested with Liquid Air's Santa Fe Springs, California air separation plant, and
 - (b) IGD's Stafford, Texas air separation plant to be divested with Liquid Air's La Porte, Texas air separation plant.

II

It is further ordered, That within two (2) years from the date of service of this order upon respondents, Liquid Air shall divest its carbon dioxide assets and operations located in the State of Texas, including carbon dioxide plants, distribution equipment, existing customer, dealer, and distributor contracts, and customer lists, to

one or more acquirers subject to the prior approval of the Federal Trade Commission, so as to transfer these assets and operations as viable competitive facilities engaged in the production, sale and distribution of carbon dioxide.

III

It is further ordered, That respondents shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with Paragraphs I and II of this order in a manner that impairs the marketability of any such assets and operations or:

(a) impairs in any manner the viability of the assets and operations divested in accordance with Paragraph I as a going concern engaged in the production, sale and distribution of industrial gases;

(b) impairs in any manner the viability of the assets and operations divested in accordance with Paragraph II as viable competitive facilities engaged in the production, sale and distribution of carbon dioxide.

Provided, however, that deterioration in the ordinary course of operation and normal wear is not a violation of this paragraph.

IV

It is further ordered, That for a period of nine (9) months after the divestiture of the assets and operations identified in Paragraph I, respondents shall not solicit customers divested pursuant to that paragraph.

V

It is further ordered, That for a period commencing on the effective date of this Order and continuing for ten (10) years from and after the date of service upon respondents of this order, respondents shall cease and desist from acquiring, without prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of any United States air separation gases producer, or any of the air separation gases assets of any United States air separation gases producer, *provided, however,* that nothing in this order shall prevent respondents from acquiring (a) gas or any product for resale, (b) transportation, delivery or storage equipment, (c) cylinders, (d)

converters, (e) bulk customer stations, or (f) plant equipment not incorporated in an operating plant.

VI

It is further ordered, That within sixty (60) days from the effective date of this order, and every sixty (60) days thereafter until it has fully complied with Paragraphs I and II of this order, Liquid Air shall submit a verified report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by Liquid Air to make public its desire to divest the assets described herein, (b) a list of all persons or organizations to whom notice of divestiture has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of all reports, internal memoranda, offers, counteroffers, communications and correspondence concerning said divestiture. Information to be supplied is subject to legally recognized privileges, and shall not be divulged by any representative of the Federal Trade Commission to any person except in response to a formal request from Congress or to compulsory process, or for the purpose of securing compliance with this order, or as is otherwise required by law.

VII

It is further ordered, That on the first anniversary date of the effective date of this order and on each anniversary date thereafter until the expiration of the prohibitions in Paragraph V of this order, respondents shall submit a report in writing to the Federal Trade Commission listing all acquisitions, mergers and agreements to acquire or merge with air separation gases producers made by respondents, the date of each such acquisition, merger or agreement, the products or services involved and such additional information as may from time to time be required.

VIII

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed changes which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of

successor corporations, and that this order shall be binding on any such successor.

401

Order

IN THE MATTER OF
PERPETUAL FEDERAL SAVINGS & LOAN ASSOCIATION
ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9083. Decision, Dec. 6, 1977 — Order, Sept. 6, 1979

This order withdraws a Commission order issued December 6, 1977, 90 F.T.C. 608, against a Washington, D.C. savings and loan association for having as directors individuals who simultaneously serve as directors of competitive financial institutions. Further, the complaint in this matter has been dismissed.

ORDER

On December 6, 1977 the Commission held that respondent Perpetual Federal Savings & Loan Association ("Perpetual") had violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by having on its board of directors individuals who served simultaneously as directors of competing commercial banks. 90 F.T.C. 608, 648. Accordingly, the Commission issued a Final Order requiring Perpetual to cease and desist from having any individual serve as a director while at the same time serving as a director of any corporation engaged in the provision of any financial service in competition with Perpetual. 90 F.T.C. at 665-66. Perpetual filed a petition for review.

On November 14, 1978, this matter was remanded to the Commission by the United States Court of Appeals for the Fourth Circuit for reconsideration in light of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. Law 95-630, 92 Stat. 3641 (Nov. 10, 1978). Title II of that Act, the Depository Institution Management Interlocks Act of 1978, 92 Stat. 3672, codified at 12 U.S.C. 3201, *et seq.*, prohibits a range of interlocks between savings and loan associations and competing banks. Interlocks like those at issue in this proceeding are exempted from the Act's proscriptions for a period of ten years from the Act's enactment.

In the limited rebriefing that followed, both Perpetual and complaint counsel concurred that the December 6, 1977, Final Order should be withdrawn and the complaint dismissed. Complaint counsel construed Section 206 of Title II as impliedly exempting interlocks like Perpetual's from the reach of the Commission for ten years. According to Perpetual, passage of the Act confirmed that Commission jurisdiction over Perpetual's director interlocks was lacking, that its conduct did not violate the Federal Trade Commis-

sion Act and that its conduct would not constitute such a violation even when ten years have elapsed after Title II's enactment. Subsequent events have made it unnecessary to address these contentions.

Since the submission of briefs by the parties, a new law has been enacted, Pub. Law 96-37 (July 23, 1979) (to be codified at 15 U.S.C. 45, 46, 57), that amends Section 5 of the Federal Trade Commission Act to exempt savings and loan associations such as Perpetual from the jurisdiction of the Commission. Accordingly,

It is ordered, That the Commission's Final Order of December 6, 1977 be withdrawn and the complaint dismissed.

AMERICAN DENTAL ASSOCIATION, ET AL.
IN THE MATTER OF
AMERICAN DENTAL ASSOCIATION, ET AL.

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

Docket 9093. Complaint, Jan. 4, 1977 — Decision, Sept. 6, 1979

This consent order, among other things, provides that on entry of a final adjudicated order in the *American Medical Association (AMA)* case, four dental associations will be bound to a similar order which will be issued against them by the Commission. During the period preceding final resolution of the *AMA* matter, respondents are prohibited from restricting or declaring unethical any form of their members' advertising or solicitation of business which is not false or misleading. Additionally, the dental associations are required to print a statement in their code of ethics which advises members that advertising or solicitation of patients and business shall not be considered unethical or improper.

Appearances

For the Commission: *L. Barry Costilo, Daniel R. Barney, Bonita L. Maplethorpe and Ann Malester.*

For the respondents: *Peter M. Sfikas, Michael P. Tone and Clay H. Phillips, Peterson, Ross, Schloerb & Seidel, Chicago, Ill. for American Dental Association, Joseph B. Carney and Jerry R. Jenkins, Baker & Daniels, Indianapolis, Ind. for Indiana Dental Association and Indianapolis District Dental Society, and John P. Ackerly, III and Stephen A. Northup, Mays, Valentine, Davenport & Moore, Richmond, Va. for Virginia Dental Association and Northern Virginia Dental Society.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents American Dental Association (hereinafter "ADA"), Indiana Dental Association (hereinafter "IDA"), Indianapolis District Dental Society (hereinafter "IDDS"), Virginia Dental Association (hereinafter "VDA"), and Northern Virginia Dental Society (hereinafter "NVDS") have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding in respect thereof would be in the public interest, issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent American Dental Association is an

Illinois corporation with its principal place of business at 211 East Chicago Ave., Chicago, Illinois. ADA has approximately 124,000 members, of whom at least 106,000 are dentists engaged in the active practice of dentistry. Various state dental associations comprise ADA's "constituent" societies, and each constituent society includes various local "component" societies. Dentists, other than those in the federal dental services or engaged in advanced education, are required to be members of a constituent and a component dental society in order to be eligible for membership in ADA. ADA's activities, including those complained of, are directed by delegates from constituent state dental societies, including IDA and VDA.

PAR. 2. Respondent Indiana Dental Association is an Indiana corporation with its principal place of business at 402 Jefferson Building, 1 Virginia Ave., Indianapolis, Indiana. IDA has approximately 2000 dentist members. It is one of the constituent societies of ADA.

PAR. 3. Respondent Indianapolis District Dental Society is an Indiana corporation with its principal place of business at the Illinois Building, 17 West Market St., Indianapolis, Indiana. IDDS is a component society of IDA and ADA and has approximately 450 dentist members.

PAR. 4. Respondent Virginia Dental Association is a Virginia corporation with its principal place of business at Suite 331, 2015 Staples Mill Road, Richmond, Virginia. VDA has approximately 2100 dentist members. It is one of the constituent societies of ADA.

PAR. 5. Respondent Northern Virginia Dental Society is a Virginia corporation with its principal place of business at 1008 North Randolph, Arlington, Virginia. NVDS is a component society of VDA and ADA and has approximately 700 dentist members.

PAR. 6. Members of respondents are engaged in the business of providing dentist services for a fee. Except to the extent that competition has been restrained as herein alleged, dentist members of respondents have been and are now in competition among themselves and with other dentists.

PAR. 7. In 1975 approximately ninety-five percent of all active dentists in the United States were members of ADA and its constituent and component societies. In 1975 total expenditures for dentist services in the United States were approximately \$7.5 billion. A substantial portion of the total expenditures for dentist services in the United States has been paid to and received by members of ADA and members of its constituent and component societies, including members of the respondents named herein.

PAR. 8. It is respondents' objective, *inter alia*, to represent the

interests of their dentist members, including their economic interests. In the course of representing those interests and in the course of performing the acts and practices herein complained of, respondents have utilized the United States mail and other instruments of interstate commerce.

PAR. 9. Members of respondent ADA are located in every state. In the course and conduct of their business, members of ADA and members of IDA, IDDS, VDA and NVDS:

- (A) Receive and treat patients from other states and countries;
- (B) Receive substantial sums of money from the federal government and from private insurers for rendering dentist services, which money flows across state lines;
- (C) Utilize and prescribe drugs and medicines which are shipped in interstate commerce;
- (D) Utilize and prescribe devices and products which are shipped in interstate commerce; and
- (E) Act in continuing association and cooperation with each other, with other state and local dental societies, and with individual dentists in every state, in furthering the agreements and concert of action described below, in the course of which association and cooperation they use the United States mail and other instruments of interstate commerce.

As a result of the conduct and activities of respondents and their members described above, the acts and practices herein complained of are in or affect "commerce" within the meaning of the Federal Trade Commission Act, and respondents are subject to the jurisdiction of the Federal Trade Commission.

PAR. 10. For many years past and continuing up to and including the date of the filing of this complaint, respondents and others have agreed, and participated in concerted action, to eliminate, prevent and hinder competition among dentists. This conduct includes agreements and concerted action to prevent or hinder dentists from:

- (A) Soliciting business by advertising or otherwise;
- (B) Engaging in price competition; and
- (C) Otherwise engaging in competitive practices.

PAR. 11. In the course and as part of the above-described conduct, respondents and others have:

- (A) Adopted, published and distributed the *Principles of Ethics* of the ADA, along with advisory opinions, and principles and codes of ethics and interpretations thereof of the ADA's constituent and

component dental societies, including respondents IDA, IDDS, VDA and NVDS;

(B) Abided by the restrictions contained in the above-described principles and codes of ethics, and interpretations thereof; and

(C) Enforced, directly and indirectly, the restrictions contained in the above-described principles and codes of ethics, and interpretations thereof.

PAR. 12. The effects, among others, of the acts and practices alleged in Paragraphs Ten and Eleven are as follows:

(A) Prices of dentist services have been stabilized, fixed or otherwise interfered with;

(B) Competition among dentists in the provision of dentist services has been hindered, restrained, foreclosed and frustrated;

(C) Consumers of dentists services have been deprived of information pertinent to the selection of a dentist and of the benefits of competition;

(D) Dentists have been restrained in their ability to compete and to make dentist services readily and fully available to consumers; and

(E) Development of innovative systems for the delivery of dentist services has been hindered or restrained.

PAR. 13. The aforesaid acts, practices and methods of competition constitute unfair methods of competition and unfair acts or practices by respondents in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional allegations set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 considered the matter and having thereupon accepted the executed consent agreement and placed such

agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent American Dental Association ("ADA") is an Illinois corporation, with its principal place of business at 211 East Chicago Ave., Chicago, Illinois.

Respondent Indiana Dental Association ("IDA") is an Indiana corporation, with its principal place of business at 402 Jefferson Building, 1 Virginia Ave., Indianapolis, Indiana. IDA is a constituent society of ADA.

Respondent Indianapolis District Dental Society ("IDDS") is an Indiana corporation, with its principal place of business at 211 North Delaware St., Indianapolis, Indiana. IDDS is a component society of IDA and ADA.

Respondent Virginia Dental Association ("VDA") is a Virginia corporation, with its principal place of business at Suite 423, 2015 Staples Mill Road, Richmond, Virginia. VDA is a constituent society of ADA.

Respondent Northern Virginia Dental Society ("NVDS") is a Virginia corporation with its principal place of business at 1008 North Randolph, Arlington, Virginia. NVDS is a component society of VDA and ADA.

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

Definitions

For purposes of this order, the following definitions shall apply: "FTC Dkt. 9064" means Federal Trade Commission Dkt. 9064 and that matter as it may otherwise be denominated by a reviewing court.

"Final adjudicated order" means an adjudicated order or opinion of the Federal Trade Commission or of a reviewing court which either dismisses the complaint on the merits or for lack of jurisdiction as to, or grants relief against, the American Medical Association in FTC Dkt. 9064 and which has become final in accordance with Section 5(g)-(k) of the Federal Trade Commission Act, 15 U.S.C. 45(g)-(k).

"Respondents" means the American Dental Association ("ADA"), the Indiana Dental Association ("IDA"), the Indianapolis District Dental Society ("IDDS"), the Virginia Dental Association ("VDA"), and the Northern Virginia Dental Society ("NVDS"), individually or jointly, and their respective councils, departments, committees, divisions, subdivisions, trustees, officers, delegates, representatives, agents, employees, successors, and assigns.

"Constituent societies" means those dental societies or dental associations defined as constituent societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate constituent societies differently or to describe a new category of dental societies which replace or are roughly equivalent to constituent societies, "constituent societies" means those dental societies as well.

"Component societies" means those dental societies or dental associations defined as component societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate component societies differently or to describe a new category of dental societies which replace or are roughly equivalent to component societies, "component societies" means those dental societies as well.

I

It is ordered, That:

(A) On entry of a final adjudicated order in FTC Dkt. 9064, the Commission will issue an order ("ADA order") against respondents in this proceeding which will consist of the provisions of the FTC Dkt. 9064 final adjudicated order, conformed to make such provisions fully applicable to respondents herein, consistent with Section I(C) of this order. Such conforming modifications will include, for purposes of illustration, but not be limited to, substituting the names of respondents and their ethical codes and publications for the names of the FTC Dkt. 9064 respondents and their ethical codes and publications, respectively, and substituting the words "dental" for "medical", "dentists" for "physicians" and "dentists' services" for "physicians' services". Respondents shall be bound by such ADA order and shall have no right to seek judicial review or otherwise challenge the validity of it unless it fails to conform substantially to the final adjudicated order in FTC Dkt. 9064, consistent with Section (C) of this order, *provided, however:*

(B) In the event that the Commission issues a decision and order based on a consent agreement against the American Medical Association in FTC Dkt. 9064, the instant case shall immediately be reopened and returned to adjudicative status.

(C) No provisions in the final adjudicated order in FTC Dkt. 9064 which relate directly to physicians' contractual arrangements for the sale or distribution of their professional services or to the growth, development or operations of any prepaid health care delivery plan or of any other organization which offers physicians' services to the public shall be applicable to respondents, except to the extent that such provisions relate to advertising or solicitation of patients or business.

(D) In the event that the final adjudicated order in FTC Dkt. 9064 dismisses the complaint on the merits or for lack of jurisdiction, the Commission shall dismiss the complaint in this proceeding.

(E) For the purpose of clarifying Section I(A) of this order, respondents shall not be bound by any order entered pursuant to Section I(A) of this order based on an order of the Commission or a reviewing court which may be entered in FTC Dkt. 9064 unless and until such Dkt. 9064 order becomes a final adjudicated order.

II

It is further ordered. That pending entry of a final adjudicated order, or Commission issuance of a decision and order based on a consent agreement against the American Medical Association in FTC Dkt. 9064, respondents in this proceeding shall not restrict, regulate, impede, declare unethical or improper, interfere with, or advise against any form of advertising or solicitation of patients or business by dentists or dental care delivery organizations which is not false or misleading in any material respect. Within sixty (60) days after entry of this order, respondents shall:

(A) State in a prominent place and manner in the ADA Principles of Ethics, ADA Official Advisory Opinions, NVDS Code of Ethics, and all other codes, guidelines, and other standards of dentist conduct issued by respondents that: "Advertising, solicitation of patients or business, or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Notwithstanding any ADA Principles of Ethics or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other

standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the ADA Principles of Ethics."

(B) Add footnotes referring readers to the quoted statement in Section II(A) of this order after each provision of respondents' respective ethical codes, advisory opinions, interpretations, and guidelines which relates in any way to dentists' or dental care delivery organizations' advertising, solicitation, or promotional activities. These include the third paragraph of the preamble of the ADA Principles of Ethics and Sections 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 thereof. No version of respondents' respective ethical codes, advisory opinions, interpretations, or guidelines which lacks such footnote references shall be distributed.

(C) Delete from all copies of ethical codes and other publications which are distributed by respondents all references to the following ADA Official Advisory Opinions [of the ADA Principles of Ethics] (March 1977 rev.):

- Advisory Opinion 2 of Section 2
- Advisory Opinions 1 through 13 of Section 12
- Advisory Opinions 1 through 6 of Section 13
- Advisory Opinions 1 through 3 of Section 14
- Advisory Opinion 1 of Section 16
- Advisory Opinions 1 and 8 of Section 17
- Advisory Opinions 1 through 9 of Section 19
- Advisory Opinions 1 through 4 of Section 20

(D) Not thereafter amend, elaborate on, or add any ADA Principles of Ethics, ADA Official Advisory Opinions, or other standards of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities, except to conform such standards to the standard set forth in Section II(A) of this order.

(E) Not refer to or apply any standard of dentist conduct other than the standard set forth in Section II(A) of this order in responding to requests for advice, inquiries, and complaints from dental societies, dentists, or others relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities. In all such responses, respondents shall enclose a copy of this order and a copy of the ADA Principles of Ethics and Official Advisory Opinions made consistent with Section II(A)-(D) of this order.

III

It is further ordered. That at no time after entry of the final adjudicated order, or Commission issuance of a decision and order based on a consent agreement against the American Medical Association in FTC Dkt. 9064, shall respondents apply, in any formal or informal disciplinary proceeding, any standard of dentist conduct different from the standard set forth in Section II(A) of this order to those promotional activities which occur prior to entry of such final adjudicated order or consent order.

IV

It is further ordered. That nothing in this order shall be construed to limit the Commission's authority to investigate, proceed administratively against, or seek court action against any constituent or component society of ADA which may be acting contrary to this order or in violation of any of the laws which the Federal Trade Commission is charged with enforcing.

V

It is further ordered. That if the instant proceeding is returned to adjudicative status pursuant to Section I(B) of this order, no provision of this order other than Section III shall be given effect thereafter.

VI

It is further ordered. That:

(A) Within sixty (60) days after this order becomes final, ADA shall publish its full text in a prominent place and manner in the *Journal of the American Dental Association* and *ADA News*. Within ninety (90) days after this order becomes final, the other respondents shall publish its full text in a prominent place and manner in their respective publications: IDA in the *IDA Journal*; IDDS in the *IDDS Newsletter*; VDA in the *VDA Journal*; and NVDS in *NOVA News*.

(B) Within sixty (60) days after this order becomes final, ADA shall send a letter in the form shown in Appendix A to this order to each of its members. During the period prior to entry of a final adjudicated order, or Commission issuance of a decision and order based on a consent agreement against the American Medical Association in FTC Dkt. 9064, ADA shall send the same form letter, together with a copy of this order, to each dentist who joins ADA, immediately upon his or her joining.

(C) Within sixty (60) days after this order becomes final, ADA shall send, by first class mail, a letter in the form shown in Appendix B to this order to the presidents, staff directors, and ethics committee chairpersons of each of its constituent and component societies, enclosing a copy of this order and a copy of the ADA Principles of Ethics and Official Advisory Opinions made consistent with Section II(A)-(D) of this order.

VII

It is further ordered, That within ninety (90) days after service of this order and annually on the anniversary date of the original report, for each of the succeeding years prior to entry of a final adjudicated order or Commission issuance of a decision and order based on a consent agreement order against the American Medical Association in FTC Dkt. 9064, each respondent shall individually file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order. All such compliance reports shall include such other information and documentation as the Commission may require to show compliance with this order.

VIII

It is further ordered, That nothing in this order shall be construed to exempt any respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws and statute.

IX

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

APPENDIX A

[ADA Regular Letterhead]

Dear Doctor:

As you are probably aware, in January of 1977, the Federal Trade Commission issued a complaint against the ADA, the Indiana Dental Association, the Indianapolis

District Dental Society, the Virginia Dental Association, and the Northern Virginia Dental Society. The administrative complaint alleged that certain portions of ADA's Principles of Ethics and advisory opinions regarding advertising and solicitation by dentists were in violation of the Federal Trade Commission Act.

We have entered into a consent order with the FTC, without admitting any violation of the law, which will provide an interim resolution of the matter pending the ultimate decision in a similar FTC case (Dkt. 9064) involving professional advertising and solicitation. The ADA and the FTC have agreed to be bound by the final outcome of the other case principally as it relates to FTC jurisdiction, ethical restrictions on advertising and solicitation, and relief. That case, which may ultimately be decided by a United States Court of Appeals or the United States Supreme Court, deals with a number of questions, but those which relate to the ADA case are principally whether the FTC has jurisdiction over the professional associations in that case and whether those professional associations may have violated the Federal Trade Commission Act through adoption and enforcement of ethical restrictions on advertising and solicitation.

Pending the final decision in that case, advertising, solicitation of patients or business, or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Regardless of any standards of dentist conduct which may be worded differently, this shall be the sole standard for determining the ethical propriety of such promotional activities. The ADA Principles of Ethics and Official Advisory Opinions have been made consistent with the above stated standard through the addition of footnotes. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above stated standard shall be deemed to be in conflict with the ADA Principles of Ethics.

We urge all of our members and constituent and component organizations to abide by the letter and spirit of this consent order, a copy of which is printed in the _____ issue of the *ADA News* and which may be obtained from ADA headquarters or from your state or local dental society. A copy of the ADA Principles of Ethics and Official Advisory Opinions, as made consistent with the above stated standard, also may be obtained from these sources.

As part of the consent order, the FTC reserves the right to investigate, proceed administratively against, or seek court action against any constituent or component society of the ADA which may be acting contrary to the consent order or in violation of any of the laws which the FTC is charged with enforcing.

We will keep you advised on further developments as this matter proceeds toward its ultimate resolution.

Thank you for your cooperation.

Sincerely,
Joseph P. Cappuccio, D.D.S.
President

APPENDIX B

[ADA Regular Letterhead]

Dear _____:

As you are probably aware, in January of 1977, the Federal Trade Commission

issued a complaint against the ADA, the Indiana Dental Association, the Indianapolis District Dental Society, the Virginia Dental Association, and the Northern Virginia Dental Society. The administrative complaint alleged that certain portions of ADA's Principles of Ethics and advisory opinions regarding advertising and solicitation by dentists were in violation of the Federal Trade Commission Act.

We have entered into a consent order with the FTC, without admitting any violation of the law, which will provide an interim resolution of the matter pending the ultimate decision in a similar FTC case (Dkt. 9064) involving professional advertising and solicitation. The ADA and the FTC have agreed to be bound by the final outcome of the other case principally as it relates to FTC jurisdiction, ethical restrictions on advertising and solicitation, and relief. That case, which may ultimately be decided by a United States Court of Appeals or the United States Supreme Court, deals with a number of questions, but those which relate to the ADA case are principally whether the FTC has jurisdiction over the professional associations in that case and whether those professional associations may have violated the Federal Trade Commission Act through adoption and enforcement of ethical restrictions on advertising and solicitation.

Pending the final decision in that case, advertising, solicitation of patients or business, or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Regardless of any standards of dentist conduct which may be worded differently, this shall be the sole standard for determining the ethical propriety of such promotional activities. The ADA Principles of Ethics and Official Advisory Opinions have been made consistent with the above stated standard through the addition of footnotes (a copy is enclosed). Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above stated standard shall be deemed to be in conflict with the ADA Principles of Ethics.

We urge all of our members and constituent and component organizations to abide by the letter and spirit of the consent order, copies of which are enclosed.

All older editions of ADA's Principles of Ethics, Official Advisory Opinions, and constituent and component society ethical codes and interpretations which are worded differently from the above stated standard should no longer be distributed or enforced. Neither should any informal interpretations be given which do not accord with this standard.

As part of the consent order, the FTC reserves the right to investigate, proceed administratively against, or seek court action against any constituent or component society of the ADA which may be acting contrary to the consent order or in violation of any of the laws which the FTC is charged with enforcing.

We will keep you advised on further developments as this matter proceeds toward its ultimate resolution.

Thank you for your cooperation.

Sincerely,
Joseph P. Cappuccio, D.D.S.
President

Enclosures

Modifying Order

IN THE MATTER OF

JAY NORRIS CORP., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9054. Decision, May 2, 1978 — Modifying Order, Sept. 10, 1979

This order conforms an order issued on May 2, 1978, 91 F.T.C. 751, 43 FR 33900, to court-approved modifications by revising Part I of the original order to reflect that the term "full purchase price," as used in Paragraph 2, excludes postage incurred in placing an order or requesting a refund; deleting Paragraph 6; and by changing the notification period for corporate changes in Paragraph 2 of Part III of the order from the 30 days originally provided to five days.

ORDER CONFORMING PREVIOUS FINAL ORDER TO COURT
APPROVED MODIFICATIONS

After the Commission issued a cease and desist order in this matter on May 2, 1978, the respondents named in the order filed a petition for review of the order in the United States Court of Appeals for the Second Circuit. By motion dated February 21, 1979, the parties jointly requested the Court to modify Part I, Paragraph 2 and Part III, Paragraph 2 of the Commission's order and affirm the Commission's order as so modified (with the exception of Part I, Paragraph 6 of the order, which respondents continued to contest in the court proceeding). By consenting to the modified order the respondents agreed to severance of Part I, Paragraph 6 for purposes of finality so that the balance of the order would become immediately final and enforceable upon approval by the Court of the stipulated modifications. The "agreement" submitted to the Court with the joint motion also provided that "[u]pon entry of the Court's Order affirming the stipulation the Commission will enter a new Administrative Order in conformity with said Order."

On May 1, 1979, the Court of Appeals, *inter alia*, approved the stipulated modifications.¹ Accordingly, the Commission hereby enters the following order incorporating the modifications agreed to by the parties and approved by the Court.

¹ The Court also rejected respondents' challenges to Part I, Paragraph 6, of the Commission's order, although it ordered changes in the wording of the language for purposes of clarification. That provision is not final as respondents have received from Mr. Justice Marshall of the United States Supreme Court an extension of time until September 14, 1979, for the filing of a petition for writ of certiorari. Part I, Paragraph 6 will be the subject of a separate administrative order if and when it becomes final in accordance with 15 U.S.C. 45(g).

ORDER

I

It is ordered, That Jay Norris Corp., a corporation, its successors and assigns, and Joel Jacobs and Mortimer Williams, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division, trade style, or other device, in connection with the advertising, offering for sale, sale and distribution of general mail-order merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to refund the amount required by Paragraph 2, in connection with the return of merchandise purchased from respondents, within the time specified in respondents' advertisements. If no time is specified, such refund must be made within the time specified in Paragraph 5(E)(4) of this part.

2. Failing to refund the full purchase price of merchandise including postage, insurance, handling, shipping, or any other fee or charge paid by the purchaser any time a refund is made to such purchaser, unless respondents clearly state in their advertisement the exact nature of the refund including any items of the purchaser's expense that will not be refunded; *provided,* that the term full purchase price as used herein shall exclude postage incurred in ordering an item from respondents or in requesting a refund thereof.

3. (A) Soliciting any order for the sale of merchandise to be ordered by the buyer through the mail unless, at the time of the solicitation, respondents have a reasonable basis to expect that they will be able to ship any ordered merchandise to the buyer: (1) within the time clearly and conspicuously stated in any such solicitation, or (2) if no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer; and

(B) Providing any buyer with any revised shipping date, as provided in Paragraph 4 of this part unless, at the time any such revised shipping date is provided, respondents have a reasonable basis for making such representation regarding a definite revised shipping date; or

(C) Informing any buyer that they are unable to make any representation regarding the length of any delay unless (1) respondents have a reasonable basis for so informing the buyer and (2) respondents inform the buyer of the reason or reasons for the delay.

For purposes of this order, the failure of respondents to have records or other documentary proof establishing their use of systems

and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time set forth in this order will create a rebuttable presumption that the respondents lacked a reasonable basis for any expectation of shipment within said applicable time.

4. (A) Where respondents are unable to ship merchandise within the applicable time set forth in Paragraph 3(A) above, failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel his order and receive a prompt refund. Said offer shall be made within a reasonable time after respondents first become aware of their inability to ship within the applicable time set forth in Paragraph 3(A), but in no event later than said applicable time.

(1) Any offer to the buyer of such an option shall fully inform the buyer regarding his right to cancel the order and to obtain a prompt refund and shall provide a definite revised shipping date, but where respondents lack a reasonable basis for providing a definite revised shipping date the notice shall inform the buyer that respondents are unable to make any representation regarding the length of the delay.

(2) Where respondents have provided a definite revised shipping date which is thirty (30) days or less later than the applicable time set forth in Paragraph 3(A), the offer of said option shall expressly inform the buyer that, unless respondents receive, prior to shipment and prior to expiration of the definite revised shipping date, a response from the buyer rejecting the delay and cancelling the order, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.

(3) Where the respondents have provided a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in Paragraph 3(A), or where the respondents are unable to provide a definite revised shipping date and therefore inform the buyer that they are unable to make any representation regarding the length of the delay, the offer of said option shall also expressly inform the buyer that his order will automatically be deemed to have been cancelled unless (a) respondents have shipped the merchandise within thirty (30) days of the applicable time set forth in Paragraph 3(A) above, and have received no cancellation prior to such shipment, or (b) respondents have received from the buyer within thirty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the respondents inform the buyer that they are unable to make any representation regarding the length of the delay, the

buyer shall be expressly informed that, should he consent to an indefinite delay, he will have a continuing right to cancel his order at any time after the applicable time set forth in Paragraph 3(A) by so notifying respondents prior to actual shipment.

(4) Nothing in this paragraph shall prohibit respondents when they furnish a definite revised shipping date to Paragraph 4(A)(1) above, from requesting, simultaneously with or at any time subsequent to the offer of an option pursuant to Paragraph 4(A), the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date. *Provided, however,* that where respondents solicit consent to an unanticipated indefinite delay the solicitation shall expressly inform the buyer that, should he so consent to an indefinite delay, he shall have a continuing right to cancel his order at any time after the definite revised shipping date by so notifying respondents prior to actual shipment.

(B) Where respondents are unable to ship merchandise on or before the definite revised shipping date provided under Paragraph 4(A)(1), and consented to by the buyer pursuant to Paragraphs 4(A)(2) and 4(A)(3), failing to offer to the buyer, clearly and conspicuously and without prior demand, a renewed option either to consent to a further delay or to cancel the order and to receive a prompt refund. Said offer shall be made within a reasonable time after respondents first become aware of their inability to ship before the said definite revised date, but in no event later than the expiration of the definite revised shipping date. *Provided, however,* that where respondents previously have obtained the buyer's express consent to an unanticipated delay until a specific date beyond the definite shipping date, pursuant to Paragraph 4(A)(4) or to a further delay until a specific date beyond the definite revised shipping date pursuant to Paragraph 4(B), that date to which the buyer has expressly consented shall supersede the definite revised shipping date for purposes of Paragraph 4(B).

(1) Any offer to the buyer of said renewed option shall provide the buyer with a new definite revised shipping date, but where respondents lack a reasonable basis for providing a new definite revised shipping date, the notice shall inform the buyer that respondents are unable to make any representation regarding the length of the further delay.

(2) The offer of a renewed option shall expressly inform the buyer that, unless respondents receive, prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date, notification from the buyer specifical-

ly consenting to the further delay, the buyer will be deemed to have rejected any further delay, and to have cancelled the order if respondents are in fact unable to ship prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date. *Provided, however*, that where respondents offer the buyer the option to consent to an indefinite delay the offer shall expressly inform the buyer that, should he so consent to an indefinite delay, he shall have a continuing right to cancel his order at any time after the old definite revised shipping date or any date superseding the old definite revised shipping date.

(3) Paragraph 4(B) shall not apply to any situation where respondents, pursuant to the provisions of Paragraph 4(A)(4), have previously obtained consent from the buyer to an indefinite extension beyond the first revised shipping date.

(C) Whenever a buyer has the right to exercise any option under this order or to cancel an order by so notifying respondents prior to shipment, failing to furnish the buyer with adequate means, at respondents' expense, to exercise such option or to notify respondents regarding cancellation. For the purposes of this order, the failure of respondents:

(1) To provide any offer, notice or action required by this order in writing and by first class mail will create a rebuttable presumption that the respondents failed to offer a clear and conspicuous offer, notice or option;

(2) To provide the buyer with the means in writing (by business reply mail or with postage prepaid by respondents) to exercise any option or to notify respondents regarding a decision to cancel, will create a rebuttable presumption that the respondents did not provide the buyer with adequate means pursuant to this Paragraph 4(C).

Nothing in Paragraph 4 of this part shall prevent respondents where they are unable to make shipment within the time set forth in Paragraph 3(A) or within a delay period consented to by the buyer, from deciding to consider the order cancelled and providing the buyer with notice of said decision within a reasonable time after they become aware of said inability to ship, together with a prompt refund.

5. Failing to deem an order cancelled and to make a prompt refund to the buyer whenever:

(A) Respondents receive, prior to the time of shipment, notification from the buyer cancelling the order pursuant to any option, renewed option or continuing option under this order;

(B) Respondents have pursuant to Paragraph 4(A)(3), provided the buyer with a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in Paragraph 3(A) or have notified the buyer that respondents are unable to make any representation regarding the length of the delay and respondents (1) have not shipped the merchandise within thirty (30) days of the applicable time set forth in Paragraph 3(A), and (2) have not received the buyer's express consent to said shipping delay within said thirty (30) days;

(C) Respondents are unable to ship within the applicable time set forth in Paragraph 4(B) and have not received, within the said applicable time, the buyer's consent to any further delay;

(D) Respondents have notified the buyer of their inability to make shipment and have indicated their decision not to ship the merchandise; or

(E) Respondents fail to offer the option prescribed in Paragraph 4(A) and have not shipped the merchandise within the applicable time set forth in Paragraph 3(A).

For purposes of this Part:

(1) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(2) "Receipt of a properly completed order" shall mean the time at which respondents receive an order from the buyer containing all the information requested by respondents and accompanied, where required, by the proper amount of money in the form of cash, check or money order. *Provided, however*, that where respondents receive notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, "receipt of a properly completed order" shall mean the time at which (a) respondents receive notice that a check or money order for the proper amount tendered by the buyer has been honored, (b) the buyer tenders cash in the proper amount or (c) the seller receives notice that the buyer qualifies for a credit sale.

(3) "Refund" shall mean:

(a) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check or money order, a return of the full amount tendered in the form of cash, check, or money order;

(b) Where there is a credit sale:

(i) and the seller is a creditor, a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) and a third party is the creditor, a copy of an appropriate credit

memorandum or the like to the third party creditor which will remove the charge from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representation that he has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) and the buyer tendered partial payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order.

(4) "Prompt refund" shall mean:

(a) Where a refund is made pursuant to definition (3)(a) or (3)(b)(iii) a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to a refund vests under the provisions of this order.

(5) The "time of solicitation" of an order shall mean that time when respondents have:

(a) Mailed or otherwise disseminated solicitation to a prospective purchaser;

(b) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense; or

(c) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

6. [Severed from this order for purposes of finality.]

7. Misrepresenting that the nondelivery of merchandise ordered and paid for by a customer is caused by loss of the merchandise by the United States Postal Service.

8. Misrepresenting, directly or indirectly, the time or manner in which respondents' flame gun, or any other product used for the removal of snow or ice, will perform in the removal of snow or ice.

9. Misrepresenting, directly or indirectly, the time in which or the manner by which respondents' roach powder, or any other pesticide product, will kill or eliminate roaches.

10. Making any representation as to the safety of respondents' roach powder or other pesticide product without failing to clearly and conspicuously include the following statement in all advertisements and other promotional material for said products: "To use this product safely, you must follow the instructions on the label."

11. Misrepresenting, directly or indirectly, that respondents' TV antenna or any TV antenna will bring in sharp and clear reception and is superior to any other antenna.

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12. Making any representation as to the life expectancy of flashlights or other battery operated product without failing to disclose, clearly and conspicuously in all advertisements and other promotional material for such products (a) the expected "on" life of the product; and (b) any limitations on the warranty of such product.

13. Representing, directly or indirectly, that the Lincoln-Kennedy penny was minted by the United States Treasury Department.

14. Representing, directly or indirectly, that the Lincoln-Kennedy penny is a coin of historical and numismatic significance which is likely to increase in value.

15. Representing, directly or indirectly, in connection with the sale of any product that another product is given "free" or as a gift without cost or charge in connection with:

a. any offer which runs for an indefinite term or continuously for a period in excess of one (1) year; or

b. any offer not covered by (a) above excluding introductory offers, unless as to such limited offer:

(1) a regular bona fide retail price is established for the product without the "free" product;

(2) a regular bona fide retail price is established for the "free" product, or in the absence of such price a determination is made of the cost to respondents of such other product; and

(3) the price of the product is reduced at least as much as the price or cost of the "free" product.

II

It is further ordered. That Jay Norris Corp. and Pan Am Car Distributors Corp., corporations, their successors and assigns, and Joel Jacobs, Mortimer Williams and Kenneth Mann, individually and as officers of said corporations, and respondents' officers, agents; representatives and employees directly or through any corporation, subsidiary, division, trade style, or other device, in connection with the advertising, offering for sale, sale and distribution of used motor vehicles by mail-order in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, the ease or profit with which purchasers can resell respondents' motor vehicles;

2. Misrepresenting the mechanical and physical condition of said motor vehicles;

3. Misrepresenting that said motor vehicles are in safe mechanical and operating condition;

4. Misrepresenting the extent to which said motor vehicles have been inspected and repaired in preparation for sale and delivery to customers;

5. Misrepresenting that said motor vehicles are in sound condition and repair and will render normal, adequate and satisfactory service; and

6. Representing the safety or performance of said motor vehicles unless such claims are fully and completely substantiated by a reasonable basis which shall consist of competent and objective material available in written form.

III

It is further ordered, That:

1. Respondents shall maintain records of all consumer complaints for a period of three (3) years after such complaint is received, including but not limited to the following information:

- a. Name and address of the consumer;
- b. Date of receipt of the complaint;
- c. Transaction about which complaint is received;
- d. Nature of the complaint; and
- e. Date and disposition of the complaint.

2. Respondents shall notify the Commission within five (5) days of changes in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the order.

3. The individual respondents named herein, shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

4. Respondents shall deliver a copy of this order to cease and desist to all personnel or agents of respondents responsible for the preparation, creation, production or publication of the advertising of all products covered by this order.

5. No provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind

obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

6. Respondents herein shall, within sixty (60) days after service of this order, and annually for five (5) years thereafter, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order. The expiration of the obligation to file such reports shall not affect any other obligations arising under this order.

IV

It is further ordered, That the allegations of the complaint are dismissed as to FEDERATED NATIONWIDE WHOLESALERS SERVICE, GARYDEAN CORP., t/a Nationwide Wholesalers Service, and P-N PUBLISHING COMPANY, INC.

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

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

Docket 8922. Complaint, Apr. 10, 1973 — Decision, Sept. 12, 1979*

This consent order requires, among other things, that two sellers of personal income tax preparation services, located respectively in Wilmington, Del. and Morristown, N.J., cease, in connection with the preparation of income tax preparation services or the extension of credit, from using the terms "Instant Tax Refund" or "Immediate Tax Refund;" and misrepresenting the terms and conditions of guarantees; and the competence and ability of their tax preparing staff. The order further prohibits respondents from misusing confidential information obtained from their customers.

Appearances

For the Commission: *David C. Fix, Robert D. Friedman and R. Galler.*

For the respondent: *Edgar T. Higgins, Morristown, N.J., Timothy J. Bloomfield and George W. Wise, Hogan & Hartson, Washington, D.C. and E. Norman Veasey, Richards, Layton & Finger, Wilmington, Del.*

DECISION AND ORDER

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

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such

*Complaint previously published at 86 F.T.C. 119.

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 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Beneficial Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 1300 Market St., Wilmington, Delaware. Respondent Beneficial Management Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 200 South St., Morristown, New Jersey.
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

It is ordered, That respondents Beneficial Corporation and Beneficial Management Corporation, corporations, and their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the preparation of income tax returns or the extension of consumer credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Instant Tax Refund" or "Immediate Tax Refund" or like phrases using words of similar import or meaning, unless such phrases include the word loan in immediate conjunction therewith and further the advertising includes language which clearly and conspicuously discloses that the loan being offered has no relationship with the individual's tax refund, and that such phrases refer to a loan which is "normal", "usual", "standard" or "regular" by using such terms or their equivalents, and that prospective borrowers will be expected to meet qualifications to borrow which are described in such material as "normal", "usual", "standard" or "regular" or words having the same or equivalent meaning.
2. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

3. Representing, directly or by implication, that respondents will reimburse their customers for any payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payment results from an error by respondents in the preparation of the tax return; *provided, however*, that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

4. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not reimburse the taxpayer for any deficiency payment which results from said errors, *provided, however*, that it shall be a defense in any enforcement proceeding for respondents to establish that they make such payments.

5. Representing, directly or by implication, that the percentage of respondents' customers who receive tax refunds is demonstrably greater than the percentage of individual taxpayers at large who receive refunds; or misrepresenting, in any manner, the magnitude or frequency of refunds received by respondents' tax preparation customers.

6. Representing, directly or by implication, that respondents' tax preparing personnel are tax experts or unusually competent in the preparation of tax returns or the rendering of tax advice; or misrepresenting, in any manner, the competence or ability of respondents' tax preparing personnel.

7. Using information concerning any customers of respondents, including the name and/or address of the customer, for any purpose which is not essential or necessary to the preparation of a tax return if such information was obtained by respondents as a result of the preparation of the customer's tax return which includes any information given by the customer after he has indicated, in any way, that he is interested in utilizing respondents' tax preparation services, unless prior to obtaining such information respondents have both (1) specifically requested from the customer the right to use the tax return information of the customer and (2) have executed a separate written consent signed by the customer which shall contain:

- A. Respondent's name;
- B. The name of the customer;
- C. The specific purpose for which the consent is being signed;
- D. The exact information which will be used;

- E. The particular use which will be made of such information;
- F. The parties or entities to whom the information will be made available;
- G. The date on which such consent is signed;
- H. A statement that the tax return information may not be used by the tax return preparer for any purpose other than that stated in the consent, and;
- I. A statement by the taxpayer that he consents to the use of such information for the specific purpose described in subparagraph (C) of this paragraph.

Provided, however, that nothing herein shall prohibit respondents from using names and addresses only of customers for the purpose of communication with such customers solely concerning respondents' income tax preparation business.

Nothing in the above provision is intended to relieve respondents of any further requirements imposed on them by the Revenue Act of 1971, Pub. Law 92-178, Title III, §316(a), December 10, 1971; 26 U.S.C. 7216 or regulations issued pursuant to it.

It is further ordered, That respondents herein shall forthwith distribute a copy of this order to each office of their respective domestic consumer finance subsidiaries.

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

It is further ordered, That respondents shall, within 60 days after the effective date of this order, file with the Commission a written report, signed by respondents, setting forth in detail the manner and form of their compliance with this order.