IN THE MATTER OF

TRI-STATE DRIVER TRAINING, INC., ET AL.

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

Docket C-2839. Complaint, Sept. 20, 1976 — Decision, Sept. 20, 1976

Consent order requiring a Middletown, Ohio, truck driver training school, among other things to cease misrepresenting the role of salespersons, industry affiliations, job demand, earnings, placement services, and financing arrangements; failing to disclose, prior to sale, names of firms currently hiring graduates; the placement rate and salary range for graduates; failing to disclose purchaser's right to cancellation and refund within ten days; and failing to honor valid cancellations. Additionally, respondents are required to institute and enforce a monitoring program and maintain pertinent records.

Appearances

For the Commission: *William M. Rice.*

For the respondents: *Daft, Stettinius & Hollister*, Cincinnati, Ohio.

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 Tri-State Driver Training, Inc., a corporation, and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tri-State Driver Training, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1130 First Ave., Middletown, Ohio.

Respondent Robert L. Wise is an individual and an officer of respondent corporation. His business address is the same as that of said corporate respondent.

Respondent Robert J. Kuhn is an individual and an officer of respondent corporation. His business address is the same as that of said corporate respondent.

The said individual respondents together formulate, direct and control the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past,

engaged in the advertising, offering for sale, sale or distribution of courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers and related occupations. Said courses when pursued to completion consist of a series of lessons pursued by correspondence through the United States mail and by a period of in-residence training at a place designated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the publication of advertisements concerning the said courses in newspapers of general circulation and have caused the correspondence portion of said courses, when sold, to be sent from respondents' place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of said courses located in states other than the State of Ohio to contact said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature relating to the sale of said courses to said purchasers. Respondents also utilize the services of brokers and other solicitors, who pay respondents a fee for providing the resident training portion of courses to persons recruited by said brokers and solicitors. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive, of such advertisements is the following:

"SEMI-DRIVERS NEEDED

On the job type training with our truck hauling steel throughout the Mid-West. Free placement. For an application and interview, call: 813/621-1244 or write Tri-State Driver Training, Inc., 1367 78th St., South, Tampa, Florida 33619."

"CONSTRUCTION WORKERS

and men on other seasonal jobs, we can train you to fill immediate openings as tractor-trailer drivers. No experience necessary! For an application and interview call: 513/424-0031,

or write: Tri-State Driver Training, Inc., 2507 N. Verity Pkwy., Middletown, Ohio 45042."

PAR. 5. By and through the use of the statements contained in the advertisements set forth in Paragraph Four and others of similar import and meaning but not expressly set out herein, respondents represent directly or by implication that:

1. Respondents are offering employment to qualified applicants who will be trained as truck drivers.

2. There is a reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

PAR. 6. In truth and in fact:

1. Respondents do not offer employment to persons who have been trained as truck drivers, but attempt to and do sell courses of instruction to said purchasers.

2. Respondents had no reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

Therefore, the statements and representations as set forth in Paragraphs Four and Five were, and are, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to the aforesaid or similar advertisements to visit respondents' salesmen at respondents' offices. For the purpose of inducing the sale of said courses, said salesmen make to prospective purchasers many statements and representations, directly or by implication, regarding opportunities for employment as truck drivers available to purchasers of said courses, the assistance furnished to graduates of said courses in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents and other statements and representations made orally by said salesmen. Among and typical, but not all inclusive of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train operators and drivers for specific jobs as truck drivers with their companies upon completion of said training.

2. Graduates of said courses will be qualified thereby for employment as truck drivers without further training or experience.

3. The nature of an initial payment by prospective enrollees of said

courses prior to the undertaking of a formal obligation to respondents is not that of a non-refundable tuition fee.

4. Respondents will permit enrollees of said courses to defer payment of the balance of the cost of said courses remaining after the initial or registration fee has been paid until after the graduate of said courses has obtained employment as a truck driver.

5. Respondents provide a placement service which will assure jobs as truck drivers for graduates of said courses who want to work in such capacity.

6. Graduates of said courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

PAR. 8. In truth and in fact:

1. Respondents have not received sufficient requests from trucking companies to train people for specific jobs as truck drivers, to offer such specific jobs to all graduates of said training.

2. Graduates of said courses are not thereby qualified for all types of employment as truck drivers without further training or experience.

3. The sum of money which enrollees in said courses are required to pay prior to the undertaking of a formal obligation with respondents is a non-refundable fee.

4. Respondents generally do not permit enrollees to defer payment of the balance of the cost of said courses remaining after the initial or registration fee has been paid until after employment as a truck driver has been obtained.

5. The placement service provided by respondent will not assure jobs for graduates of said courses.

6. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, false, misleading and deceptive.

PAR. 9. In the course and conduct of their business as aforesaid, respondents have utilized the services of brokers and other solicitors to provide students for the resident training portion of the courses offered by respondents. These brokers and other solicitors are under an obligation to pay a fee to respondents for providing to respondents enrollees of said resident training courses. Said brokers and other solicitors have published, or caused to be published, advertisements containing statements and representations similar to those described in Paragraphs Four and Five above. As a consequence of said advertisements or other inducements, prospective enrollees met with salesmen of such brokers and solicitors to discuss said courses. In their attempts to induce prospective enrollees to enroll in said courses, said salesmen made various statements and representations regarding the tuition-

financing arrangements, the training program provided by respondents, the assistance furnished to graduates in obtaining employment and the availability of employment opportunities, and other matters. Respondents have been aware of said statements and representations made by or in behalf of said brokers and other solicitors for the purpose of inducing prospective purchasers to enroll in courses offered by respondents. Said statements and representations are often false, misleading or deceptive.

PAR. 10. Respondents offered for sale courses of instruction to prepare graduates thereof for jobs as truck drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of graduates of each school who were able to obtain the employment for which they were trained; (2) the employers that hired any such graduates; (3) the initial salary any such graduates received; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would indicate the possibility of securing future employment upon graduation and the nature of such employment. Thus, respondents have failed to disclose a material fact, which, if known to certain prospective enrollees, would be likely to affect their consideration of whether or not to purchase such course of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive, or unfair.

PAR. 11. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses by the general public, respondents acting directly through their company–owned training facilities and furnishing the means and instrumentalities to their salesmen, directly or indirectly, have engaged in the following additional acts or practices:

> Respondents have induced members of the general public to sign certain contracts entitled "Application." Respondents thereby have deceptively and misleadingly created the impression that said documents are not legally binding contractual agreements, when in fact said documents are legally binding contractual agreements.

Therefore, respondents' statements, representations, acts or practices as set forth herein were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 12. Respondents have entered into contracts with purchasers of said courses of instruction which contracts contain provisions for the cancellation of said contracts and the refund of tuition monies paid by said purchasers. In many instances, respondents have failed to offer to refund and refused to refund to purchasers who have cancelled their

contracts such monies as may be due and owing according to the terms of said contracts.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 13. (a) Respondents have been and are now using the aforesaid unfair, false, misleading or deceptive acts and practices, which a reasonably prudent person should have known, under all of the facts and circumstances, were unfair, false, misleading or deceptive, to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction which, to such purchasers in connection with their future employment and careers was, and is, virtually worthless. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to or to rescind such contractual obligations of substantial numbers of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

(b) In the alternative and separate from Paragraph Thirteen (a) herein, respondents, who are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, have been and are now using, as aforesaid, false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction.

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

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. By and through the use of the aforesaid acts, practices, statements and representations, respondents place in the hands of others the means and instrumentalities by and through which they mislead and deceive the public in the manner and as to the things hereinbefore alleged.

PAR. 15. In the course and conduct of their aforesaid business, and at

all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of similar courses of study and instruction.

PAR. 16. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said courses of study and instruction offered by respondents by reason of said erroneous and mistaken belief.

PAR. 17. 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 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 determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 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 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tri-State Driver Training, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Ohio, with its office and principal place of business located at 1130 First Ave., in the city of Middletown, State of Ohio.

Respondents Robert L. Wise and Robert J. Kuhn are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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 Tri-State Driver Training, Inc., a corporation, its successors and assigns, and officers, and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, and respondents' 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 courses of study and instruction in truck driving or any other subject, trade or vocation, or in connection with any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

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

(a) Employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of such training courses.

(b) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or otherwise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons or that persons completing said courses will or may earn any specific amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 9 of the order.

(c) Respondents have been requested by trucking companies or any other business or organization to train persons for specific jobs; or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

(d) Graduates of respondents' courses will be qualified thereby for employment as truck drivers without further training or experience.

(e) Any payments made by prospective enrollees prior to the

undertaking of a formal obligation to respondents may be refunded to such enrollees upon request; or misrepresenting in any manner the nature of any payments made by such enrollees.

(f) After payment of the initial or registration fee, enrollees will be permitted to defer the payment of any balance remaining for tuition until after they have graduated and commenced employment as truck drivers; or misrepresenting in any manner the terms and conditions under which tuition payments are to be made.

(g) Respondents will finance the balance of tuition remaining after the payment of the initial or registration fee or will arrange for such financing by others, unless such financing is in fact provided by respondents or by others that are specifically named to enrollees.

(h) Respondents or others provide a placement service which will assure jobs for graduates of their courses.

(i) Graduates of said courses are assured of placement in the positions for which they have been trained; or representing that graduates of said courses will easily attain employment.

(j) Respondents' courses provide any stated minimum number of hours of road-driving instruction, when such representations do not accurately disclose the actual number of hours of behind-the-wheel road-driving instruction furnished to enrollees; or misrepresenting, in any manner, the number of actual hours of behind-the-wheel road-driving instruction furnished to enrollees.

(k) Any person engaged in the promotion, offering for sale, sale, distribution or other use of respondents' courses is a trained admissions counselor or vocational counselor; or misrepresenting the training, experience, title, qualifications or status of such person or the import or meaning of any advice given by or any other statement made by any such person.

(l) Respondents accept only qualified candidates for enrollment in their courses.

2. Placing advertisements in "Help Wanted" columns, or failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any truck driver training course offered by respondents, the following information:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of truck drivers prescribe a minimum age of twenty-one (21) years of age for drivers.

(2) Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five (25) years of age.

(3) Many employers of truck drivers give preferential consideration in hiring to driver applicants with actual truck-driving experience.

4. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is a private school.

5. Utilizing the services of, brokers, or solicitors who engage in any of the acts or practices prohibited by this order, or who otherwise misrepresent in any way the training program offered by respondents, the type of training equipment utilized by respondents, the tuition-financing arrangements, the assistance furnished to graduates in obtaining employment and the availability of employment opportunities, and other matters.

6. Failing to place the title "CONTRACT" or "AGREEMENT" in boldface type, on any document which evidences an agreement between an enrollee and respondents for the purchase of any of the courses offered by respondents.

7. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course offered by respondents, the full cost of such course including the fee for any residential training.

8. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 9 of this order and prescribed in Appendix A.

9. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction offered by respondents, the following information in the format prescribed in Appendix A and for a base period designated as described in Appendix B.

(a) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each schoool, location or facility;

(b) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(c) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (b) above;

(d) A list of firms or employers which are currently hiring graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (b) above.

Provided, however, this paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period established pursuant to Appendix B as prescribed in this paragraph. However, during such period, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

> This school [or course, as the case may be] has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

10. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

> "You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right."

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point boldface type the following information and statements:

NOTICE OF CANCELLATION

(enter date of transaction)
(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR

OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND

ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE: OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLERS' EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY (20) DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PAYMENT FOR SAID GOODS.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (Name of seller), AT (Address of seller's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective enrollee's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within ten (10) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by respondent; (iii) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

(f) During the cancellation period described herein, respondents shall

not initiate contacts with such contracting persons other than contacts permitted by this paragraph.

11. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driver training or any other course offered to the public in any field in commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

12. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by the order.

II

1. *It is further ordered*, That:

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of

persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

2. *It is further ordered*, That respondents herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation conducted at any location other than respondents' offices during which the purchase of or enrollment in any course of instruction offered by respondents herein is discussed or solicited, a 5" x 7" card containing only the following language:

"YOU WILL BE TALKING TO A SALESPERSON"

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

4. *It is further ordered*, That the respondent Tri-State Driver Training, Inc., 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 respondents which may affect compliance obligations arising out of this order.

5. *It is further ordered*, That the individual respondents named herein 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 or employment in which they are engaged as well as a description of their duties and responsibilities.

6. *It is further ordered*, That the respondents herein 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 they have complied with this order.

Commissioner Dole did not participate by reason of absence.

APPENDIX A

DISCLOSURE FORM

(NAME OF SCHOOL)
DROP OUT AND PLACEMENT RECORD FOR
(NAME OF COURSE) FOR THE PERIOD OF (DATE) TO (DATE)

1. TOTAL ENROLLEES ..... [Number]
2. TOTAL WHO FAILED TO COMPLETE THE COURSE ..... [Number]
3. PERCENTAGE WHO FAILED TO COMPLETE THE COURSE ..... [%]
4. TOTAL NUMBER OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM [Number]
5. PERCENTAGE OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM ..... [% of Enrollees]
6. PERCENTAGE OF GRADUATES WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM ..... [% of Graduates]
7. NUMBER AND PERCENTAGE OF TOTAL ENROLLEES AND GRADUATES WHO OBTAINED EMPLOYMENT IN THE FOLLOWING SALARY RANGES:

Less Than $2.50 Per Hour ..... [Number] STUDENTS WHICH IS [%] OF TOTAL GRADUATES
$2.50 - $3.99 Per Hour ..... ”
$4.00 - $5.50 Per Hour ..... ”
$5.51 - $7.00 Per Hour ..... ”
More Than $7.00 Per Hour ..... ”

8. EMPLOYERS HIRING PERSONS WHO GRADUATE FROM [NAME OF COURSE] FROM (DATE) TO (DATE) AS TRACTOR TRAILER DRIVERS:

NAMES OF EMPLOYERS	*TOTAL NUMBER OF GRADUATES HIRED*

APPENDIX B

"Base period" shall mean that period of time that begins with the entrance and ends with the graduation of respondents' most recent graduating class, provided that the class graduated at least three (3) months prior to the date on which respondents must begin to disseminate the necessary statistics with respect to the base period.

The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment success of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the base period that covers their graduating class.

On the first business day falling more than three (3) months after the graduation of the most recent graduating class respondents shall begin to disseminate statistics for that base period. Respondents shall continue to distribute said statistics until the first business day falling three (3) months after the graduation of the next graduating class.

The following example describes how base periods will be utilized by respondents.

Base period 1 will cover the period that begins with the entrance and ends with the graduation of the first class whose graduation date occurs after the effective date of this order. Therefore if a class began on January 1, 1975 and graduated on March 1, 1975 then from March 1, 1975 until June 1, 1975 respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during the base period, January 1, 1975 to March 1, 1975. Respondents would begin disseminating these statistics on the first business day after June 1, 1975.

Base period number two (2) would begin with entrance and end with the graduation of the next graduating class. If that class began on February 1, 1975 and graduated on April 1, 1975 then from April 1, 1975 to July 1, 1975 respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during base period number two (2) February 1, 1975 to April 1, 1975. Respondents would begin disseminating these statistics on the first business day after July 1, 1975.

IN THE MATTER OF

ELECTRONIC COMPUTER PROGRAMMING INSTITUTE, INC., ET AL.

Docket 8952. Order, Sept. 21, 1976

Denial of complaint counsel's motion to amend complaint by naming two individuals as additional parties.

Appearances

For the Commission: *Deirdre E. Shanahan* and *D. McCarty Thornton, IV.*

For the respondents: *Robert E. Fischer, Lowenthal, Freedman, Landau, Fischer & Singer*, New York City and *Sidney Davis*, New York City.

ORDER DENYING MOTION TO JOIN ADDITIONAL PARTIES

This matter is before us upon the administrative law judge's certification of complaint counsel's motion to amend the complaint by naming two individuals as additional parties. The Commission has determined that insufficient justification has been offered for adding new parties two and one-half years after the complaint originally issued and that such action would, therefore, not be in the public interest. Accordingly,

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

Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

Docket 8998. Order, Sept. 21, 1976

Determination that subpoena enforcement proceedings should not be commenced with remand to administrative law judge for issuance of a new subpoena.

Appearances

For the Commission: *Richard H. Gateley* and *John J. Hemrick.*

For the respondents: *Thompson, Knight, Simmons & Bullion,* Dallas, Tex.

ORDER REMANDING MATTER TO ADMINISTRATIVE LAW JUDGE

The administrative law judge has certified complaint counsel's motion that the Commission institute proceedings to enforce a subpoena ad testificandum directing Mr. James Cowan to testify. The subpoena directed Mr. Cowan to appear on July 22, 1976, at a hearing in Dallas, Texas. According to the motion, however, complaint counsel "contacted Mr. Cowan and told him not to appear on July 22, 1976, but that he would be called early the following week should the hearings continue." Complaint counsel assert that they have subsequently been unable to reach the witness.

The Commission has determined that enforcement proceedings should not be commenced unless a new subpoena issues directing Mr. Cowan to appear on a date certain and the witness disobeys the subpoena. Accordingly,

It is ordered, That this matter be, and it hereby is remanded to the administrative law judge for issuance of a new subpoena.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

FOOD TOWN STORES, INC., ET AL.

ORDER DISMISSING COMPLAINT IN REGARD TO ALLEGED VIOLATION OF SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9087. Complaint, Aug. 4, 1976 — Order, Sept. 24, 1976

Order dismissing complaint issued against Ford Town Stores, Inc., and Lowe's Food Stores, Inc., two North Carolina retail food stores for alleged violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act. The complaint has been dismissed because the proposed merger between the two respondents which gave rise to the complaint, has been abandoned.

Appearances

For the Commission: *Ronald A. Bloch* and *Joseph Tasker, Jr.*
For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents 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(a)(1) of the Federal Trade Commission Act, as amended (15 U.S.C. §45(a)(1)), and having found that a proceeding with respect to said violation is in the public interest, issues its complaint stating its charges as follows:

DEFINITION

PARAGRAPH 1. For the purposes of this complaint, the following definition shall apply: "retail food stores" shall be defined as retail food establishments primarily engaged in selling food for home preparation and consumption.

FOOD TOWN STORES, INC.

PAR. 2. Respondent Food Town Stores, Inc., (Food Town) is a North Carolina corporation with its principal office at Harrison Road, Salisbury, North Carolina.

PAR. 3. In 1975, Food Town operated twenty-nine (29) retail food stores in North Carolina, which were located in the following eleven

contiguous counties in the west-central region of that State: Cabarrus, Davidson, Forsyth, Gaston, Guilford, Mecklenburg, Rowan, Stanley, Surry, Union and Yadkin. In 1976, Food Town opened one retail food store in Iredell County, North Carolina. In 1972, Food Town operated seventeen (17) retail food stores in ten (10) counties in west-central North Carolina.

PAR. 4. Food Town's total retail sales in 1975 were approximately $130,406,000. In 1972, Food Town's total retail sales were approximately $49,253,000.

PAR. 5. At all times relevant herein, Food Town has engaged and is engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

LOWE'S FOOD STORES, INC.

PAR. 6. Respondent Lowe's Food Stores, Inc., (Lowe's) is a North Carolina corporation with its principal office at Wilkesboro, North Carolina 28697.

PAR. 7. In 1975, Lowe's operated thirty-five retail food stores which were located in the following eighteen-county contiguous region in North Carolina: Alexander, Ashe, Burke, Caldwell, Catawba, Cleveland, Davidson, Davie, Forsyth, Iredell, Lincoln, McDowell, Mitchell, Rowan, Surry, Watauga, Wilkes and Yadkin. In 1972, Lowe's operated nineteen (19) retail food stores which were located in eleven (11) counties in west-central North Carolina.

PAR. 8. Lowe's total retail sales in 1975 were approximately $79,771,000. For the fiscal year ending September 30, 1972, Lowe's had total retail sales of approximately $34,739,000.

PAR. 9. At all times relevant herein, Lowe's has engaged and is engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

MERGER AGREEMENT

PAR. 10. On or about April 30, 1976, Food Town and Lowe's entered into an "Agreement and Plan of Merger" under the terms of which Lowe's and Food Town agreed to merge into a single corporation pursuant to the provisions of the North Carolina Business Corporation Act. The agreement provides, *inter alia*, that Food Town will be the surviving corporation, and that the Lowe's shareholders will receive shares of Food Town in exchange for their Lowe's shares. The practical

result of the agreement, if consummated, would be the acquisition of Lowe's by Food Town.

TRADE AND COMMERCE

Relevant Product Market

PAR. 11. The relevant product market is retail food store sales.

PAR. 12. Concentration in the relevant product market is high in each of the relevant geographic markets alleged below.

Relevant Geographic Market

Actual Competition

PAR. 13. The relevant geographic markets in which actual competition exists are cities or town(s) in North Carolina and their trading areas in which Food Town and Lowe's both operate retail food stores, including but not limited to Winston-Salem, Mount Airy, Jonesville, Kannapolis, Lexington and Statesville.

PAR. 14. At the time Food Town and Lowe's entered into the agreement described in Paragraph 10 herein, respondents both operated retail food stores in the following cities or towns:

City/Town	*Food Town*	*Lowe's*
Winston-Salem	*3*	*3*
Mount Airy	*2*	*2*
Jonesville	*1*	*1*
Kannapolis	*2*	*1*
Lexington	*1*	*1*

PAR. 15. During the period 1972-1975, Lowe's opened one retail food store in Lexington, three retail food stores in Winston-Salem and one retail food store in Kannapolis. At the time Lowe's commenced operating these stores, Food Town operated retail food stores in those cities or town, but Lowe's previously had not operated retail food stores therein. In addition, during this period, Lowe's opened a retail food store in Mount Airy, in which, at the time, both Lowe's and Food Town operated retail food stores.

PAR. 16. In 1976, Food Town commenced operation of a retail food store in Statesville, North Carolina, in which town Lowe's was operating two retail food stores.

PAR. 17. Food Town and Lowe's have for some time been and are now direct and substantial competitors in the relevant product market in each of the geographic areas described in Paragraphs 13-16 herein.

Potential Competition

PAR. 18. The relevant geographic markets in which potential competition exists are: (a) the trading areas within the eleven county contiguous region described in Paragraph 3, and (b) the trading areas within the eighteen county contiguous region described in Paragraph 7.

PAR. 19. Food Town is an actual and potential entrant into Lowe's trading areas, as described in Paragraph 18(b), herein.

PAR. 20. Lowe's is an actual and potential entrant into Food Town's trading areas, as described in Paragraph 18(a), herein.

PAR. 21. Barriers to entry into the retail food store business in the relevant geographic markets alleged in Paragraph 18 are high.

EFFECTS OF THE MERGER

PAR. 22. The effects of the proposed merger set forth in Paragraph 10 may be substantially to lessen competition or tend to create a monopoly in the relevant markets, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and the acquisition constitutes an unfair method of competition and an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. §45) in the following ways among others:

a. the elimination of actual competition between Food Town and Lowe's in the North Carolina cities or towns of Winston-Salem, Mount Airy, Jonesville, Kannapolis, Lexington and Statesville, and their trading areas; (b) increased concentration in the retail food store business in each of the areas described in (a) above; (c) the elimination of potential competition in the markets described in Paragraph 18; (d) increased barriers to entry into the retail food store business in some or all of the relevant geographic markets herein alleged.

VIOLATION CHARGED

PAR. 23. The merger between Food Town and Lowe's, if consummated, would for the reasons set forth herein 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).

PAR. 24. By entering into the agreement giving rise to the violation described in Paragraph 23, herein, Food Town and Lowe's have violated Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

ORDER DISMISSING COMPLAINT

The administrative law judge has certified a motion filed by

complaint counsel and respondents that the complaint be dismissed on the ground that the proposed merger challenged in the complaint has been abandoned. Upon consideration of the motion and the papers filed therewith,

It is ordered, That the complaint be, and it hereby is, dismissed.

Commissioner Dole not participating.

IN THE MATTER OF

GIFFORD-HILL & COMPANY, INC.

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

Docket 8989. Complaint, Aug. 7, 1976 — Decision, Sept. 28, 1976

Consent order requiring a Dallas, Tex., producer and seller of construction material, among other things, to divest itself of the stock assets and capital stock of three acquired companies; Southern Equipment Corporation, Becker Sand & Gravel Company, and Concrete Supply Company, within one (1) year of the effective date of this order. Further, respondent is prohibited from acquiring any company engaged in the sale of construction aggregates within a specified radius of respondent's North Carolina plant, for a period of ten (10) years without prior F.T.C. approval.

Appearances

For the Commission: *Paul N. Kane* and *Paul T. Breitstein.*

For the respondent: *John H. Schafer, Covington & Burling,* Washington, D.C. *Merlyn D. Sampels, Worsham, Forsythe & Sampels,* Dallas, Tex.

COMPLAINT

The Federal Trade Commission having reason to believe that Gifford-Hill & Company, Inc., a corporation, has violated and is now violating the provisions of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45) through the acquisition of the capital stock or assets of Concrete Materials, Inc., a corporation; Southern Equipment Corporation, a corporation; H. L. Coble Construction Company, a corporation; Becker Sand & Gravel Company, a corporation; and capital stock of Concrete Supply Co., a corporation, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to the provisions of Section 11 of the aforesaid Clayton Act (15 U.S.C. §21) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) stating its charges as follows:

I

DEFINITIONS

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

a. "Portland cement" — includes Types I through V of portland cement as specified by the American Society for Testing Materials. Neither masonary nor white cement is included.

b. "Ready mixed concrete" — includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready mixed concrete includes central mixed concrete, shrink mixed concrete and transit mixed concrete.

c. "Prestressed concrete products" — includes all precast, pretensioned, prestressed or post-tensioned concrete members, the essential raw materials of which are portland cement, aggregates, water and frequently steel.

d. "Concrete block" — includes all concrete masonary and paving block, the essential raw materials of which are portland cement, aggregates and water.

e. "Fine aggregate" — Fine aggregate is that material which consists of natural sand, manufactured sand, or a combination thereof, having clean, hard, uncoated particles conforming to all specifications established by the State Highway Commission of North Carolina or by the State Highway Department of South Carolina for use in portland cement concrete.

f. "The Charlotte Area" — Consists of the Counties of Mecklenburg and Union in the State of North Carolina.

g. "The Fayetteville Area" — Consists of Cumberland County in the State of North Carolina.

h. "The Greensboro Area" — Consists of the Counties of Forsyth, Guilford, Randolph and Yadkin in the State of North Carolina.

i. "The Raleigh Area" — Consists of Wake County in the State of North Carolina.

j. "The Wilmington Area" — Consists of the Counties of Brunswick and New Hanover in the State of North Carolina.

k. "The Charleston Area" — Consists of the Counties of Berkeley and Charleston in the State of South Carolina.

l. "The Greenville Area" — Consists of the Counties of Greenville and Pickens in the State of South Carolina.

m. "The Atlanta Area" — Consists of the Counties of Clayton, Cobb, Dekalb, Fulton and Gwinnett in the State of Georgia.

II

GIFFORD-HILL & COMPANY, INC.

2. Gifford-Hill & Company, Inc. (hereinafter Gifford-Hill), respondent herein, was incorporated under the laws of Texas in 1926, and since its 1969 reincorporation has been a corporation organized, existing

and doing business under the laws of the State of Delaware with its office and principal place of business located at 2949 Stemmons Freeway, Dallas, Texas.

3. Gifford-Hill, its subsidiaries and 50%-owned companies are primarily engaged in the production and sale of certain construction materials, including ready mixed concrete, aggregates, portland cement, prestressed and pre-cast concrete products, concrete pipe, concrete pressure pipe and roll-formed metal building products. In addition, Gifford-Hill manufactures and sells agricultural irrigation systems, aluminum tubing, plastic pipe and machinery, tools and dies for metal fabrication and handling. A wholly-owned subsidiary is engaged in specialized motor truck transportation of specified commodities and another wholly-owned subsidiary of Gifford-Hill is engaged in real estate investment and development.

4. Gifford-Hill, in calendar 1972, had net sales of $146,071,442, assets of $128,370,004 and net income amounting to $9,020,415.

5. In 1972 Gifford-Hill began construction of a portland cement plant near Harleyville, South Carolina (55 miles southeast of Columbia), which, when completed will have an annual estimated capacity to produce 3 million barrels of portland cement, which can be distributed in each of the areas defined in Paragraph 1 above and in other areas of North Carolina, South Carolina, Georgia and Florida. This plant will cost approximately $26 million and was scheduled to be completed in January of 1974.

6. At all times relevant herein, Gifford-Hill has been a corporation engaged in the purchase or sale of products in interstate commerce and is engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

III

CONCRETE MATERIALS, INC. AND WHOLLY OWNED SUBSIDIARY — CONCRETE MATERIALS OF GEORGIA, INC.

7. Prior to December 15, 1967, Concrete Materials, Inc. (hereinafter CMI), was a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Charlotte, North Carolina. CMI's wholly-owned subsidiary, Concrete Materials of Georgia, Inc. (hereinafter CMI of Georgia) was a corporation organized and existing under the laws of the State of Georgia with its principal office located in Clayton County, Georgia.

8. At the time of its acquisition, CMI and its wholly-owned subsidiary, CMI of Georgia were, and for many years had been, engaged in the production and sale of prestressed concrete products.

For the calendar year 1967, CMI and its wholly-owned subsidiary CMI of Georgia had sales of $9,178,190 and assets of $7,975,883.

9. CMI and CMI of Georgia operated two prestressed concrete products plants, one being located in Charlotte, North Carolina and the other being located in Conley, Georgia. During 1969, CMI was the leading producer of prestressed concrete products in the Charlotte Area and CMI of Georgia was likewise the leading producer of prestressed concrete products in the Atlanta Area.

10. At all times relevant herein, CMI and its wholly-owned subsidiary CMI of Georgia were corporations engaged in the purchase or sale of products in interstate commerce and were engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

IV

ACQUISITION

11. On or about December 15, 1967, Gifford-Hill acquired 81 percent of all the outstanding capital stock of CMI and thereby acquired control of its wholly–owned subsidiary, CMI of Georgia, for a total consideration of $1,052,552.50. Thereafter, on December 31, 1969, CMI of Georgia was merged into CMI. In April of 1970, Gifford-Hill purchased the remaining 19 percent of all the outstanding capital stock of CMI for 29,624 shares of Gifford-Hill common stock, $2.00 par value, having a fair market value of $402,886. On December 31, 1970, CMI was dissolved and liquidated, its assets and business being transferred to Gifford-Hill.

V

CONCRETE SUPPLY CO.

12. Prior to December, 1967, Concrete Supply Co. was a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Charlotte, North Carolina.

13. At the time of its acquisition, Concrete Supply Co. was and for many years had been, engaged in the production and sale of ready mixed concrete in the Charlotte Area and nearby Counties in North Carolina. For the calendar year 1967, Concrete Supply Co. had net sales of $5,066,000, assets of $1,358,596 and net profit before taxes of $414,557.

14. Concrete Supply Co. operated six ready mixed concrete plants in the Charlotte Area and nearby Counties in North Carolina. Concrete Supply Co. was the leading supplier of ready mixed concrete and the

largest such consumer of portland cement in the Charlotte Area. During 1967, Concrete Supply Co. consumed 480,000 barrels of portland cement and sold 369,000 cubic yards of ready mixed concrete.

15. At all times relevant herein, Concrete Supply Co. was a corporation engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

VI

ACQUISITION

16. On or about December 15, 1967, Gifford-Hill acquired 81 percent of all the outstanding capital stock of Concrete Materials, Inc. (hereinafter CMI). Thereafter, in April of 1970, Gifford-Hill purchased the remaining 19 percent of all the outstanding capital stock of CMI. CMI owned 50 percent of all the outstanding capital stock of Concrete Supply Co. On December 31, 1970, CMI was dissolved and liquidated and direct ownership of 50 percent of all the outstanding capital stock of Concrete Supply Co. was thereby acquired and secured by Gifford-Hill. Gifford-Hill has continued its ownership of substantially all of such acquired capital stock of Concrete Supply Co.

VII

SOUTHERN EQUIPMENT CORPORATION

17. Prior to September 14, 1970, Southern Equipment Corporation was a corporation organized and existing under the laws of the State of North Ccarolina with its principal office located in Raleigh, North Carolina.

18. At the time of its acquisition, Southern Equipment Corporation was, and for many years had been, engaged in production and sale of ready mixed concrete in the Raleigh Area. For the calendar year 1969, this company had sales of $3,175,531, assets of $1,472,701, and net profits before taxes of $394,623.

19. Southern Equipment Corporation operated four ready mixed concrete plants in the Raleigh Area. This corporation was the largest producer of ready mixed concrete and the largest such consumer of portland cement, in the Raleigh Area during 1969. In 1969 this corporation sold 193,281 cubic yards of ready mixed concrete and consumed 255,667 barrels of portland cement.

20. At all times relevant herein, Southern Equipment Corporation was a corporation engaged in the purchase or sale of products in

interstate commerce, and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

VIII

ACQUISITION

21. On or about September 14, 1970, Gifford-Hill acquired all the outstanding capital stock of Southern Equipment Corporation for approximately $2,600,000 in the form of cash and notes.

IX

READY-MIX CONCRETE COMPANY DIVISION OF THE H. L. COBLE CONSTRUCTION CO.

22. Prior to September 15, 1970, H. L. Coble Construction Company, a corporation organized and existing under the laws of the State of North Carolina, with its principal office located in Greensboro, North Carolina, operated a division known as Ready-Mix Concrete Company (hereinafter Greensboro Ready-Mix).

23. At the time of its acquisition, Greensboro Ready-Mix was, and for several years had been, engaged in the production and sale of ready mixed concrete and since 1969, had been engaged in the production and sale of concrete block in the Greensboro Area. For the calendar year 1969, Greensboro Ready-Mix had sales of $1,507,037, assets of $761,302, and net profits before taxes of $35,100.

24. Greensboro Ready-Mix operated two ready mixed concrete plants and a concrete block plant in Greensboro, North Carolina. During 1969, Greensboro Ready-Mix consumed 131,651 barrels of portland cement, and sold 88,608 cubic yards of ready mixed concrete.

25. At all times relevant herein, H. L. Coble Construction Company, through Greensboro Ready-Mix, was engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

X

ACQUISITION

26. On or about September 15, 1970, Gifford-Hill acquired the business and assets of the Ready-Mix Concrete Company Division of the H. L. Coble Construction Company for approximately $1,400,000 in cash, notes and assumed liabilities.

XI

BECKER SAND & GRAVEL COMPANY

27. Prior to July 1, 1972, Becker Sand & Gravel Company (hereinafter Becker), was a corporation organized and existing under the laws of the State of Minnesota with its principal office located in Cheraw, South Carolina.

28. At the time of its acquisition Becker was, and for many years had been, engaged in the production and sale of mineral aggregates principally within the States of North Carolina and South Carolina. For the calendar year 1971, Becker had sales of $10,067,414, assets of $9,074,839, and net income before taxes of $1,226,422.

29. Becker operated five sand and gravel plants, a gravel plant, two sand plants and a specialty aggregate plant and a slag sales outlet in North Carolina and South Carolina. Becker is one of the leading producers of fine aggregate which is essential in the production of ready mixed concrete, in North Carolina and South Carolina.

30. At all times relevant herein, Becker was a corporation engaged in the purchase or sale of products in interstate commerce and was engaged in commerce, as "commerce" is defined in the amended Clayton and Federal Trade Commission Acts.

XII

ACQUISITION

31. On or about July 1, 1972, Gifford-Hill acquired all the outstanding stock of Becker, exchanging therefor 300,000 shares of Gifford-Hill Common Stock valued at that time at approximately $8,100,000 and cash of $81,098.

XIII

NATURE OF TRADE AND COMMERCE

32. Portland cement is a material which in the presence of water binds coarse aggregate, such as crushed stone or gravel and fine aggregate, such as sand, into concrete. Portland cement and fine aggregate are essential ingredients in the manufacture of ready mixed concrete, prestressed concrete products and concrete block.

33. The portland cement industry in the United States is substantial. In 1972, there were approximately 51 portland cement companies in the United States operating approximately 170 plants. Total shipments of portland cement in 1972 amounted to approximately 83 million tons, valued at about $1.6 billion.

34. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building material dealers. On a national basis, approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete. However, in heavily populated metropolitan areas, the percentage of portland cement consumed by ready mixed concrete companies is usually higher. In North Carolina, South Carolina and Georgia, portland cement consumers have generally not been integrated or affiliated with portland cement manufacturers.

35. The fine aggregate industry in North Carolina and South Carolina is substantial. In 1972, there were approximately 45 producers of fine aggregate doing business within these two States. Total shipments of fine aggregate to all customers located in the Fayetteville, Greensboro, Raleigh, Wilmington, Charleston and Greenville Areas exceeded 2,000,000 tons during 1972.

36. Fine aggregate producers sell their product to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building material dealers. During 1972, producers of ready mixed concrete consumed approximately 59 percent of all fine aggregate shipped to the Fayetteville, Greensboro, Raleigh, Wilmington, Charleston and Greenville Areas.

37. Any vertical merger or acquisition which occurs in the portland cement or fine aggregate industries potentially forecloses competing portland cement or fine aggregate manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement or fine aggregate consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions, contributing both to the share of the market already foreclosed, and to the impetus for further such acquisitions. Gifford-Hill, by its programs and activities, has demonstrated its proclivity to conduct its business and to engage in competition, on vertically integrated bases, not only within the States of North Carolina, South Carolina and Georgia, but also within other domestic geographic areas.

38. The ownership of a significant producer of fine aggregate by a portland cement manufacturer may foreclose competing portland cement or fine aggregate producers from segments of otherwise available markets. This amalgamation may be used to compel or influence the purchasing decisions of independent consumers of

portland cement and fine aggregate to the detriment of actual or potential competition in the manufacture and sale of these products.

XIV

EFFECTS OF THE ACQUISITIONS

Count I

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Eleven and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

39. The effect of Gifford-Hill's acquisition of the stock and assets of Concrete Materials, Inc. and Concrete Materials of Georgia, Inc., in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or prestressed concrete products in the Charlotte Area or in the Atlanta Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement or prestressed concrete products has been and/or may be substantially impaired.

c. The entry of new portland cement or prestressed concrete products competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement and prestressed concrete products, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or prestressed concrete products.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of prestressed concrete products.

Count II

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charge of Paragraphs One through Six, Twelve

through Sixteen and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

40. The effect of Gifford-Hill's acquisition of 50 percent of the outstanding stock of Concrete Supply Company, in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or ready mixed concrete in the Charlotte Area, in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement or ready mixed concrete has been and/or may be substantially impaired.

c. The entry of new portland cement or ready mixed concrete competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete, prestressed concrete products and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or ready mixed concrete.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete.

Count III

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Seventeen through Twenty-One and Thirty-Two through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

41. The effect of Gifford-Hill's acquisition of the stock of Southern Equipment Corporation in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement, ready mixed concrete or fine aggregate in the Raleigh Area, in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.

b. The ability of Gifford-Hill's nonintegrated competitors effective-

ly to compete in the sale of portland cement, ready mixed concrete or fine aggregate has been and/or may be substantially impaired.

c. The entry of new portland cement, ready mixed concrete or fine aggregate competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement, ready mixed concrete or fine aggregate.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete or fine aggregate.

Count IV

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Twenty-Two through Twenty-Six and Thirty-Two through Thirty-Eight are incorporated by reference herein as if set forth verbatim.

42. The effect of Gifford-Hill's acquisition of the assets of Ready-Mix Concrete Company Division of the H. L. Coble Construction Co., in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of portland cement may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement, ready mixed concrete, concrete block or fine aggregate in the Greensboro Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.

b. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of portland cement, ready mixed concrete, concrete block or fine aggregate has been and/or may be substantially impaired.

c. The entry of new portland cement, ready mixed concrete, concrete block or fine aggregate competitors may have been and/or may be inhibited or prevented.

d. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete, concrete block and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of

portland cement, ready mixed concrete, concrete block or fine aggregate.

e. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of ready mixed concrete, concrete block or fine aggregate.

Count V

Alleging the violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §§18, 45), the charges of Paragraphs One through Six, Twenty-Seven through Thirty-Eight hereof are incorporated by reference herein as if set forth verbatim.

43. The effect of Gifford-Hill's acquisition of the stock and assets of Becker Sand & Gravel Company in itself, cumulatively, and by potentially causing a trend toward vertical integration between suppliers and consumers of fine aggregate may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement or fine aggregate in the Fayetteville Area, Greensboro Area, Raleigh Area, Wilmington Area, Charleston Area, or the Greenville Area, or may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of ready mixed concrete in the Raleigh Area or the Greensboro Area in the following ways, among others:

a. Gifford-Hill's competitors have been and/or may be foreclosed from a substantial segment of the market for portland cement or fine aggregate.

b. The ability of Gifford-Hill's competitors effectively to compete in the sale of portland cement and/or fine aggregate may be substantially impaired.

c. The ability of Gifford-Hill's nonintegrated competitors effectively to compete in the sale of ready mixed concrete in the Raleigh Area or in the Greensboro Area may be substantially impaired.

d. The entry of new portland cement and/or fine aggregate competitors may have been and/or may be inhibited or prevented.

e. Gifford-Hill, as a manufacturer and seller of both portland cement and fine aggregate, may achieve a decisive competitive advantage over its competitors which are engaged solely in the manufacture and sale of portland cement or fine aggregate.

f. Gifford-Hill, as a fully integrated manufacturer and seller of portland cement, ready mixed concrete and fine aggregate, may achieve a decisive competitive advantage over its competitors in the Raleigh Area or in the Greensboro Area which are engaged solely in the

manufacture and sale of portland cement, ready mixed concrete or fine aggregate.

g. Gifford-Hill has been eliminated as a potential entrant through internal expansion in the production and sale of fine aggregate.

DECISION AND ORDER

The Commission having issued its complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45); and

Respondent and complaint counsel, by joint motion filed March 31, 1976 having moved to have the matter withdrawn from adjudication for the purpose of submitting an executed consent agreement; and

The Commission, by Order issued April 20, 1976, having withdrawn this matter from adjudication pursuant to Section 3.25(c) of its Rules; and

The executed agreement containing a consent order, an admission by 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 the complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Respondent, Gifford-Hill & 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 at 8435 Stemmons Freeway, Dallas, Texas.

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

ORDER

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

A. "Portland cement"—includes Types I through V of portland

cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

B. "Ready mixed concrete"—includes all portland cement concrete manufactured and delivered to a purchaser in a plastic and unhardened state. Ready mixed concrete includes central mixed concrete, shrink mixed concrete and transit mixed concrete.

C. "Concrete block"—includes all concrete masonry and paving block, the essential raw materials of which are portland cement, aggregates and water.

D. "Construction aggregates"—Construction aggregates are those materials which consist of natural sand, gravel, manufactured sand, or crushed stone suitable in the manufacture of portland cement concrete.

E. "Respondent" means Gifford-Hill & Company, Inc. and all of its domestic subsidiaries, affiliates and their respective successors and assigns.

I

It is ordered, That respondent, and its officers, directors, agents, representatives, and employees, within one (1) year from the date of service of this order, (i) divest, absolutely, subject to the approval of the Federal Trade Commission, as going concerns and as separate and viable competitor(s), all stock, assets, properties, rights or privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, raw material reserves, inventory, customer lists, contract rights, trade names, trademarks and goodwill, acquired by respondent, as a result of the acquisition of the stock and/or assets of Southern Equipment Corporation, and Becker Sand & Gravel Company, together with all additions and improvements thereto and replacements thereof of whatever description and (ii) divest, absolutely, subject to the approval of the Federal Trade Commission, its ownership of the capital stock of Concrete Supply Company.

II

It is further ordered, That pending such divestitures, respondent shall not make or permit any deterioration or changes in any of the plants, assets, machinery, equipment, properties, rights or privileges, tangible and intangible, to be divested which would impair their present capacity or market value.

III

It is further ordered, That none of the stock, assets, properties, rights or privileges, tangible and intangible, required to be divested be sold or

transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Gifford-Hill & Company, Inc., or any of its subsidiaries or affiliates or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of voting stock of Gifford-Hill & Company, Inc., or any of its subsidiaries or affiliates, or successors or assigns thereof, without the prior approval of the Federal Trade Commission, or, directly or indirectly, to Martin-Marietta Corporation, B.V. Hedrick Gravel & Sand Co., lessees of B.V. Hedrick Gravel & Sand Co., or W.R. Bonsal Company, their respective subsidiaries, affiliates, stockholders, directors, officers, employees, lessees, successors, agents or assigns, or to the lessees, successors, agents or assigns of such stockholders, directors, officers or employees. Without the prior approval of the Federal Trade Commission, each divestiture herein required shall be concluded with separate and unrelated acquirers.

IV

It is further ordered, That for a period of ten (10) years from the date of service of this order, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital, assets or any interest of any company, corporation or partnership engaged in the sale of construction aggregates within a three hundred (300) mile distance of respondent's cement plant located at Harleyville, South Carolina, or the whole or any part of the share capital, assets or any interest of any company, corporation or partnership engaged in the sale of ready mixed concrete or concrete block within a three hundred (300) mile distance of respondent's cement plant located at Harleyville, South Carolina, which purchased more than 40,000 barrels or 7,520 tons of portland cement in any of the three (3) years preceding the proposed acquisition.

V

It is further ordered, That for so long as respondent holds, directly or indirectly, any security interest or promissory note received as whole or part consideration in the sale effecting each divestiture required by Paragraph I hereof or retains directly or indirectly, a bona fide lien, mortgage, deed of trust, or other security interest in any of the stock, property, plants or equipment divested, respondent, without the prior approval of the Federal Trade Commission, may provide no more portland cement to that plant or group of plants than an amount, in

tons, equal to more than (i) fifty percent (50%) of the portland cement consumed by the plant or group of plants, respectively, during the three (3) calendar years following such divestiture, (ii) forty percent (40%) for the next such three (3) calendar years, and (iii) thirty percent (30%) thereafter. When respondent ceases to hold, directly or indirectly any such security interest, promissory note, lien, mortgage or deed of trust, or other security interest in any of the stock, property, plants or equipment divested, the restriction provided for in this Paragraph V shall no longer be applicable.

VI

It is further ordered, That with respect to the divestitures required herein, nothing in this order shall be deemed to prohibit respondent from accepting consideration which is not entirely cash and from accepting and enforcing a promissory note, mortgage, deed of trust or other interest for the purpose of securing to respondent payment of the price received by respondent in connection with each divestiture required by Paragraph I hereof; *provided, however*, that should respondent by enforcement of such interest, or for any other reason, regain direct or indirect ownership or control of any of the divested assets, properties, rights and privileges, tangible and intangible, said ownership or control shall be expeditiously redivested subject to the provisions of this order as soon as possible, but in no event beyond one (1) year from the date of reacquisition.

VII

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until the divestitures are fully effected, submit to the Commission a detailed written report of its actions, plans and progress in complying with the divestiture provisions of this order, and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the stock, assets, properties, rights or privileges, whether tangible or intangible, to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons. Annual reports of compliance with the remaining provisions of this order shall be submitted to the Commission on the anniversary date of the service of this order.

VIII

It is further ordered, That respondent provide a copy of this order to each purchaser of stock, plants and assets divested pursuant to this order at or before the time of purchase.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

AMREP CORPORATION

Docket 9018. Order, Sept. 28, 1976

Administrative law judge's recommendation to obtain transcript of grand jury testimony taken under advisement pending report from administrative law judge, upon resumption of administrative hearing, relative to disclosure to the parties of said testimony in the criminal trial.

Appearances

For the Commission: *Perry W. Winston, Jon R. Calhoun* and *George E. Schulman.*

For the respondent: *Martin M. Maneker, Proskauer, Rose, Goetz & Mendelsohn,* New York City and *Peter W. Williamson* and *Michael E. Schoeman,* New York City.

ORDER

The administrative law judge on July 6, 1976, certified to the Commission a recommendation that appropriate action be taken to obtain transcripts of grand jury testimony of various witnesses named in a subpoena duces tecum issued by the administrative law judge on June 17, 1976, who have testified, or are expected to testify, during the presentation of complaint counsel's case-in-chief. On August 2, 1976, the ALJ, in a supplementary report, advised that the transcripts of two of the witnesses have been made available to the parties in the instant proceeding and that two of the witnesses did not testify before the grand jury. The ALJ now recommends that the Commission attempt to procure the testimony of the fifth witness, Paul W. Heinz. The recommendation, however, may be mooted if the testimony is made available to defendant Amrep during the course of the trial in *United States* v. *Amrep Corp.*, 75 Cr. 1023 (S.D. N.Y.), pursuant to the Jencks Act, 18 U.S.C. §3500.[1]

The Commission will, therefore, take the recommendation under advisement pending the certification of a report by the ALJ upon the resumption of the administrative hearing indicating whether complaint counsel intend to call Mr. Heinz as a witness, and, if so, whether Mr. Heinz' grand jury testimony was disclosed to the parties during the course of the criminal trial.

It is so ordered.

Commissioner Dole not participating by reason of absence.

[1] The Commission need not now address the question whether respondent is entitled to the testimony for use in the instant proceeding.

IN THE MATTER OF

NOSOMA SYSTEMS, INC., ET AL.

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

Docket C-2841. Complaint, Sept. 28, 1976 — Decision, Sept. 28, 1976

Consent order requiring a Vineland, N.J., debt collection agency and three of its affiliates among other things to cease, prior to obtaining a judgment, from communicating or threatening to communicate with a debtor's employer or other parties, other than spouse or attorney, who have no liability for the debt. Further, if respondents do not reveal that the inquiry concerns debt collection, they may communicate with third parties to locate a debtor whose whereabouts are genuinely unknown, or to determine the extent of a debtor's income or property.

Appearances

For the Commission: *Elliot Feinberg.*

For the respondents: *Hartman, Schlesinger, Schlosser & Foxton,* Mount Holly, N.J.

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 the parties named in the caption hereof, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nosoma Systems, Inc., (hereinafter referred to as Nosoma) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office located at 600 Landis Ave., Vineland, New Jersey.

Respondent Capital Collection Service of Vineland, Inc. (hereinafter referred to as CCS Vineland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 600 Landis Ave., Vineland, New Jersey.

Respondent Capital Collection Service of Atlantic City, Inc. (hereinafter referred to as CCS Atlantic City) is a corporation organized, existing and doing business under and by virtue of the laws of the State

of New Jersey with its office and principal place of business located at 1112 Tilton Road, Northfield, New Jersey.

Respondent Capital Collection Service of Willingboro, Inc. (hereinafter referred to as CCS Willingboro) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 129 High St., Mount Holly, New Jersey.

Respondents CCS Vineland, CCS Atlantic City and CCS Willingboro are now, and for some time last past have been, doing business as Capital Collection Service. Respondent Nosoma is now, and for some time last past has been, doing business as Capital Collection Service, Central Credit Collectors and Woodbury Credit Systems.

Corporate respondents are affiliate corporations employing the same operating procedures and collection practices. In addition, said respondents share various corporate services including, but not limited to, sales personnel whose accounts are allocated among corporate respondents' collection offices.

Respondent Thomas L. Norris is an individual and officer of all the aforementioned corporate respondents. He formulates, directs and controls their acts and practices including the acts and practices hereinafter set forth. His address is the same as that of corporate respondent Nosoma.

Respondent John G. Marshall, Jr. is an individual and officer of respondents Nosoma and CCS Atlantic City. He formulates, directs and controls their acts and practices including the acts and practices hereinafter set forth. His address is the same as that of corporate respondent CCS Atlantic City.

Respondent R. J. Sopourn, Jr., is an individual and officer of respondents Nosoma and CCS Willingboro. He formulates, directs and controls their acts and practices including the acts and practices hereinafter set forth. His address is the same as that of corporate respondent CCS Willingboro.

All of the aforementioned respondents have engaged in and have cooperated and acted together in the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the practice of collecting or attempting to collect any and all kinds of alleged delinquent accounts.

PAR. 3. In the course and conduct of their business as aforesaid, respondents solicit and receive accounts for collection from businesses and professional people located in the State of New Jersey and in various other States of the United States, which accounts the respondents seek thereafter to collect from debtors in the State of New

Jersey. In the further course and conduct of their business, respondents transmit collection messages from their places of business within the State of New Jersey to third parties located in the various other States of the United States. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are, in competition in or affecting commerce with other corporations, firms and individuals in the attempted collection and collection of consumer debts on behalf of creditors.

PAR. 5. In the course and conduct of their business as aforesaid, respondents have engaged in the practice of threatening to communicate and communicating prior to judgment the fact of the debt, its date and amount and the name of the creditor, both by telephone and in writing, directly and indirectly, to employers of debtors, and to other third parties not liable therefor.

PAR. 6. The practice of contacting employers of debtors and other third parties prior to judgment as alleged in Paragraph Five above, has had or tends to have the following effects:

1. Predictably placing debtors in fear of loss of their jobs, or in fear of loss of opportunities for advancement or promotion, or in fear of incurring the enmity of employers, or in fear of being subjected to ridicule from co-workers, other third parties, or employers as well as general injury to their reputation.

2. Causing debtors to pay debts, some of which may be in dispute, because of pressure from employers and other third parties receiving such communications or because they are fearful that employers and other third parties will receive such communications, or because of the embarrassment to which the debtors are subjected as a result of such communications.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 New York Regional Office

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

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

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

1. Respondent Nosoma Systems, Inc., (hereinafter referred to as Nosoma) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office located at 600 Landis Ave., Vineland, New Jersey.

Respondent Capital Collection Service of Vineland, Inc. (hereinafter referred to as CCS Vineland) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 600 Landis Ave., Vineland, New Jersey.

Respondent Capital Collection Service of Atlantic City, Inc. (hereinafter referred to as CCS Atlantic City) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 1112 Tilton Road, Northfield, New Jersey.

Respondent Capital Collection Service of Willingboro, Inc. (hereinafter referred to as CCS Willingboro) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 129 High St., Mount Holly, New Jersey.

Respondents CCS Vineland, CCS Atlantic City and CCS Willingboro are now, and for some time last past have been, doing business as Capital Collection Service. Respondent Nosoma is now, and for some

time last past has been, doing business as Capital Collection Service, Central Credit Collectors and Woodbury Credit Systems.

Respondent Thomas L. Norris is an individual and officer of all the aforementioned corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents and his address is the same as that of corporate respondent Nosoma.

Respondent John G. Marshall, Jr., is an individual and officer of corporate respondents Nosoma and CCS Atlantic City. He formulates, directs and controls the acts and practices of said corporate respondents and his address is the same as that of corporate respondent CCS Atlantic City.

Respondent R.J. Sopourn, Jr., is an individual and officer of corporate respondents Nosoma and CCS Willingboro. He formulates, directs and controls the acts and practices of said corporate respondents and his address is the same as that of corporate respondent CCS Willingboro.

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 Nosoma Systems, Inc., a corporation doing business as Capital Collection Service, Central Credit Collectors and Woodbury Credit Systems, and Capital Collection Service of Vineland, Inc., Capital Collection Service of Atlantic City, Inc. and Capital Collection Service of Willingboro, Inc., corporations, their successors and assigns, and their officers and Thomas L. Norris, John G. Marshall, Jr. and R.J. Sopourn, Jr., individually and as officers of some or all of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Communicating or threatening to communicate with the debtor's employer or any agent of the employer or any other person not liable for the debt other than the spouse or the attorney of the debtor;

Provided, however, that nothing herein shall prohibit such communications in order to locate a debtor whose whereabouts are genuinely unknown to the creditor and respondents, to determine the nature and extent of the debtor's property or income, or pursuant to an order of a court; nor shall anything herein prohibit respondents from engaging an attorney or an agent, if authorized by the creditor, for the purpose of collection of the alleged indebtedness; and

Further provided, that in the course of an attempt to locate a debtor or determine the extent of his income or property the use of any language or symbol on envelopes or in the contents therein or any oral communication indicating that the communication relates to the collection of a debt shall be deemed a communication of the alleged debt prohibited by this order.

It is further ordered, That respondents shall maintain for a period of two years with respect to each delinquent debtor, records which shall consist of copies of all collection letters, dunning notices, requests for information and similar correspondence delivered to such debtor or third parties or an indication of what form items were sent; a record or tabulation of all telephone calls made to or about the debtor showing the identity of the caller, the date and time of the call, the identity of the recipient of the call, the telephone number called, the purpose and result of the call; and copies of all documents pertaining to collection efforts such as referral to lawyers or other agencies and legal documents utilized in collection efforts.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions, collection managers and to all personnel or other parties including attorneys and collection agencies responsible for or engaged in the collection of consumer debts.

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

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and of each affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the collection of consumer debts, or of his affiliation with a new business or employment in which his own duties and responsibilities involve the collection of consumer debts. Such notice shall include this respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein 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 they have complied with this order.

It is further ordered, That 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.

Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

OWENS-CORNING FIBERGLAS CORPORATION

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

Docket C-2842. Complaint, Sept. 30, 1976 — Decision, Sept. 30, 1976

Consent order requiring a Toledo, Ohio, manufacturer, seller, and and distributor of fibrous glass products, among other things to cease misrepresenting the amount of energy or money the consumer can save as a result of installing respondent's insulation; misrepresenting the basis for savings claims; misrepresenting the insulation characteristics of its product; and failing to disclose pertinent facts and conditions which are significant to the customer and which affect the savings claim made. Further, respondent must maintain accurate records of documentation which supports advertising claims made.

Appearances

For the Commission: *Vivian Soljanik.*

For the respondent: *William L. Kreutz* and *Steven M. Mayer*, Toledo, Ohio.

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 Owens-Corning Fiberglas Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Owens-Corning Fiberglas Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Fiberglas Tower, Toledo, Ohio.

PAR. 2. Respondent Owens-Corning Fiberglas Corporation is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale, and distribution of fibrous glass products, including but not limited to, residential building insulation products, which, when sold, are shipped to purchasers located in various States of the United States. Thus, respondent maintains, and at all times mentioned has maintained, a substantial course of trade in said fibrous glass building insulation products.

PAR. 3. Respondent Owens-Corning Fiberglas Corporation, at all

times mentioned herein, has been and now is in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with individuals, firms, and corporations engaged in the sale and distribution of building insulation products of the same general kind and nature as those produced and sold by respondent.

PAR. 4. In the course and conduct of its said business, Owens-Corning Fiberglas Corporation has disseminated and caused the dissemination of advertisements concerning the aforementioned fibrous glass insulation products for residential buildings in commerce transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said fibrous glass insulation products for use in residential buildings.

PAR. 5. Typical of the representations and statements contained in said advertisements disseminated as aforesaid, but not all inclusive thereof, are the television advertisements for which storyboards have been reproduced and attached to this complaint, Exhibits A and B, and made a part hereof.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, that Owens-Corning Fiberglas Corporation had a reasonable basis from which to conclude that consumers could realize the amount of dollar savings stated in the advertisement as a result of installing respondent's fibrous glass insulation in the consumer's attic.

PAR. 7. In truth and in fact, at the time that Owens-Corning Fiberglas Corporation made the savings claims set forth in the aforesaid advertisements, respondent had no reasonable basis from which to conclude that consumers could realize the amount of dollar savings stated in said advertisements as a result of installing Owens-Corning Fiberglas Corporation insulation in their attic.

Therefore, the statements and representations set forth in Paragraph Six were and are deceptive or unfair acts or practices.

PAR. 8. By and through the use of the aforesaid advertisements, and others of similar import and meaning, respondent has represented, directly or by implication, that the dollar savings stated in respondent's advertisements approximate or equal the savings that an owner of a home with an average attic can realize.

PAR. 9. In truth and in fact, at the time respondent made the representations alleged in Paragraph Eight, respondent did not possess

or rely upon a reasonable basis for making these representations. Therefore, the said advertisements were and are unfair or deceptive.

PAR. 10. By and through the use of the aforesaid advertisements, and others of similar import and meaning, respondent has represented, directly or by implication, that:

1. Consumers will save the dollar amount stated in respondent's advertisement as the result of installing respondent's fibrous glass building insulation in their attic.

2. The conditions upon which respondent's savings claims are based represent the average or typical attic.

PAR. 11. In truth and in fact:

1. In a substantial number of instances, consumers will not save the dollar amount stated in respondent's advertisement as the result of installing respondent's fibrous glass building insulation in their attic.

2. The conditions upon which respondent's savings claims are based do not represent the average or typical attic.

Therefore, the statements and representations made in respondent's aforesaid advertisements were and are false, misleading, and deceptive.

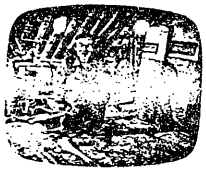
PAR. 12. Respondent's aforesaid advertisements, and others of similar import and meaning, failed to disclose certain material facts and conditions which affect the amount of money and energy a home owner can save by installing respondent's fibrous glass building insulation in his or her attic. Therefore, the representations contained in said advertisements were and are unfair or deceptive.

PAR. 13. The use by respondent of the aforesaid unfair or deceptive 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 such statements and representations were and are true, and into the purchase of substantial quantities of Owens-Corning Fiberglas Corporation fibrous glass insulation for residential buildings.

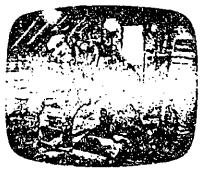
PAR. 14. The aforesaid acts and practices of respondent as herein alleged were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair or deceptive acts in commerce or unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ATTACHMENT A

Title: "Flint/Saginaw $150"
Product: Owens-Corning Fiberglas insulation
Agency: Ogilvy & Mather Inc., 2 E. 48th St., N.Y. 10017



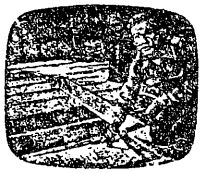
MAN: Wanna save about $150* a year with one day's work?



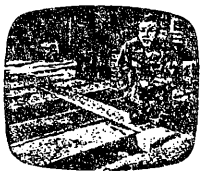
Insulate your attic yourself with Fiberglas 6 inches thick.

You'll save a $150 a year in fuel.

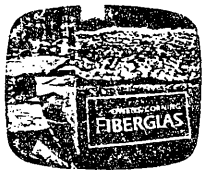
With an average attic.



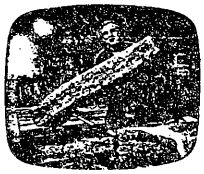
Right here in the Flint/Saginaw area.*



Owens-Corning Fiberglas.



At your building supply dealers, or call an insulation contractor.



Spend a day in your attic—save $150* a year.

(VO) Already have some insulation? Increase it to 6 inches. You'll save too.

*All commercials keyed to individual markets

Owens-Corning is Fiberglas

OWENS/CORNING FIBERGLAS

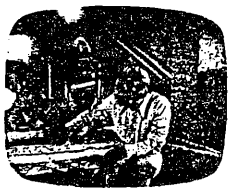
ATTACHMENT B

Title: "Birmingham $175"
Product: Owens-Corning Fiberglas insulation
Agency: Ogilvy & Mather Inc., 2 E. 48th St., N.Y. 10017

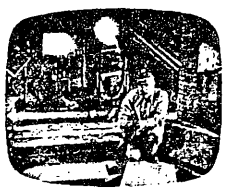
MAN: Wanna save about $175* a year with one day's work?

Insulate your attic yourself with Fiberglas 6 inches thick.

You'll save a $175 a year on air conditioning and heating.*



With an ave·age attic.



Right here in Birmingham.*

Owens-Corning Fiberglas.

At your building supply dealers, or call an insulation contractor.

Spend a day in your attic—save $175* a year.

OWENS/CORNING
FIBERGLAS

(VO) Already have some insulation? Increase it to 6 inches. You'll save too.

*All commercials keyed to individual markets.

Owens-Corning is Fiberglas

OWENS/CORNING
FIBERGLAS

DECISION AND ORDER

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

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

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

1. Respondent Owens-Corning Fiberglas Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Fiberglas Tower, Toledo, Ohio.

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

ORDER

It is ordered, That respondent Owens-Corning Fiberglas Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with consumer advertising, offering for sale, sale or distribution of fibrous glass insulation for residential buildings, in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Misrepresenting, in any advertising or sales promotion material, directly or by implication, that respondent has a reasonable basis for statements or representations which are made concerning the amount of energy or money the consumer can save as a result of installing said insulation.

(2) Making any statements or representations in any advertising or sales promotion material, directly or by implication, concerning the insulating characteristics of said insulation or the savings in money or energy which consumers can realize as a result of installing said insulation, unless at the time of such representation, respondent has a reasonable basis for such statements or representations. Such reasonable basis shall consist of competent scientific, engineering, or other objective material or industry-wide standards based on such material.

(3) Misrepresenting, in any advertising or sales promotion material, directly or by implication, the amount of energy or money which a consumer can save as the result of installing said insulation.

(4) Misrepresenting, in any advertising or sales promotion material, directly or by implication, the facts, conditions, or assumptions upon which energy or money savings claims are based.

(5) Failing to disclose in advertising or sales promotion material containing money or energy savings claims, facts and conditions which, within the confines of the medium being used, are significant to the consumer and which affect the amount of money and energy a consumer can save by installing said insulation.

It is further ordered, That respondent Owens-Corning Fiberglas Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with consumer advertising, offering for sale, sale or distribution of fibrous glass insulation for residential buildings, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) which consist of documentation in support of any claims included in advertising or sales promotion material, insofar as the text of such material is prepared or is authorized and approved by any person who is an officer or employee of respondent Owens-Corning Fiberglas Corporation, or of any division or subdivision of respondent, or by any advertising agency engaged by respondent or by any such division or subsidiary, which concern the insulating characteristics of said insula-

tion or the savings which consumers can realize from the installation of said insulation; and

(b) which provided the basis upon which respondent relied as of the time those claims were made; and

(c) which shall be maintained by respondent for a period of three (3) years from the date such advertising or sales promotion material was last disseminated.

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries engaged in the domestic sale or distribution of fibrous glass insulation for residential buildings.

It is further ordered, That respondent herein 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 it has complied with this order.

Commissioner Dole not participating by reason of absence.

IN THE MATTER OF

UNITED STATES MARKETING INSTITUTE, ET AL.

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

Docket C-2844. Complaint, Sept. 30, 1976 — Decision, Sept. 30, 1976

Consent order requiring a Los Angeles, Calif., idea promotion firm, among other things, to cease misrepresenting its ability to promote ideas, inventions or products that will or may result in financial gains for its clients; misrepresenting the nature or value of its services; failing to disclose relevant information including the fact it does not provide any legal protection recognized by the United States Patent Office, and that serious consequences could result from this lack of patent protection. Further, the order prohibits the company from accepting any money from a client other than a percentage of royalties or other financial gain derived through its efforts.

Appearances

For the Commission: *George Gregores.*

For the respondents: *James Ginsburg, Freshman, Marantz, Comsky & Deutsch*, Beverly Hills, Calif.

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 United States Marketing Institute, a corporation, and Louis Lindstrom, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appear- 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:

I. DEFINITIONS

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

A. "Idea" shall mean any idea, invention or product;

B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea;"

C. "Financial gain" shall mean an amount of money greater than the amount of money paid by a "client" to respondents;

D. "Promotion" shall mean the evaluation, development, manufac-

turing, marketing or otherwise contributing to the success or growth of an "idea."

2. Respondent United States Marketing Institute, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 16055 Ventura Boulevard, Los Angeles, California.

Respondent Louis Lindstrom is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 16055 Ventura Boulevard, Los Angeles, California.

III. NATURE OF TRADE AND COMMERCE

3. Respondents are now and have been engaged in the advertising, offering for sale and sale of contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas. The consideration required by respondents is and has been approximately between $1,500 and $4,500.

IV. JURISDICTION

4. In the course and conduct of their business as aforesaid, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted through the United States mails and other interstate instrumentalities from their place of business in the State of California to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are, and have been, in substantial competition, in or affecting commerce, with corporations, firms and individuals offering contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas.

V. ACTS AND PRACTICES

6. In the further course and conduct of their aforesaid business, respondents now cause and have caused the dissemination of advertisements in various publications of general circulation, the broadcast of radio and television advertisements, the distribution of advertising materials to members of the public, and are now making and have made

sales presentations by means of oral and written statements. By and through such means, respondents have made and are making representations that:

A. Respondents possess the ability to recognize ideas which may result in financial gains;

B. Respondents possess engineering and marketing expertise necessary for the development and promotion of ideas;

C. Respondents possess adequate knowledge to provide legal protection for clients' ideas;

D. Respondents have the ability to obtain manufacturing contracts for their clients;

E. Respondents have the ability to obtain financial gains for their clients, including but not limited to potential income to be derived by their clients from sales, licensing or royalty agreements.

7. By and through the statements and representations alleged in Paragraph 6 herein, respondents have represented and are now representing, directly or by implication, that clients will have their ideas reviewed and evaluated by qualified and appropriately licensed persons; that clients receive legal protection for their ideas; that clients' ideas will be manufactured and marketed; and as a result of contracting with respondents, clients will receive a financial gain.

8. In truth and in fact, few, if any, of respondents' clients have their ideas reviewed and evaluated by qualified and appropriately licensed persons; receive legal protection for their ideas; have their ideas manufactured or marketed; or receive a financial gain as a result of contracting with respondents. Therefore, the acts and practices alleged in Paragraph 7 herein are deceptive, false, misleading and unfair.

9. In the further course and conduct of their aforesaid business, respondents have failed to protect clients' investments and have failed to disclose facts concerning the probability that such clients will receive a financial gain as a result of contracting with respondents.

Since few, if any, of respondents' clients receive or have received financial gains as a result of contracting with respondents, respondents know or should have known that their clients' investments are unprotected and that their clients will not obtain financial gains.

Therefore, respondents, by inducing their clients to pay substantial sums of money without adequate protection for such clients' investments and without a disclosure of facts concerning the probability of a client receiving a financial gain which if known to certain prospective clients, would likely affect their decision of whether to execute contracts with respondents, are engaging in unfair acts or practices constituting a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

10. In the further course and conduct of their aforesaid business, respondents have represented, directly or indirectly, that their clients' ideas have adequate legal protection. Respondents have failed to disclose to their clients the degree of legal protection being offered the clients' ideas and the risk involved in contracting with respondents concerning potential patent rights. Such non-disclosures include, but are not limited to:

A. Respondents fail to disclose that they afford no legal protection recognized by the United States Patent Office.

B. Respondents fail to disclose that the ordinary course of conduct of their business may be construed by the United States Patent Office to constitute publication of the clients' idea.

C. Respondents fail to disclose that publication of an unprotected idea for a period of one year or more may constitute a waiver of any patentable rights the client may have.

D. Respondents fail to disclose that their clients must maintain the confidentiality of their ideas.

Respondents' failure to disclose such consequences in language calculated to be readily understood by their clients is a failure to disclose material facts which if known to prospective clients would likely affect their decision of whether to execute contracts with respondents. Respondents' aforesaid failure to disclose material facts is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

11. Respondents as aforesaid have been and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such persons.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice and a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

12. The use by respondents of the aforementioned unfair, false, misleading leading and deceptive acts, practices, statements or representations has had and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into erroneous and mistaken beliefs and into the execution of contracts with respondents by reason of said erroneous and mistaken beliefs.

13. The aforementioned acts and practices, as herein alleged, have caused and are now causing substantial pecuniary losses to persons

contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and have constituted, and now 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 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent United States Marketing Institute is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 16055 Ventura Boulevard, Los Angeles, California.

Respondent Louis Lindstrom is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent. His business address is the same as that of the corporate respondent.

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

ORDER

I. Definitions

For purposes of this order the following definitions shall apply:

A. "Idea" shall mean any idea, invention or product;

B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea;"

C. "Financial gain" shall mean an amount of money derived by a "client", from a respondent's "promotion" of the client's "idea;"

D. "Promotion" shall mean the evaluation, development, manufacturing, marketing or otherwise contributing to the success or growth of an "idea;"

E. "Future services" shall include any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive, as a result of such arrangement, the delivery or performance, at least partly in the future, of any service, benefit, promotion, sum of money, or similar thing of value; the term shall include, but shall not be limited to, any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive a financial gain as a result of such arrangement.

II.

It is ordered, That respondents, United States Marketing Institute, a corporation, and its officer Louis Lindstrom, individually and as an officer of said corporation, their successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation subsidiary, division or other device, in connection with the advertising, offering for sale and sale of contracts for future services in the promotion of ideas, or any other future services, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by any means, that:

A. Respondents possess ability in the field of engineering unless they retain a licensed engineer who shall provide a written evaluation of each client's idea. Respondents shall provide a copy of said evaluation which the client may retain.

B. Respondents can or will provide legal protection for a client's idea unless respondents retain an attorney or agent licensed by the United States Patent Office who renders a written opinion on such client's idea. Respondents shall provide a copy of said opinion which the client may retain.

C. Any party may or will receive a financial gain as a result of

contracting with respondents except as allowed by Subparagraphs A and B of Paragraph 4 of this order.

2. Misrepresenting, directly or indirectly, by any means, that respondents possess the ability to promote ideas that will or may result in financial gains for their clients.

3. Failing to prominently display the following notice in two or more locations in those portions of respondents' business premises most frequented by prospective clients and in each location where clients sign contracts or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by respondents' clients and prospective clients:

NOTICE

BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY, YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. THEREFORE, PRIOR TO SIGNING ANY AGREEMENT WITH US YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY.

4. Failing to make the following disclosures on the contract or other binding instrument to be executed by prospective clients. Said disclosures shall be in more conspicuous print than all other language in said instrument, but in no case shall they be smaller than 12 point upper case type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the text of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) SINCE WE BEGAN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS, OR PRODUCTS FOR (*Number*) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (*Number*) OF OUR CLIENTS EARNED NOTHING.
2. (*Number*) OF OUR CLIENTS EARNED $100-$499.
3. (*Number*) OF OUR CLIENTS EARNED $500-$1,000.
4. (*Number*) OF OUR CLIENTS EARNED OVER $1,000.

(B) WITHOUT PATENT PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE.

(C) BECAUSE THERE WILL BE NO PATENT PROTECTION FOR YOUR IDEA, SERIOUS CONSEQUENCES COULD RESULT FROM YOUR CONTRACTING WITH US, INCLUDING:

(1) When we disclose information concerning your idea to per-

sons/manufacturers/marketers outside our company, such disclosure may be interpreted by the United States Patent Office as a "publication" of your idea.

(2) "Publication" for a period of one year or more of an idea which has no legal protection recognized by the United States Patent Office may result in the loss of any patentable rights you may have.

(D) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(E) BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY BEFORE YOU SIGN THIS AGREEMENT.

(F) TODAY IS (*Date*). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (Month/Day/Year). I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the date specified below.

(Customer's Signature)
(Date)

5. Executing contracts or other agreements with a client prior to expiration of the 10-day period disclosed in accordance with Paragraph 4 herein.

6. Failing to retain executed copies of all disclosures required by Paragraph 4 of this order for a period of three (3) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts. Respondents shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure. Accurate disclosures, given without comment, as required by Paragraph 4 of this order, shall not be deemed a violation of Paragraph 1 of this order.

7. Failing, in all pamphlets, brochures and other promotional materials to make the following disclosures in the manner and form provided for herein:

A. In all printed advertisements, the notice shall be conspicuously placed in print at least as large as the largest print in the advertising material other than respondents' name and shall state:

"(*Number*)% of our clients have earned at least $100 as a result of our efforts to promote their ideas."

B. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest part of the advertisement.

C. At the time respondents submit advertising to any newspaper or

other written medium, they shall provide a copy of the following notice to each such medium:

NOTICE

The Federal Trade Commission has entered into a consent agreement with (Name of Respondent). A copy of the Commission's news release is available from (*Name of Respondent*) upon request.

D. At the time respondents submit advertising to any radio or television station, they shall provide a copy of the following notice to each such station:

NOTICE

The Federal Trade Commission has entered into a consent agreement with (*Name of Respondent*), A copy of the Commission's news release is available from (*Name of Respondent*) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972.

8. Failing to maintain for a period of three (3) years after any of their advertisements are disseminated:

(A) records disclosing the date or dates each such advertisement was published;

(B) records disclosing the name and address of the newspapers, other publications or broadcast media disseminating said advertisement; and

(C) copies or scripts of all of their advertisements published or disseminated by any media.

9. Failing to utilize one written contract or other binding instrument which shall constitute the entire agreement between the parties. In addition to the disclosures required under Paragraph 4 herein, each such instrument shall contain the following provision:

> (*Name of Respondent*) agrees to present to the client all materials due to the client pertaining to the promotion of said client's idea within 180 days of the date this agreement is executed, and it is hereby further agreed that time is of the essence. If such materials are not presented to the client within the 180 day period, it is hereby mutually agreed between (*Name of Respondent*) and the client whose signature appears below that this agreement is rescinded in its entirety.

It is further ordered, That respondents cease and desist from:

A. Including in any contract or other document any waiver, limitation or condition on the right of a client to rescind an agreement under any provision of this order.

B. Misrepresenting the right of a client to rescind an agreement under any provision of this order or any applicable statute or regulation.

C. Making any representations or taking any action which is inconsistent with or detracts from the effectiveness of this order.

It is further ordered, That respondents shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission on request, and comply with all contract provisions required by this order.

It is further ordered, That neither the corporate respondent nor the individual respondent engage in any course of conduct which contravenes the rights of clients or prospective clients provided by this order.

It is further ordered, That respondents, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract where respondents determine, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transactions with respondent.

It is further ordered:

A. That respondents deliver, by hand or by certified mail, a copy of this order to each of their present or future salesmen, independent brokers, employees or any other person who sells or promotes the sale of respondents' contracts;

B. That respondents provide each person so described in subparagraph A above with a form returnable to respondents, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;

C. That respondents inform each person described in subparagraph A above that respondents shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondents to be bound by the provisions contained in this order;

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

E. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in subparagraph A conform to the requirements of this order; and

F. That respondents discontinue dealing with any person described in subparagraph A of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondents may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondents'

efforts. Respondents may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondents shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

It is further ordered, That in the event the Federal Trade Commission promulgates a Trade Regulation Rule applicable to respondent's business that this order shall be deemed modified to the extent it contravenes said Rule.

It is further ordered, That in the event that corporate respondent merges with another corporation or transfers all or a substantial part of its business, respondent shall require said successor or transferee to file within thirty (30) days with the Commission a written agreement to be bound by the terms of this order; *provided*, That if respondent wishes to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the succession or transfer.

It is further ordered, That the individual respondent named herein promptly notify the Commission of discontinuance of any business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents 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.

It is further ordered, That the respondents herein 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 they have complied with this order.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

INTERNATIONAL INVENTORS INCORPORATED, ET AL.

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

Docket C-2845. Complaint, Sept. 30, 1976 — Decision, Sept. 30, 1976

Consent order requiring a Los Angeles, Calif., idea promotion firm, among other things, to cease misrepresenting its ability to promote ideas, inventions or products that will or may result in financial gains for its clients; misrepresenting the nature or value of its services; failing to disclose relevant information including the fact it does not provide any legal protection recognized by the United States Patent Office, and that serious consequences could result from this lack of patent protection. Further, the order prohibits the firm's president from even engaging in the idea promotion business and prohibits the company from accepting any money from a client other than a percentage of royalties or other financial gain derived through its efforts.

Appearances

For the Commission: *Carl B. Mickelson* and *George J. Gregores.*
For the respondents: *Fred LaDeane*, Los Angeles, Calif.

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 International Inventors Incorporated, a corporation, and Siegfried Bart, individually and as an officer of said corporation, 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:

I. DEFINITIONS

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

A. "Idea" shall mean any idea, invention or product;

B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea";

C. "Financial gain" shall mean an amount of money greater than the amount of money paid by a "client" to respondents;

D. "Promotion" shall mean the evaluation, development, manufac-

turing, marketing or otherwise contributing to the success or growth of an "idea."

PAR. 2. Respondent International Inventors Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 11110 Ohio Ave., Los Angeles, California.

Respondent Siegfried Bart is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is 21361 Rambler Vista, Malibu, California.

III. NATURE OF TRADE AND COMMERCE

PAR. 3. Respondents are now and have been engaged in the advertising, offering for sale and sale of contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas. The consideration required by respondents is and has been generally approximately $1,690.

IV. JURISDICTION

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted through the United States mail and other interstate instrumentalities from their place of business in the State of California to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are, and have been, in substantial competition, in or affecting commerce, with corporations, firms and individuals offering contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas.

V. ACTS AND PRACTICES

PAR. 6. In the further course and conduct of their aforesaid business, respondents now cause and have caused the dissemination of advertisements in various publications of general circulation, the broadcast of radio and television advertisements, the distribution of advertising

materials to members of the public, and are now making and have made sales presentations by means of oral and written statements. By and through such means, respondents have made and are making representations that:

A. Respondents possess the ability to recognize ideas which may result in financial gains.

B. Respondents possess engineering and marketing expertise necessary for the development and promotion of ideas.

C. Respondents possess adequate knowledge to provide legal protection for clients' ideas.

D. Respondents have the ability to obtain manufacturing contracts for their clients.

E. Respondents have the ability to obtain financial gains for their clients, including but not limited to potential income to be derived by their clients from sales, licensing or royalty agreements.

PAR. 7. By and through the statements and representations alleged in Paragraph 6 herein, respondents have represented and are now representing, directly or by implication, that clients will have their ideas reviewed and evaluated by qualified and appropriately licensed persons; that clients receive legal protection for their ideas; that clients' ideas will be manufactured and marketed; and as a result of contracting with respondents, clients will receive a financial gain.

PAR. 8. In truth and in fact, few, if any, of respondents' clients have their ideas reviewed and evaluated by qualified and appropriately licensed persons; receive legal protection for their ideas; have their ideas manufactured or marketed; or receive a financial gain as a result of contracting with respondents. Therefore, the acts and practices alleged in Paragraph 7 herein are deceptive, false, misleading and unfair.

PAR. 9. In the further course and conduct of their aforesaid business, respondents have failed to protect clients' investments and have failed to disclose facts concerning the probability that such clients will receive a financial gain as a result of contracting with respondents.

Since few, if any, of respondents' clients receive or have received financial gains as a result of contracting with respondents, respondents know or should have known that their clients' investments are unprotected and that their clients will not obtain financial gains.

Therefore, respondents, by inducing their clients to pay substantial sums of money without adequate protection for such clients' investments and without a disclosure of facts concerning the probability of a client receiving a financial gain which if known to certain prospective clients, would likely affect their decision of whether to execute contracts with respondents, are engaging in unfair acts or practices

constituting a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

PAR. 10. In the further course and conduct of their aforesaid business, respondents have represented, directly or indirectly, that their clients' ideas have adequate legal protection. Respondents have failed to disclose to their clients the degree of legal protection being offered the clients' ideas and the risk involved in contracting with respondents concerning potential patent rights. Such non-disclosures include, but are not limited to:

A. Respondents fail to disclose that they afford no legal protection recognized by the United States Patent Office.

B. Respondents fail to disclose that the ordinary course of conduct of their business may be construed by the United States Patent Office to constitute publication of the clients' idea.

C. Respondents fail to disclose that publication of an unprotected idea for a period of one year or more may constitute a waiver of any patentable rights the client may have.

D. Respondents fail to disclose that their clients must maintain the confidentiality of their ideas.

Respondents' failure to disclose such consequences in language calculated to be readily understood by their clients is a failure to disclose material facts which if known to prospective clients would likely affect their decision of whether to execute contracts with respondents. Respondents' aforesaid failure to disclose material facts is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Respondents as aforesaid have been and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such persons.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice and a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

PAR. 12. The use by respondents of the aforementioned unfair, false, misleading and deceptive acts, practices, statements or representations has had and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into erroneous and mistaken beliefs and into the execution of contracts with respondents by reason of said erroneous and mistaken beliefs.

PAR. 13. The aforementioned acts and practices, as herein alleged, have caused and are now causing substantial pecuniary losses to persons contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and have constituted, and now 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 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent International Inventors Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 11110 Ohio Ave., Los Angeles, California.

Respondent Siegfried Bart is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent. His business address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. DEFINITIONS

For purposes of this order the following definitions shall apply:

A. "Idea" shall mean any idea, invention or product.

B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."

C. "Financial gain" shall mean an amount of money derived by a "client", from a respondent's "promotion" of the client's "idea."

D. "Promotion" shall mean the evaluation, development, manufacturing, marketing or otherwise contributing to the success or growth of an "idea."

E. "Future services" shall include any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive, as a result of such arrangement, the delivery or performance, at least partly in the future, of any service, benefit, promotion, sum of money, or similar thing of value; the term shall include, but shall not be limited to, any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive a financial gain as a result of such arrangement.

II.

It is ordered, That respondent, International Inventors Incorporated, a corporation, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale and sale of contracts for future services in the promotion of ideas, or any other future services, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by any means, that:

A. Respondent possesses ability in the field of engineering unless it retains a licensed engineer who shall provide a written evaluation of each client's idea. Respondent shall provide a copy of said evaluation which the client may retain.

B. Respondent can or will provide legal protection for a client's idea unless respondent retains an attorney or agent licensed by the United States Patent Office who renders a written opinion on such client's idea. Respondent shall provide a copy of said opinion which the client may retain.

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C. Any party may or will receive a financial gain as a result of contracting with respondent except as allowed by Subparagraphs A and B of Paragraph 4 of this order.

2. Misrepresenting, directly or indirectly, by any means, that respondent possesses the ability to promote ideas that will or may result in financial gains for its clients.

3. Failing to prominently display the following notice in two or more locations in those portions of respondent's business premises most frequented by prospective clients and in each location where clients sign contracts or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by respondent's clients and prospective clients:

NOTICE

BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY, YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. THEREFORE, PRIOR TO SIGNING ANY AGREEMENT WITH US YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY.

4. Failing to make the following disclosures on the contract or other binding instrument to be executed by prospective clients. Said disclosures shall be in more conspicuous print than all other language in said instrument, but in no case shall they be smaller than 12 point upper case type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the text of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) SINCE WE BEGAN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS, OR PRODUCTS FOR (*Number*) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (*Number*) OF OUR CLIENTS EARNED NOTHING.
2. (*Number*) OF OUR CLIENTS EARNED $100-$499.
3. (*Number*) OF OUR CLIENTS EARNED $500-$1,000.
4. (*Number*) OF OUR CLIENTS EARNED OVER $1,000.

(B) WITHOUT PATENT PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL

BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE.

(C) BECAUSE THERE WILL BE NO PATENT PROTECTION FOR YOUR IDEA, SERIOUS CONSEQUENCES COULD RESULT FROM YOUR CONTRACTING WITH US, INCLUDING:

(1) When we disclose information concerning your idea to persons/manufacturers/marketers outside our company, such disclosure may be interpreted by the United States Patent Office as a "publication" of your idea.
(2) "Publication" for a period of one year or more of an idea which has no legal protection recognized by the United States Patent Office will result in the loss of any patentable rights you may have.

(D) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(E) BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY BEFORE YOU SIGN THIS AGREEMENT.

(F) TODAY IS (*Date*). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (MONTH/DAY/YEAR).

I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the date specified below.

Customer's Signature
Date

5. Executing contracts or other agreements with a client prior to expiration of the 10-day period disclosed in accordance with Paragraph 4 herein.

6. Failing to retain executed copies of all disclosures required by Paragraph 4 of this order for a period of three (3) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts. Respondent shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure. Accurate disclosures, given without comment, as required by Para-

graph 4 of this order, shall not be deemed a violation of Paragraph 1 of this order.

7. Failing, in all pamphlets, brochures and other promotional materials to make the following disclosures in the manner and form provided for herein:

A. In all printed advertisements, the notice shall be conspicuously placed in print at least as large as the largest print in the advertising material other than respondent's name and shall state:

"(*Number*)% of our clients have earned at least $100 as a result of our efforts to promote their ideas."

B. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest part of the advertisement.

C. At the time respondent submits advertising to any newspaper or other written medium, it shall provide a copy of the following notice to each such medium:

"NOTICE

The Federal Trade Commission has entered into a consent agreement with (*Name of Respondent*). A copy of the Commission's News Release is available from (*Name of Respondent*) upon request."

D. At the time respondent submits advertising to any radio or television station, it shall provide a copy of the following notice to each such station:

"NOTICE

The Federal Trade Commission has entered into a consent agreement with (*Name of Respondent*). A copy of the Commission's news release is available from (*Name of Respondent*) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972."

8. Failing to maintain for a period of three (3) years after any of their advertisements are disseminated:

(A) records disclosing the date or dates each such advertisement was published;

(B) records disclosing the name and address of the newspapers, other publications or broadcast media disseminating said advertisement; and

(C) copies or scripts of all of their advertisements published or disseminated by any media.

9. Failing to utilize one written contract or other binding instrument which shall constitute the entire agreement between the parties. In addition to the disclosures required under Paragraph 4 herein, each such instrument shall contain the following provision:

> "(*Name of Respondent*) agrees to present to the client all materials due to the client pertaining to the promotion of said client's idea within 180 days of the date this agreement is executed, and it is hereby further agreed that time is of the essence. If such materials are not presented to the client within the 180 day period, it is hereby mutually agreed between (*Name of Respondent*) and the client whose signature appears below that this agreement is rescinded in its entirety."

It is further ordered, That respondent cease and desist from:

A. Including in any contract or other document any waiver, limitation or condition on the right of a client to rescind an agreement under any provision of this order.

B. Misrepresenting the right of a client to rescind an agreement under any provision of this order or any applicable statute or regulation.

C. Making any representations or taking any action which is inconsistent with or detracts from the effectiveness of this order.

It is further ordered, That respondent shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission on request, and comply with all contract provisions required by this order.

It is further ordered, That the corporate respondent shall not engage in any course of conduct which contravenes the rights of clients or prospective clients provided by this order.

It is further ordered, That respondent, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract where respondent determines, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transaction with respondent.

It is further ordered:

A. That respondent delivers, by hand or by certified mail, a copy of this order to each of its present or future salesmen, independent brokers, employees or any other person who sells or promotes the sale of respondent's contracts;

B. That respondent provide each person so described in sub-para-

graph A above with a form returnable to respondent, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;

C. That respondent inform each person described in subparagraph A above that respondent shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondent to be bound by the provisions contained in this order;

D. That in the event such person will not agree to file such notice with respondent and be bound by the provisions of this order, respondent shall not use such person, or the services of such person;

E. That respondent institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in sub-paragraph A conform to the requirements of this order; and

F. That respondent discontinue dealing with any person described in sub-paragraph A of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondent may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondent's efforts. Respondent may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondent shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

It is further ordered, That in the event the Federal Trade Commission promulgates a trade regulation rule applicable to respondent's business that this order shall be deemed modified to the extent it contravenes said rule.

It is further ordered, That in the event that corporate respondent merges with another corporation or transfers all or a substantial part of its business, respondent shall require said successor or transferee to file within thirty (30) days with the Commission a written agreement to be bound by the terms of this order; *provided* that if respondent wishes to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the succession or transfer.

It is further ordered, That the corporate respondent 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.

III.

It is ordered, That Siegfried Bart, individually and as an officer of the corporate respondent, directly or through any corporation, subsidiary, division or other device, does forthwith cease and desist from offering to engage or engaging in contractual relationships with consumers for monetary consideration, in connection with the evaluation, development, marketing or promotion of ideas or inventions, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

It is provided, however, that nothing in this paragraph shall be construed to limit respondent Siegfried Bart's right to participate or share in the royalty payments, licensing fee or other proceeds resulting from the sale of an idea or invention or to limit respondent's right to manufacture or market products.

It is further ordered, That the individual respondent named herein promptly notify the Commission in the event of both (1) the discontinuance of his employment with the corporate respondent and (2) of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein 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 they have complied with this order.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

SHERRY MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-2843. Complaint, Oct. 1, 1976—Decision, Oct. 1, 1976

Consent order requiring a Miami, Fla., textile fiber products manufacturer, among other things to cease misrepresenting the quality of its products; misbranding and mislabeling its textile fiber products; and removing required labels from items without substituting other specified labels.

Appearances

For the Commission: *Albert Posnick.*
For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sherry Manufacturing Company, Inc., a corporation, and Quentin Sandler, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Sherry Manufacturing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 3287 N.W. 65th St., Miami, Florida.

Respondent Quentin Sandler is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the business of purchasing textile fiber products including, but not limited to, piece goods, jacquard woven beach towels, first quality and irregular white beach towels and white T-shirts; screen-printing some of said textile fiber products, such as the first quality and irregular white beach towels and the white T-shirts; manufacturing an

assortment of swim and beach apparel from the piece goods; selling all their products to retailers who resell them to the ultimate consumer.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past have caused their said merchandise to be sold and shipped from their place of business located in the State of Florida to purchasers in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents have sold substandard towels which were not labeled or marked "irregulars" or "seconds" or labeled or marked in any other manner so as to inform purchasers thereof of their imperfect quality. Purchasers, in the absence of a label or mark showing that textile fiber products are "irregulars" or "seconds," understand and believe that they are of first quality.

PAR. 5. Respondents' failure to label or mark their products in such a manner as to disclose that said products are imperfect has had, and now has, the capacity and tendency to mislead retailers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and causes the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts or 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 methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act, the implementing rules and regulations promulgated thereunder, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 7. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, or caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, or caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder in that they were falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name and amount of constituent fibers contained therein.

Such misbranded textile fiber products include, but are not limited to, women's beach jackets which contained substantially different fibers than represented on the label and in advertisements.

PAR. 9. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the rules and regulations promulgated under said Act.

Such misbranded textile fiber products include, but are not limited to, beach towels which were not stamped, tagged or labeled so as to disclose the true generic names and percentages by weight of the fibers present.

PAR. 10. Certain of said textile fiber products were misbranded by respondents in that fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels in immediate conjunction therewith in violation of Rule 17(a) of the rules and regulations promulgated under the Textile Fiber Products Identification Act.

Such misbranded textile products include, but are not limited to, "sleeveless maxis" which were labeled with the fiber trademark "Arnel" without disclosing the generic name "triacetate."

PAR. 11. Certain of said textile fiber products were falsely or deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of said products, failed to set

forth the information as to fiber content required by Section 4(c) of the Textile Fiber Products Identification Act in the manner and form prescribed by the rules and regulations promulgated under said Act.

Such textile fiber products include, but are not limited to, ladies' "hooded maxis" which were falsely or deceptively advertised by means of catalogues distributed by respondents throughout the United States in that the true generic names of the fibers in such articles were not set forth.

PAR. 12. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act, have caused or participated in the removal of, prior to the time textile fiber products subject to the provisions of said Act were sold and delivered to the ultimate consumer, labels required by said Act to be affixed to such products, without substituting therefor labels or other means of identification in the manner prescribed by Section 5(b) of said Act.

PAR. 13. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce under the Federal Trade Commission Act, as amended.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sherry Manufacturing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 3287 N.W. 65th St., Miami, Florida.

Respondent Quentin Sandler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

ORDER

I

It is ordered, That respondents Sherry Manufacturing Company, Inc., a corporation, its successors and assigns, and its officers, and Quentin Sandler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, selling or distributing of towels or any other article of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Offering for sale, selling or distributing any such product which is less than first quality without clearly and conspicuously marking thereon the word "irregular" or "second" in such degree of permanency as to remain on the product until consummation of the sale to the consumer and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product which is less than first quality unless it is clearly and conspicuously disclosed therein that such article is an "irregular" or "second" as the case may be.

C. Misrepresenting in any manner the quality of such product.

II

It is further ordered, That respondents Sherry Manufacturing

Company, Inc., a corporation, its successors and assigns, and its officers, and Quentin Sandler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name and amount of the constituent fibers contained therein;

2. failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act; and

3. using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness.

B. Falsely and deceptively advertising textile fiber products by making any representations, by disclosure or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

C. Causing or participating in the removal of labels required by the Textile Fiber Products Identification Act, without substituting therefor labels or other means of identification in the manner prescribed by Section 5(b) of said Act.

III

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

It is further ordered, That respondents 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.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein 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 they have complied with this order.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF

WARNER-LAMBERT COMPANY

OPINION AND ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

*Docket 8850. Complaint, June 30, 1971—Final Order, Oct. 5, 1976**

Opinion and order requiring a Morris Plains, N.J., major industrial corporation and a leading manufacturer and seller of drugs, to partially divest itself of particular assets whose retention would substantially lessen competition in drug manufacturing submarkets relating to thyroid preparations, cough medications, serum albumin and tetanus immune globulin; and to furnish the necessary assistance to enable respective purchasers to become effective competitors in these submarkets. Additionally, the order bans further acquisitions by respondent in the particular product areas for ten years without prior F.T.C. approval.

Appearances

For the Commission: *Thomas P. Athridge.*

For the respondent: *Mudge, Rose, Guthrie & Alexander*, New York City, and *Bergson, Borkland, Margolis & Adler*, Washington, D.C.

OPINION ACCOMPANYING FINAL ORDER

In the Commission's decision of April 27, 1976 in this matter, it found that the acquisition of Parke, Davis & Company ("Parke, Davis") by Warner-Lambert Company ("Warner-Lambert") violated Section 7 of the Clayton Act (15 U.S.C. § 18) in five therapeutic product submarkets: thyroid preparations, cough remedies, cough drops and lozenges, normal serum albumin, and tetanus immune globulin. At the same time, the Commission ruled that no violation of Section 7 had been demonstrated in seventeen other asserted lines of commerce, including an alleged overall drug market and an ethical drug market segment thereof.[1]

In view of the fact that the lines of commerce in which the Commission found Section 7 violations accounted for only a small portion of Parke, Davis' sales (less than 5 percent of total sales for 1969, the year prior to the merger),[2] it did not enter an order requiring divestiture of Parke, Davis, but called for proposed orders and supplemental briefs addressed to the issue of "what relief is necessary and sufficient to restore competition in the submarkets in which violations have been found" (Comm. Op. p. 50). The Commission noted

* For the Complaint, Initial Decision, Opinion, Findings of Facts and Conclusions of Law, see 87 F.T.C. 812.

[1] The complaint originally alleged unlawful effects in some 55 lines of commerce. A majority of the lines of commerce dropped out of the case by the time the matter reached the Commission for final decision.

[2] Total sales of Parke, Davis in 1969 were $273 million. Sales in the affected submarkets were as follows: thyroid preparations—$837,000; cough remedies (including cough drops and lozenges)—$8,771,000; normal serum albumin $2,400,000; tetanus immune globulin—$701,000. (Comm. Find. 51, 64; Comm. Op. p. 4, 46).

that "where the offending line or lines of commerce constitute a relatively small proportion of the entire business of the acquired corporation, partial divestiture may be appropriate if competition can be effectively restored in the affected markets," citing *Federal Trade Commission* v. *Pepsico, Inc.*, 477 F.2d 24, 29 (2d Cir. 1973); *United States* v. *Reed Roller Bit Co.*, 274 F. Supp. 573, 584-92 (W.D. Okl. 1967); *Union Carbide*, 59 F.T.C. 614, 659 (1961); and *United States* v. *CIBA*, 1970 Trade Cases ¶ 73,269 (S.D.N.Y. 1970) (consent decree).[3]

In accordance with this request, respondent, without waiving its rights to appeal from the Commission's adverse decision, has submitted a proposed order which would entail product line divestitures in the thyroid preparations, cough remedies, and cough drops/lozenges submarkets and provides for the introduction of new competition in the blood fractions submarkets, normal serum albumin and tetanus immune globulin.

Complaint counsel, on the other hand, adhere to their original proposed order which would require complete divestiture of Parke, Davis. Their principal argument is that anything less would result in leaving a substantial part of Parke, Davis in the hands of Warner-Lambert thereby increasing economic concentration in the overall drug industry and permanently eliminating Parke, Davis as an independent entity.

These arguments ignore the fact that the Commission has determined that the merger did *not* produce "a firm controlling an undue percentage share of the relevant market" or result in "a significant increase in concentration" (Comm. Op. p. 12). The Commission further found that the drug industry is composed of a large number of viable competitors and that removal of Parke, Davis (which ranked fourteenth in the industry in 1969 with a 2.9 percent share of drug sales) did not exacerbate any discernible trend toward concentration or effect a substantial diminution in the number of effective competitors (Comm. Op. 12, 15, 19).

Complaint counsel also contend that the sale of overlapping product lines is unacceptable because it would eliminate another "actual or potential competitor" even though purchasers must be approved by the Commission under the order. But the record shows there are numerous well-financed pharmaceutical firms which are not competitors in these

[3] In the analogous context of a merger involving companies competing in only a limited geographic area, the Supreme Court has observed that while that fact would not "immunize the merger in those markets in which competition might be adversely affected * * * [it] would, of course, be properly considered in determining the equitable relief to be decreed." *Brown Shoe Co. v. United States*, 370 U.S. 294, 337 n.65 (1962).

See also *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 129-30 (1962) reversing an ICC order of divestiture because the Commission failed to consider whether less harsh measures would eliminate the illegality of the merger in question. The Court emphasized the agency's "heavy responsibility to tailor the remedy to the particular facts of each case * * *." (371 U.S. at 130).

submarkets or at best have but a tiny market share. In 1971, 36 firms had ethical drug sales above $20 million and 50 had sales above $10 million. No more than six to eight drug firms held significant positions in the affected submarkets.

Assuming all firms in the drug industry which are not competitors in these submarkets should be viewed as potential entrants in these submarkets, the loss of one of these firms as a potential entrant (by allowing it to purchase a Parke, Davis line) would not significantly lessen competition. It has long been recognized in Commission decisions that eliminating one of a large number of equally able potential entrants does not significantly lessen competition. *Sterling Drug Co.*, 80 F.T.C. 477, 604 (1972); *Beatrice Foods Co.*, Dkt. 8864, slip opinion p. 13 (July 1, 1975) [86 F.T.C. 1]. Moreover, none of the product lines to be divested occupies a leading market position. Parke, Davis' thyroid products sales amounted to 4.7 percent of the thyroid preparations submarket prior to the merger. Its Medicated Throat Discs represented about three percent of the cough drops/lozenges submarket. In the larger cough remedies submarket, respondent's proposal involves divestiture of essentially four product lines accounting for a total of about three percent of that market (and these products may eventually be sold to more than one purchaser).

For the foregoing reasons we do not believe that an order requiring total divestiture is appropriate in this case. Instead we shall consider the divestiture of specific product lines as proposed by respondent.

I. *Thyroid preparations*

As the Commission found in its previous decision, Parke, Davis markets two thyroid products: thyroid U.S.P. and "Thyroid Strong," combined sales of which amounted to $837,000 in the year prior to the merger. Warner-Lambert markets two competitive thyroid products, which sell at from two to four times the price of Parke, Davis' products. Warner-Lambert enjoyed an overall market share of 20.3 percent in 1969 compared to 4.7 percent for Parke, Davis.

The Commission further found, *inter alia*, that "continued presence of Parke, Davis' product in the hands of an independent marketer is important to assure prescribing physicians the choice of Parke, Davis' lower priced [thyroid] product." (Op. p. 24). Warner-Lambert states that its proposed order would accomplish this by requiring Warner-Lambert to sell to a purchaser approved by the Commission "such assets, tangible and intangible, as will enable [the purchaser] to become an effective marketer" of Thyroid Strong and U.S.P. thyroid. Respondent would sell all inventories on hand at the close of the transaction, grant to the purchaser rights to the trade name "Thyroid Strong," and

provide affirmative assistance in establishing the purchaser's thyroid manufacturing capability. Furthermore, Warner-Lambert would furnish the purchaser with all formulations, specifications, manufacturing know-how and scientific data relating to the Parke, Davis thyroid products and provide various other types of assistance needed to establish the purchaser's ability to manufacture Thyroid Strong and U.S.P. thyroid. Warner-Lambert would also agree, as an interim measure, pending the establishment or expansion of the purchaser's manufacturing capability, to supply adequate quantities of Thyroid Strong and U.S.P. thyroid and provide the purchaser with all relevant Parke, Davis customer lists and other sales and marketing materials. Additionally, Warner-Lambert will not compete in this submarket with the approved purchaser for a period of three years.

Warner-Lambert contends that when the order is effectuated, Parke, Davis' "Thyroid Strong" and its U.S.P. thyroid will be in the hands of a marketer wholly independent of Warner-Lambert, and the pricing of these products will be entirely beyond Warner-Lambert's control.

Complaint counsel, on the other hand, predict that any purchaser of Parke, Davis' line will not be able to market successfully these products even though it may be a successful marketer of other prescription drug products. No reasons are presented why this would be so. The sale of product lines consisting of the transfer of trade names, manufacturing processes, sales and marketing data is fairly common in this industry. The record reveals many instances where drug companies have purchased product lines from other companies and successfully marketed them.

II. *Cough remedies and cough drops and lozenges*

Parke, Davis' position in the cough medication field was due primarily to Benylin Expectorant cough syrup, Ambenyl Expectorant cough syrup, and Cosanyl cough syrup. Benylin and Ambenyl are prescription drugs, although Benylin has also recently become available as an over-the-counter ("OTC") ethical product. Cosanyl, too, is an OTC ethical cough syrup. In the cough drop and lozenges submarket, Parke, Davis' primary product has been Medicated Throat Discs (recently reformulated and now sold under the name "Throat Discs").

Most of Warner-Lambert's cough remedy products are proprietary cough drops or lozenges. These include Smith Brothers Cough Drops, Hall's Mentho-Lyptus Cough Tablets, Listerine Throat Lozenges and Listerine Cough Control Lozenges.

In the Commission's decision of April 27, 1976, it found that there is an overall cough remedies market as well as submarkets thereof consisting of cough drops/lozenges and cough syrups. It further found

that the cough remedies market is sufficiently concentrated to be concerned with the loss of a significant firm through acquisition, the four largest firms having 45 percent of sales in 1969 and the eight largest 63 percent. Warner-Lambert's share represented 4.4 percent and Parke, Davis' sales represented 4.2 percent. In cough drops/lozenges, concentration was even higher, with Warner-Lambert the leading firm with a 27 percent market share and Parke, Davis with 3 percent represented by sales of Medicated Throat Discs.[4]

Although one approach to relief in these submarkets would be to require divestiture of all of Parke, Davis' cough remedy products, respondent notes that this would completely remove it as a competitor in ethical prescription or OTC cough remedies. It proposes, instead, that it dispose of Parke, Davis' prescription product Ambenyl Expectorant ($1.5 million sales in 1969) and ethical OTC Cosanyl products (Cosanyl and Cosanyl DM) ($1.3 million), and Warner-Lambert's Nilcol cough syrup (not introduced until 1970), allowing respondent to retain Benylin Expectorant ($3.5 million). Warner-Lambert would also dispose of Parke, Davis' Throat Discs ($1.5 million) and its own Smith Brothers Cough Drops line ($2.4 million).

As in the case of thyroid preparations, Warner-Lambert would be obligated to sell to the purchasers of these product lines all inventories of the above products, grant them all trademark rights, assist them in becoming effective manufacturers and marketers of the above cough remedies, and, as an interim measure, agree to supply these products for resale by the purchasers.

Respondent contends that these product-line divestitures would effectively nullify most of the increase in concentration found by the Commission and create even stronger incentives to competition than existed before the merger, because the Parke, Davis ethical lines of cough syrups will be split among at least two companies. Also, a firm that does not already have cough drops or lozenges will be more likely to promote Smith Brothers Cough Drops than did Warner-Lambert which has concentrated promotion in this area on its Listerine Lozenges.

We generally agree with this analysis and find the proposed order with respect to cough remedies appropriate.

III. *Normal serum albumin and tetanus immune globulin*

Parke, Davis had normal serum albumin (NSA) sales of $2.4 million in 1969, and a market share of 34 percent. In the smaller tetanus immune globulin (TIG) market, Parke, Davis' sales were $701,000, or a 28 percent market share. Warner-Lambert never manufactured or sold either of

[4] The figures for Warner-Lambert in both markets exclude $5.2 million in sales of Hall's Cough Drops, which were imported from England and, therefore, were not included in the Census universe relied upon in the April 27 decision.

these products (or any other therapeutic blood fraction products) but had investigated the possibility of either acquiring a leading blood fractionator or entering into the distribution of blood fractions to be supplied by a blood fractionator. The Commission concluded that there was a reasonable probability that Warner-Lambert would eventually enter these markets and that the acquisition of Parke, Davis eliminated it as a future entrant.

Respondent's proposed order, rather than requiring divestiture of Parke, Davis' entire blood fractionation business, requires respondent to produce NSA and TIG for distribution by an approved purchaser. Warner-Lambert explains that the order has two objectives:

> First to introduce immediate actual competition on a distributor basis; and, second, to create the opportunity for the purchaser then either to become a *de novo* entrant into the fractionation of NSA and TIG, or to expand a pre-existing toehold position. Since the merger did not eliminate any actual competition, the relief proposed by respondent will more than restore the pre-merger competitive *status quo*.

To accomplish the first objective, respondent's order would require Warner-Lambert to enter into an arrangement for the manufacture of NSA and TIG from plasma supplied by the purchaser. Respondent is required to dedicate up to 40 percent of Parke, Davis' present fractionation capacity to this arrangement, and to use its best efforts in assisting the purchaser in procuring adequate supplies of plasma. Warner-Lambert shall also assist the purchaser in developing relevant promotional, advertising and sales training material.

The second objective is said to be accomplished by giving the purchaser a call upon Parke, Davis' manufacturing know-how and scientific expertise for the purpose of establishing or expanding the purchaser's own fractionating capacity. Paragraph 3D of the proposed order requires Warner-Lambert, upon request, to assist the purchaser in plant design, to make available all Parke, Davis scientific data pertaining to NSA and TIG, and, if necessary, to help the purchaser obtain the requisite licenses for the Bureau of Biologicals of the Food and Drug Administration.

It appears to the Commission that this two-phased approach may well have a more immediate and concrete pro-competitive effect than wholesale divestiture of Parke, Davis' blood fractionation business. The latter would not assure that Warner-Lambert/Parke, Davis would re-enter the blood fractionation market in the near future, whereas the proposed order would at least assure that 40 percent of respondent's present fractionation capacity will be at the immediate disposal of a

presently interested potential entrant or toehold firm. On balance, the Commission believes the proposed order is preferable to divestiture of Parke, Davis' entire blood fractionation business.[5]

IV. *Miscellaneous Provisions*

The Commission's order will require divestiture to be accomplished within a period of one year, the time ordinarily allowed by the Commission in Section 7 cases. Although respondent has proposed a time period of 18 months, no reason has been suggested as to why the additional time should be necessary.[6]

Our order will also require that for a period of ten years following its effective date, respondent not acquire any company or product lines accounting for sales in the five submarkets in which violations have been found without prior notice to, and approval by, the Commission. A prohibition on future acquisitions in the affected markets without review and approval by the Commission is obviously necessary to ensure that no repetition of respondent's prior illegal conduct occurs. Respondent's proposal in this regard, which would permit it to make acquisitions in the affected submarkets with only advance notice to the Commission, and then only when feasible, is wholly inadequate, taking no account of the fact that its prior acquisitions have been found to restrain competition.

Finally, we must reject respondent's suggestion that notice (and approval) requirements be limited to acquisitions involving sales in excess of $500,000 in the submarkets in which violations have been found. As the record reveals, Parke, Davis' sales amounted to $837,000 in thyroid preparations and $701,000 in tetanus immune globulin at the time of its acquisition. Quite clearly, future acquisitions by Warner-Lambert of product lines accounting for sales of less than $500,000 in these submarkets might well threaten anti-competitive consequences.[7] In light of this, we believe that respondent must be required to obtain prior clearance for acquisitions involving any sales in the markets in which violations have been found. Since this requirement is limited to only a small fraction of the markets in which respondent operates, we do

[5] A similar approach was taken by the Commission in *Inland Container Corp.*, 69 F.T.C. 201 (1966). Inland had been a potential competitor in the Louisville market prior to its purchase of a box company there. Inland was permitted to remain in the market, but was ordered to assist another manufacturer in setting up a competing plant in Louisville.

[6] We have also omitted paragraph "4" of the order proposed by respondent. Since purchasers are, by terms of the order, subject to prior Commission approval, this paragraph is unnecessary, although obviously purchasers with the sorts of affiliations described in the paragraph will be viewed with suspicion.

[7] Indeed, by means of two sub-$500,000 acquisitions respondent under its own proposal could conceivably reacquire the entire thyroid preparations position it is being required to divest without even the necessity to provide notice to the Commission. While the administrative proceeding which would ensue once the Commission learned of such an occurrence might well be as short as the present proceeding has been long, an effective order should obviously forbid recurrence of the very violations which gave rise to it.

not foresee that it will impose a significant or unwarranted burden upon it.

An appropriate order is appended.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the initial decision; the Commission having vacated the initial decision and granted, in part, the appeal to the extent set forth in the Opinion of the Commission and its Findings of Fact and Conclusions of Law; each party, pursuant to the Commission's Order of April 27, 1976, having submitted a proposed form of order and supporting and reply memoranda; and the Commission having determined that an order requiring partial divestiture of certain assets of respondent Warner-Lambert Company (hereinafter "Warner-Lambert") and Parke, Davis & Co. (hereinafter "Parke, Davis") is appropriate for the reasons stated in the accompanying opinion,

1. *It is ordered*, That respondent, Warner-Lambert, a corporation, and its successors and assigns, within twelve (12) months from the effective date of this order, shall enter into an agreement with a purchaser approved by the Commission whereby the said purchaser shall acquire such assets, tangible and intangible, as will enable it to become an effective marketer of the thyroid preparations presently being manufactured and sold by Parke, Davis; namely "Thyroid Strong" and "U.S.P. Thyroid." In furtherance of the requirements of this provision,

A. Warner-Lambert shall sell to the purchaser all inventories of Thyroid Strong and U.S.P. Thyroid on hand at the date the transaction with the purchaser is closed.

B. Warner-Lambert shall grant to the purchaser, in perpetuity, all of its rights to the trade name "Thyroid Strong."

C. Warner-Lambert shall agree to assist the purchaser in becoming an effective and competitive manufacturer of Thyroid Strong and U.S.P. Thyroid comparable in quality to the products presently being manufactured by Parke, Davis, and in furtherance of this requirement shall

(1) Provide the purchaser with Parke, Davis' formulations, specifications, and manufacturing procedures, including Parke, Davis' quality control standards and methods relating to Thyroid Strong and U.S.P. Thyroid;

(2) Provide the purchaser with all of Parke, Davis' scientific and research data relating to Thyroid Strong and U.S.P. Thyroid;

(3) Provide the purchaser, at reasonable cost, with the assistance of such technical and production personnel as may reasonably be necessary

in establishing or expanding the purchaser's facility for the production of Thyroid Strong and U.S.P. Thyroid; and

(4) Use its best efforts to assist the purchaser in obtaining raw materials required to manufacture Thyroid Strong and U.S.P. Thyroid of acceptable quality.

D. Warner-Lambert shall assist the purchaser in becoming an effective marketer of Thyroid Strong and U.S.P. Thyroid by providing it with all relevant Parke, Davis customer lists, sales and promotional materials, market research materials, and sales training material and devices relating thereto.

E. As an interim measure, and for not more than three (3) years, pending the establishment or expansion of the purchaser's manufacturing capability, Warner-Lambert shall agree to supply the purchaser with adequate quantities of Parke, Davis-manufactured Thyroid Strong and U.S.P. Thyroid. At the purchaser's option, Warner-Lambert will sell thyroid preparation tablets to the purchaser in bulk or finished package form. Warner-Lambert shall be required to sell the purchaser such products up to the maximum quantity that Warner-Lambert is capable of manufacturing on the Parke, Davis equipment now used for such products without further capital investment in new machinery and without incurring extraordinary operating expenses above those arising in the normal course of business. Warner-Lambert shall grant the purchaser the right to state on the label of all Thyroid preparation packages containing products manufactured by Parke, Davis that such products were "Manufactured by Parke, Davis for Distribution by [Purchaser]."

F. Warner-Lambert shall, at the option of the purchaser, agree with the purchaser not to engage in the distribution and sale of Thyroid Strong and U.S.P. Thyroid within the United States for a period of up to three (3) years.

2. *It is ordered*, That Warner-Lambert and its successors and assigns, within twelve (12) months from the effective date of this order, shall enter into agreements with purchasers approved by the Commission whereby the said purchasers shall acquire such assets, tangible and intangible, as will enable them to become effective marketers of one or more of the following Warner-Lambert and Parke, Davis cough remedies, and as will result in all of the following products being marketed by parties other than Warner-Lambert and Parke, Davis:

Smith Bros. Cough Drops;
Throat Discs;
Ambenyl Expectorant;
Cosanyl;

Cosanyl DM;
Nilcol.

In furtherance of the requirements of this provision:

A. Warner-Lambert shall sell to the purchasers all inventories of these products on hand at the dates the transactions with the purchasers are closed.

B. Warner-Lambert shall grant to the purchasers, in perpetuity, all of its rights to all trademarks, trademark registrations and trade names pertaining to the above-specified cough remedies and shall transfer to the purchasers all approved new drug applications relating thereto.

C. Warner-Lambert shall agree to assist the purchasers in becoming effective and competitive manufacturers of each of the above-specified cough remedies comparable in quality to the products presently being manufactured by Warner-Lambert and Parke, Davis, and in furtherance of this requirement shall (1) provide the purchasers with all of the Warner-Lambert and Parke, Davis formulations, specifications and manufacturing procedures, including quality control standards and methods relating to the above-specified cough remedies; (2) provide the purchasers with all of Warner-Lambert's and Parke, Davis' scientific and research data relating to the above-specified cough remedies; (3) provide the purchasers, at reasonable cost, with the assistance of such technical and production personnel as may reasonably be necessary in establishing or expanding the purchasers' facilities for the production of the above-specified cough remedies; and (4) use its best efforts to assist the Purchasers in obtaining raw materials required to manufacture the above-specified cough remedies of acceptable quality.

D. Warner-Lambert shall assist the purchasers in becoming effective marketers of the above-specified cough remedies by providing them with all relevant Parke, Davis and Warner-Lambert customer lists, sales and promotional materials, market research materials and sales training material and devices relating thereto.

E. As an interim measure, and for not more than three (3) years, pending the establishment of the manufacturing capabilities of the purchasers, Warner-Lambert shall agree to supply the purchasers with adequate quantities of the above-specified cough remedies. At the purchasers' option, Warner-Lambert will sell such products to the purchasers in bulk or in finished dosage form. Warner-Lambert shall be required to sell the purchasers such products up to the maximum quantity that Warner-Lambert or Parke, Davis is capable of manufacturing on the existing equipment now used for such products without further capital investment in new machinery and without incurring

extraordinary operating expenses above those arising in the normal course of business.

3. *It is ordered*, That Warner-Lambert and its successors and assigns, within twelve (12) months from the effective date of this order, shall enter into an agreement with a purchaser approved by the Commission whereby the said purchaser shall be enabled to become an effective marketer of Normal Serum Albumin (hereinafter "NSA") and Tetanus Immune Globulin (hereinafter "TIG") in competition with Parke, Davis and other companies presently engaged in the marketing of said blood fractions. In furtherance of the requirements of this provision,

A. Warner-Lambert shall, at reasonable compensation from the purchaser, manufacture on a toll conversion basis, NSA and TIG from plasma supplied by the purchaser, for a period of up to five (5) years; *provided, however*, that Warner-Lambert shall not be required to fractionate for the purchaser in excess of the purchaser's domestic requirements of NSA and TIG, or in excess of forty percent (40%) of the present capacity of the Parke, Davis fractionation facility as operated without further capital investment in new machinery and without incurring extraordinary operating expenses above those arising in the normal course of business. Warner-Lambert shall use its best efforts to assist the purchaser in procuring adequate supplies of plasma for toll conversion pursuant to this provision.

B. Subject to regulations of the Food and Drug Administration's Bureau of Biologicals, NSA and TIG provided by Warner-Lambert to the purchaser shall be labeled "Manufactured by Parke, Davis for Distribution by [Purchaser]."

C. At the purchaser's option, Warner-Lambert shall, at reasonable cost, provide the purchaser with the assistance of marketing personnel for the development of promotional, advertising and sales training material for NSA and TIG.

D. At the purchaser's option, to be exercised within five (5) years, Warner-Lambert shall, at reasonable compensation from the purchaser, assist the purchaser in establishing or expanding an existing facility for fractionation of NSA and TIG from plasma. In furtherance of this requirement, Warner-Lambert shall do the following:

(1) Warner-Lambert shall make available to the purchaser Parke, Davis' know-how relating to the manufacture of NSA and TIG, including technical advice and assistance on plant location and design, procurement of plasma, quality control standards and methods, and such other information and advice as deemed appropriate by the parties.

(2) Warner-Lambert shall make available to the purchaser all Parke, Davis scientific data and information pertaining to NSA and TIG,

including all internal research of Parke, Davis and all material relating to its establishment license and product licenses for NSA and TIG.

(3) If purchaser does not hold an establishment license from the Bureau of Biologicals of the Food and Drug Administration, Warner-Lambert shall use its best efforts to assist purchaser in acquiring such a license, including technical assistance in the construction of a fractionation facility. Warner-Lambert shall also use its best efforts to assist purchaser in acquiring from the Bureau of Biologicals product licenses for NSA and TIG, if purchaser does not already hold such product licenses.

4. *It is further ordered*, That for a period of ten (10) years from the effective date of this order, Warner-Lambert, and its successors and assigns, shall not merge with or acquire, directly or indirectly, through subsidiaries or in any manner, any company or product line accounting for domestic sales in any of the three product areas referred to in paragraphs 1, 2, or 3 of this order, without prior notice to, and approval by, the Commission.

5. *It is further ordered*, That Warner-Lambert, and its successors and assigns, shall, within thirty (30) days after the effective date of this order, and every ninety (90) days thereafter until it has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with this order. All compliance reports shall include, among other things that are from time to time required, (a) the steps taken to enter the required agreements; and (b) copies of all documents, reports, memoranda, communications and correspondence concerning or relating thereto.

6. *It is further ordered*, That until all of the transactions required by this order are accomplished, Warner-Lambert, and its successors and assigns, shall not take any action which diminishes the value of the products and other assets, tangible and intangible, that are subject to this order or which in any way impairs Warner-Lambert's ability to comply with the requirements of this order.

7. *It is further ordered*, That Warner-Lambert 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.

Commissioner Dole did not participate by reason of absence.