

IN THE MATTER OF  
RELIABLE MORTGAGE CORPORATION, ET AL.

*Docket C-8956. Interlocutory Order, September 21, 1990*

ORDER

*It is ordered*, That this show cause proceeding is dismissed.  
Commissioner Strenio dissenting.

OPINION OF THE COMMISSION

BY CALVANI, *Commissioner*:

The Commission has reopened this matter to consider modifying our earlier decision and order, which found that respondents had violated the Truth-in-Lending Act and Regulation Z. Staff now urges that we find that respondents' conduct also constitutes an unfair or deceptive act or practice under Section 5 of the FTC Act. For the reasons discussed below, we reject the arguments advanced to support the proposed modification and dismiss this show cause proceeding.

I. Procedural History

On January 8, 1975, the Commission issued an order against Reliable Mortgage Corporation and its chief executive officer Edward Siegel ("Reliable" or "respondents") for violations of the Truth In Lending Act ("TILA"), 15 U.S.C. 1601 *et seq.* and Regulation Z, 12 CFR 226, which implements TILA. *Reliable Mortgage Corporation, et al.*, 85 FTC 21 (1975) ("*Reliable*"). The Commission adopted the ALJ's finding that respondents advertised a mortgage interest rate without stating the annual percentage rate ("APR") in violation of Regulation Z. *Reliable*, 85 FTC at 25.<sup>1</sup> The final order, among other things, prohibited respondents from stating the rate of finance charge in a consumer credit advertisement without also disclosing the APR, as defined by Regulation Z. *Reliable*, 85 FTC at 26. Predicating its findings on TILA and Regulation Z, the decision did not hold that respondents had violated the Federal Trade Commission Act.

On January 31, 1989, the Commission issued an order to show

<sup>1</sup> When the Commission issued *Reliable*, this requirement was contained in 12 CFR 226.10(d)(1). It now appears at 12 CFR 226.24(b) (1981).

cause to respondents in this matter<sup>2</sup> as to why the *Reliable* proceeding should not be reopened and the order modified to clarify that the TILA violation at issue also constitutes an unfair and deceptive act or practice in violation of Section 5. *Reliable*, D. 8956 (January 31, 1989) (Show Cause Order). Respondents failed to answer the show cause order.<sup>3</sup>

Consequently, on September 25, 1989, the Commission issued an order reopening this proceeding and ordering the staff to file a brief addressing the proposed modification. *Reliable*, D. 8956 (September 25, 1989) (Order Reopening Proceeding to Consider Modification of Decision and Directing Submission of Briefs).<sup>4</sup> The Commission invited interested parties to submit amicus curiae briefs on the proposed revisions to the *Reliable* decision.<sup>5</sup> The staff filed their brief on January 2, 1990. No amici briefs were received.

## II. Whether the Practice is Unfair or Deceptive Under Section 5

Staff now urges the Commission to modify the *Reliable* decision to expressly state that the practice at issue, advertising a finance charge without stating the APR, is unfair and deceptive.<sup>6</sup> Staff advances two primary arguments in support of the proposed modification. First, staff claims that by enacting TILA, Congress determined that this practice is deceptive and unfair. Second, staff argues that the TILA

<sup>2</sup> On the same date, the Commission issued a similar show cause order against respondents in *Seekonk Freezer Meats, Inc., et al.*, 82 FTC 1025 (1973) ("*Seekonk*"). The show cause order proposed to modify the *Seekonk* order to state that the TILA and Regulation Z violation at issue also constitutes an unfair or deceptive practice under Section 5. *Seekonk*, D. 8880 (January 31, 1989) (Show Cause Order).

<sup>3</sup> They did, however, informally reply by letter to FTC staff that *Reliable* had no objections to the proposed reopening. 54 Fed. Reg. 47,827 (November 17, 1989).

<sup>4</sup> The Commission issued a similar order reopening the *Seekonk* proceeding. *Seekonk*, D. 8880 (September 25, 1989). Our per curiam decision with respect to that matter accompanies this opinion.

<sup>5</sup> 54 Fed. Reg. 47826 (November 17, 1989).

<sup>6</sup> The Commission initiated this proceeding in response to an Eighth Circuit opinion holding that the Commission's failure in *Reliable*, *Seekonk*, and two other credit advertising cases to determine that the TILA violations also constitute unfair or deceptive practices under Section 5 of the FTC Act precluded their use as the basis for a civil penalty action under Section 5(m)(1)(B) of the FTC Act. *United States v. Hopkins Dodge Sales, Inc.*, 849 F.2d 311 (8th Cir. 1988).

Under Section 5(m)(1)(B) of the FTC Act, the Commission may seek civil penalties for any act or practice of a nonparty to a previous Commission proceeding finding such act or practice to be unfair or deceptive, only if: (1) the Commission determined the particular act or practice in question to be unfair or deceptive in a proceeding under Section 5(b) of the FTC Act, and then issued a final cease and desist order with respect to such act or practice; and (2) the defendant (nonparty to the previous proceeding) had actual knowledge of this determination and order. *Hopkins*, 849 F.2d at 314-15.

The fact of these modification proceedings suggests that no previous Commission decisions meet the first prerequisite with respect to the particular acts and practices at issue. If previous Commission decisions meet the first prerequisite, then the current proceedings may be unnecessary; the Commission could provide the required actual notice to prospective Section 5(m)(1)(B) defendants by furnishing such decisions. The staff has not addressed whether any such decisions exist. We base our opinion on the legislative history and the unfairness and deception standards as applied to the record in this proceeding.

violation independently meets the unfairness and deception criteria. Neither argument is convincing for the reasons discussed below.

A. Whether Congress Has Determined that the TILA Violation at Issue Constitutes Unfair or Deceptive Acts Or Practices Under Section 5 of the FTC Act

Staff argues that the express language of TILA and its legislative history demonstrate that Congress has already determined that the TILA violation in *Reliable* constitutes an unfair or deceptive practice under Section 5. Brief dated January 2, 1990 (“Br.”) at 8-11. In essence, this contention relies on two related arguments. First, staff maintains that subsection 108(c) of TILA, 15 U.S.C. 1607(c), providing that “a violation of any requirement imposed under [TILA] shall be deemed a violation of a requirement imposed under the [FTC Act],” requires a finding that respondents’ TILA violations breached some requirement of the FTC Act. Br. at 8. Second, staff claims that the only FTC Act “requirements” to which TILA logically can refer are Section 5’s prohibitions against unfair or deceptive acts or practices. In staff’s view, this latter conclusion flows directly from the Eighth Circuit’s recognition in *United States v. Hopkins Dodge Sales, Inc.*, 849 F.2d at 314 (“*Hopkins*”), that the applicable FTC Act requirement is Section 5 (Br. at 8) and legislative history demonstrating that the prohibition against unfair or deceptive acts is the relevant Section 5 requirement. Br. at 9-10. We are unpersuaded for several reasons.

First, subsection 108(c)’s express language and apparent purpose fail to support staff’s interpretation. Staff selectively quotes only a portion of the relevant language. The entire sentence makes clear that a violation of TILA is deemed a violation of the FTC Act for procedural purposes—so that the FTC may invoke all of its functions and powers under the FTC Act in enforcing TILA violations. Thus, the entire sentence states:

[F]or the purpose of the exercise by the FTC of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act (emphasis added).

This reading of the sentence is confirmed by its context. Reading subsection 108(c) as a whole discloses Congress’ intent to provide the Commission with authority for using FTC Act powers and procedures,

including the power to seek civil penalties, against TILA violations. If further confirmation were needed, it is provided by the full context: the other parts of Section 108. Like subsection 108(c), subsections 108(a) and (b) allow other agencies with responsibilities under TILA to invoke, for enforcement purposes, the procedures set forth in their respective statutes. 15 U.S.C.s 1607(a), (b).<sup>7</sup>

TILA's legislative history does not contradict this interpretation. The legislative history of subsection 108(c), which would be most relevant, in fact confirms it. *See, e.g.*, H.R. 1040, 90th Cong., 1st Sess. 18, 30 (1968), *reprinted* in 1968 U.S. Code Cong. & Admin. News 1962, 1976 and 1988 (Section 207 of House Bill (renumbered Section 108 in conference substitute) establishes administrative enforcement procedures and permits agencies to invoke their own statutory procedures). To be sure, there are passages from certain reports and debates that could illustrate a general intent to prevent unfairness and deception. *See Br.* at 9-10. Although the cited passages demonstrate a concern with certain misleading or unfair credit advertising practices, this does not amount to a determination that violating TILA constitutes an unfair or deceptive practice under Section 5.

Moreover, other consumer credit statutes enacted after TILA specifically provide that a violation constitutes an unfair or deceptive practice. *See, e.g.*, the Fair Credit Reporting Act, 15 U.S.C. 1681s(a); and the Fair Debt Collection Practices Act, 15 U.S.C. 1692l(a). Since TILA is part of this overall statutory scheme, staff argues that it should be construed similarly. *Br.* at 11, n. 8. On the contrary, Congress' failure to include such language in TILA, in contrast to the other credit statutes, is dispositive.

#### B. Whether The Practices At Issue Meet The Deception And Unfairness Criteria

Does application to the record evidence of the legal criteria for finding deception and unfairness independently support a finding that Reliable's practices were deceptive or unfair in violation of Section 5?

##### 1. Deception

Staff claims that Reliable's practice of advertising an interest rate

<sup>7</sup> We disagree that the Eighth Circuit "recognized" that TILA violations constitute unfair or deceptive practices under Section 5 of the FTC Act. *Br.* at 8. Rather, in observing that subsection 108(c) incorporates by reference the same "remedial procedures" as Section 5, the Eighth Circuit confirms that subsection 108(c) is a procedural rather than substantive provision. *Hopkins*, 849 F.2d at 314. Were it otherwise the Court of Appeals should not have affirmed the district court's order since violation of TILA would have constituted a violation of Section 5 of the FTC Act as a matter of law.

of 8.5% without also disclosing the APR of 11.93% meets the deception standard.<sup>8</sup> Since the APR includes all charges (buyer's points, mortgage insurance, loan origination fees and other costs), a rate that omits these charges understates the true cost of credit and suggests that the advertised rate is the APR. Br. at 13. Therefore, the omission of the APR is a deceptive act proscribed by Section 5 of the FTC Act.

The Commission has two options. First, it could conclude that advertising an interest rate, without stating the APR, is—as a matter of law—deceptive.<sup>9</sup> Under certain circumstances, the Commission may determine without extrinsic evidence that an advertisement conveys a particular claim and is misleading. *See, e.g., Thompson Medical Co.*, 104 FTC 648, 788-89 (1984). However, we are reluctant to do so in the absence of an adversarial proceeding where the issues have been joined. Second, the Commission could determine, on the basis of the record, that staff has proved that advertising an interest rate without stating the APR is deceptive. Unfortunately, no such record exists in this case. There is simply no supporting evidence from which we can conclude that consumers were in fact misled by the advertising in question. Nor can we resolve whether consumers believed that the advertised rate represented the APR. In short, absent a record with supporting evidence, we cannot find that Reliable's practice was deceptive.

## 2. Unfairness

Staff's unfairness argument fails for similar reasons. Unfairness requires a finding of substantial unavoidable consumer injury. *Orkin Exterminating Company, Inc.*, 108 FTC 263, 360 (1986).<sup>10</sup> Once again we refuse to find the practice at bar unfair as a matter of law in an uncontested proceeding.

And, again, the record is bare. Staff's entire unfairness analysis rests on unsupported assumptions that Reliable's advertisements created substantial unavoidable injury. Br. at 17-18.<sup>11</sup> By contrast,

<sup>8</sup> The Commission will find deception if there is a material representation, omission or practice that is likely to mislead consumers acting reasonably. *Cliffdale Associates, Inc., et al.*, 103 FTC 110, 165 (1984).

<sup>9</sup> Thus, should Congress repeal TILA, the use of an interest rate without stating an APR as in this case would nonetheless remain illegal under Section 5 of the FTC Act.

<sup>10</sup> The Commission considers: (1) how substantial the injury is; (2) whether the practice in question produces offsetting benefits that outweigh the injury; and (3) whether the consumers could have reasonably avoided it. *Orkin*, 108 FTC at 362; *International Harvester Co.*, 104 FTC 949, 1061 (1984).

<sup>11</sup> Staff's use of the word "may" illustrates the speculative nature of its argument. For example, in describing the injury caused by Reliable's practices, staff states that understating the true cost of credit would be "likely" to cause serious injury because: consumers "may" not learn the true cost of credit until locked into

(footnote cont'd)

the records in both *Orkin* and *International Harvester* contained substantial evidence to justify the Commission's conclusions. For example, in *Orkin*, respondent's practices affected over 200,000 consumers and imposed financial costs of \$7.5 million. *Orkin*, 108 FTC at 362. Similarly, *International Harvester* involved serious physical injury, including death and severe disfigurement. *International Harvester*, 104 FTC at 1064.<sup>12</sup>

To summarize, on this record we are unable to conclude that Reliable's practices independently satisfy the deception and unfairness criteria. This is not to say that the practices might meet these standards in another case on a litigated record. We are simply reluctant to make new law in the context of a nonadversarial proceeding where the evidence is lacking.

### III. Conclusion

For the reasons set forth above, we find the record insufficient to support the proposed modification. Accordingly, we dismiss this show cause proceeding.

#### SEPARATE STATEMENT OF CHAIRMAN JANET D. STEIGER

I concur in the decision to dismiss this show cause proceeding, but reach that decision for different reasons than those stated in the Opinion of the Commission.

It has been the Commission's longstanding and well publicized view that certain violations of Regulation Z and the Truth in Lending Act (TILA)<sup>1</sup>—such as stating an interest rate in a consumer credit advertisement without specifying the annual percentage rate for the financing, and advertising of certain credit terms without stating other terms—are unfair and deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act (FTCA).<sup>2</sup> In 1975, pursuant to Section 5(m)(1)(B) of the FTCA,<sup>3</sup> the Commission issued its first synopsis stating that certain violations of the TILA are unfair and deceptive acts or practices: Credit Advertising Practices—Synop-

a loan; they "may" lose opportunities for more favorable credit terms; and they "may" incur costs in applying for credit based on a non-APR rate. See Br. at 17.

<sup>12</sup> Staff suggests that specific findings may be unnecessary where Congress has already determined the practices are unfair. Br. at 19. However, the absence of express statutory language or persuasive legislative history demonstrating this "congressional determination" counsel against taking this approach.

<sup>1</sup> 15 U.S.C. 1601 *et seq.*

<sup>2</sup> 15 U.S.C. 45(a).

<sup>3</sup> 15 U.S.C. 45(m)(1)(B).

sis of FTC Determinations. The synopsis was later amended to track the 1980 TILA amendments.<sup>4</sup> The Commission based its substantial credit advertising law enforcement program on these synopses. As a result, in the past 15 years, the Commission has secured over 25 consent judgments, and has imposed civil penalties of more than \$1.29 million dollars for credit advertising violations.

In 1988, the U.S. Court of Appeals for the Eighth Circuit held that the synopsis was flawed because the Commission had not directly determined that the TILA violations in the cases underlying the synopsis were also unfair and deceptive acts or practices in violation of Section 5(a) of the FTCA.<sup>5</sup> Therefore, civil penalties could not be awarded. In an attempt to address this determination, the Commission began this show cause proceeding pursuant to Section 3.72 (b) of its Rules, which provides a mechanism for the Commission to reopen a proceeding after a decision has become final, by issuing an order to show cause, and thereafter modify an existing order.<sup>6</sup>

In this show cause proceeding, the Commission staff proposed modifications of the order against *Reliable Mortgage* that would clarify the Commission's determinations and expressly state that *Reliable's* violations of Regulation Z and the TILA also constituted unfair or deceptive practices in violation of Section 5(a) of the FTCA. Despite the Commission's best efforts, the respondents failed to answer the show cause order and failed to submit a brief in opposition to the proposed modifications.<sup>7</sup> In addition to serving the respondents, Federal Register Notices were twice published requesting comments and amicus curiae briefs from interested parties,<sup>8</sup> but none were received.

The Commission's Rules of Practice for show cause proceedings specifically address a default situation by providing that the Commission may, in its discretion, decide the matter on its own. Section 3.72(b)(1) provides that "[a]ny person not responding to the order

<sup>4</sup> Truth in Lending Simplification and Reform Act of 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 168.)

<sup>5</sup> *United States v. Hopkins Dodge, Inc.*, 849 F.2d 311 (8th Cir. 1988). There could be an historical explanation for the Commission's failure to do so. At the time the decisions underlying the synopsis were rendered, Section 5(m)(1)(B) had not yet been enacted, so there was no need to include Section 5(a) allegations.

<sup>6</sup> 16 CFR 3.72(b) (1990).

<sup>7</sup> The respondents were properly served when the Commission issued the show cause order and again when the Commission reopened the proceedings and requested the submission of briefs. The individual respondent in *Reliable* informally responded that he had no objections to the Commission's proposed changes, but no formal response was received.

<sup>8</sup> 54 Fed. Reg. 7294 (February 17, 1989) and 54 Fed. Reg. 47826 (November 17, 1989).

within the time allowed may be deemed to have consented to the proposed changes.” Consequently, as a general rule, the failure to respond to a show cause order does not preclude Commission action. Thus, I do not believe, as the Commission’s Opinion might be read to suggest, that without respondents’ participation, the Commission cannot determine that certain conduct is, as a matter of law, unfair or deceptive.

I join in dismissing the show cause proceeding, however, because in my view the record before us is not sufficient to support a determination, as a matter of law or fact, that the practices at issue are deceptive or unfair. I am concerned that a court would decline to hold that a determination made on the basis of this record could provide a basis for civil penalty actions brought under Section 5(m)(1)(B).

I am nevertheless concerned that the Commission’s opinion could be read to hold that before a finding of deception can be made, it must be shown that consumers were in fact misled by the advertising at issue. (See Opinion of the Commission at 6.) The Commission never has had the burden of proving actual deception. Initially, Commission cases applied a “tendency or capacity” to mislead or deceive standard which more recently evolved into the “likely to mislead” standard embodied in the 1983 Deception Policy Statement. In either event, as the 1983 Statement makes clear, “The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deception.”<sup>9</sup> The Commission’s opinion has advanced no reason to reverse the Commission’s more than 50-year precedent of not requiring a showing of actual deception, and I therefore dissent from that portion of the opinion.

In conclusion, this proceeding involves a very important area of the FTC’s consumer protection program—the prevention of deceptive credit advertising throughout the nation. As a result of the court’s decision in *Hopkins Dodge*, the FTC’s enforcement ability has suffered a significant setback. This show cause proceeding by the Commission was an attempt to cure the legal problem delineated by the Court of Appeals, and it is with great reluctance, for the reasons set forth above, that I concur in the decision to dismiss this proceeding. However, I commend the staff for their efforts, and emphasize my commitment to seeking other solutions to this problem

<sup>9</sup> Commission Deception Statement, *Cliffdale Associates, Inc.*, 103 FTC 110, 176 (1984).



so that the FTC can continue to be an effective law enforcement agency in the credit advertising area.

CONCURRING OPINION OF COMMISSIONER DEBORAH K. OWEN

I agree with the result and the underlying analysis of the Majority Opinion in this matter. In this concurring statement, I wish to offer a few additional observations.

Neither the plain language of the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 *et seq.*, nor its legislative history clearly supports a finding by this Commission that the Congress intended a violation of TILA to be "unfair" or "deceptive" *per se* for purposes of determining whether Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, has been violated. Nothing in TILA expressly provides that violations thereof are necessarily "unfair" or "deceptive," and the wording of Section 108(c) of that Act is simply too susceptible of other interpretations to justify jumping to such a conclusion.

The legislative history on this issue is indeed scanty, but does seem to provide some support for the view that Section 108 of TILA, regarding administrative enforcement, was added in the later stages of the legislative process merely as a procedural and jurisdictional enhancement to enforcement of the statute.<sup>1</sup> Furthermore, there is no definitive indication in that legislative history that Congress consciously intended to declare that any violation of TILA's affirmative disclosure requirements automatically meets the criteria for a finding of unfairness or deception under Section 5. The legislative history is mixed. On one hand, several legislators referred to certain practices that prompted passage of TILA as "unfair" and fraudulent.<sup>2</sup> On the

<sup>1</sup> The Conference Report of May 20, 1968, contains very limited reference to the administrative enforcement provision, acknowledging that the bill then being considered "also provided for administrative enforcement by the Federal Trade Commission as to businesses generally...." H. Rep. No. 1397, 90th Cong., 2d Sess. 24. The most lengthy reference to this provision in the Report states:

Section 108 of the conference substitute clarifies the legislative intention that the vesting of sole rulemaking power under title I in the Board of Governors of the Federal Reserve System does not impair the authority of the other agencies having administrative enforcement responsibilities to make rules respecting their own procedures in enforcing compliance. It also makes clear that, except for the exclusions specifically stated in the section, the jurisdiction of the Federal Trade Commission is plenary and attaches to any creditor subject to the title, irrespective of whether the creditor meets any jurisdictional test in the Federal Trade Commission Act.

*Id.* at 26 (emphasis added). This arguably supports a statutory interpretation that Congress may have intended Section 108(c) to be purely a procedural and jurisdictional provision, which would not increase the substantive liability imposed under the statute. Further, this passage buttresses the argument advanced in the Majority Opinion with respect to the context created by the other subsections of Section 108.

<sup>2</sup> See, e.g., statements quoted in Proposed Modification to Decision and Supporting Brief [hereinafter "Brief"] at 8-10; see also, *Consumer Credit Labeling Bill: Hearings on S. 2755 Before the Subcomm. on*

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other hand, the legislative history suggests that Congress' primary purposes in enacting TILA may have been regulatory: to establish a uniform system of advertising credit in order to eliminate "confusion;" to "permit consumers to compare the cost of credit among different creditors and to shop effectively for the best credit buy;" and to prevent the deceptive practices of "some unscrupulous creditors."<sup>3</sup> The Report of the Senate Committee on Banking and Currency emphasized that the proponents of the legislation:

...[do] not imply or infer that most creditors have been deliberately untruthful. The bill contains no assumptions that consumer credit is bad or that the vast majority of those who extend consumer credit are engaged in deceitful practices.<sup>4</sup>

The vagueness of the language in TILA and its surrounding legislative history stands in marked contrast to Congress' subsequent, clear expressions that violations of some other credit practices laws *ipso facto* constitute unfairness or deception for purposes of the FTC Act.<sup>5</sup> There are several possible explanations for the differences.<sup>6</sup> They may be the result of method; or they may be attributable to inartful drafting, an understandable inability to foresee every potential interpretation of the language by those outside the legislative process, or even happenstance.<sup>7</sup> In light of the clear variations in Congressional approach to this issue among the various acts, this Commission would be overstepping its bounds if it were to unilaterally

*Production and Stabilization of the Senate Comm. on Banking and Currency, 86th Cong., 2d Sess. 16 (1960) [hereinafter "Hearings"] (Memorandum from Sen. Paul H. Douglas to Cosponsors of S. 2755) ("... Because of the widespread use of misleading and deceptive methods of stating the price of credit, ordinary citizens find it difficult to make meaningful comparisons and therefore intelligent choices of the various credit terms offered to them.") While many discussants of the legislation in 1967 and 1968 did not appear to use the terms "unfair" and "deceptive" as terms of art under the FTC Act, Senator Douglas' 1960 Memorandum cites with approval certain FTC actions and principles as "excellent guidelines for the truth-in-lending legislation we have put forward...." Hearings at 21-22. Senator Douglas' Memorandum is somewhat at odds with certain statements made by TILA's managers at the time of passage eight years later. See notes 3 & 4 and accompanying text *infra*.*

<sup>3</sup> See, e.g., S. Rep. No. 392, 90th Cong., 1st Sess. (1967) *passim* and at 1-3. The Committee also noted that differing disclosure practices "[i]n large part ... have arisen out of historical circumstances" and that requiring a uniform method of disclosure would alleviate the competitive disadvantage that any one segment of the industry might suffer if it attempted to "reform itself by disclosing the simple annual rate." *Id.* at 3.

<sup>4</sup> *Id.* at 2 (emphasis added).

<sup>5</sup> See, e.g., the Fair Credit Reporting Act, 15 U.S.C. 1681s (1970), and the Fair Debt Collection Practices Act, 15 U.S.C. 1692l(1977); *but see*, the Equal Credit Opportunity Act, 15 U.S.C. 1691c (1974) (tracking the TILA language).

<sup>6</sup> I am unaware of any explanatory Congressional history surrounding the passage of any of the acts cited in note 5 *supra*.

<sup>7</sup> Later amendments to TILA would have been logical vehicles for correcting any unintended discrepancy, but no such change was made. See, e.g., Pub. L. No. 93-495, 88 Stat. 1500 (1974); Pub. L. No. 94-222, 90 Stat. 197 (1976); Pub. L. No. 94-240, 90 Stat. 257 (1976); Pub. L. No. 96-221, 94 Stat. 132 (1980).

attempt to conform them on a question of such moment. In the face of what little enlightenment is available to us in the legislative history, we should not presume that the differences are meaningless.

In sum, the proscriptions of TILA and Regulation Z, 12 CFR 226, which implements it, are many, varied and often complicated. Although the Commission might very well find, on an adjudicated record, that specific violations of one or more provisions are unfair or deceptive under the Federal Trade Commission Act, I cannot conclude on the basis of the evidence available that Congress intended all violations of TILA and Regulation Z to be unfair and deceptive simply because it gave the FTC certain powers to enforce the TILA.

Having found the plain language of the statute and the legislative history insufficient to support an automatic finding of unfairness or deception, I turn to the question of whether a review of Reliable's actions gives me reason to believe that they were unfair or deceptive under Section 5 of the Federal Trade Commission Act, and that such a finding would be in the public interest. This is a question that I cannot fairly answer, because the factual record is simply too bare with respect to certain basic elements of unfairness and deception identified in the Majority Opinion. Theories are useful and case precedents are important, but in the end, they can be hollow in the absence of evidentiary support related to a specific case. In this matter, there are no current adjudicated findings of fact,<sup>8</sup> nor any stipulated finding of facts<sup>9</sup> on the factual issues identified in the Majority Opinion. I appreciate the arguments that staff has proffered for finding that the actions of Reliable were unfair and deceptive. Nevertheless, I do not believe that the Commission should make such findings in this context; I would prefer to make them on a more complete factual record.<sup>10</sup>

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<sup>8</sup> The Commission clearly has the authority to issue an adjudicated decision, or an order reopening and modifying a decision, even if the respondents do not contest the proceeding. Commission Rules 3.51(a), 3.72, 16 CFR 3.51(a), 3.72 (1990). Here, the absence of a formal contest by the respondent is not by itself dispositive as to whether the Commission, in its discretion, should modify the order. Respondent's silence is relevant because it comes in the context of an otherwise scant record on certain elements of unfairness and deception, as discussed in the Majority Opinion. Had more factual evidence been available from the record, the failure of the respondents to reply would have been less significant, in my judgment. Accordingly, our action here should not be construed to prevent the Commission from modifying orders in appropriate, uncontested cases.

<sup>9</sup> Section 3.25(g) of the Commission's Rules provides for settlement through the adjudicative process on the basis of an admission answer, or stipulated facts and an agreed order.

<sup>10</sup> I do not reach the question of whether, in light of the motives outlined in the staff Brief (at 21-26), an action against the individual respondent in this matter might constitute an abuse of discretion by the Commission.

IN THE MATTER OF  
RECKITT & COLMAN PLC

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

*Docket C-3306. Complaint, Sept. 26, 1990—Decision, Sept. 26, 1990*

This consent order allows, among other things, a London, England corporation to acquire the Boyle-Midway Division of American Home Products Corp., but requires respondent to divest its own rug-cleaning products business to a Commission-approved acquirer, within eight months, and to comply with all terms of the Hold Separate Agreement. In addition, for ten years, respondent is required to obtain prior Commission approval before acquiring any interest in any company that manufactures or sells rug cleaning products in the U.S.

*Appearances*

For the Commission: *Robert W. Doyle, Jr.* and *Steven A. Newborn.*

For the respondent: *Allen T. Maulsby, Cravath, Swaine & Moore,*  
New York, N.Y.

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that respondent, Reckitt & Colman plc, a corporation subject to the jurisdiction of the Federal Trade Commission, proposes to acquire the Boyle-Midway Division of American Home Products Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

For the purposes of this complaint the following definitions apply:

1. *Reckitt & Colman plc* (“R&C”) means Reckitt & Colman plc, a corporation organized, existing, and doing business under and by

virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships, and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

2. *American Home Products Corporation* ("AHP") means American Home Products Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

3. "*Boyle*" means the Boyle-Midway Division of AHP, which includes four corporations, directly or indirectly, wholly-owned by AHP, with their principal offices at 685 Third Avenue, New York, New York: Boyle-Midway, Inc., and Boyle-Midway Household Products, Inc., both of which are organized and doing business under the laws of Delaware; Boyle-Midway Puerto Rico, Inc., organized and doing business under the laws of Puerto Rico; and Boyle-Midway Subsidiary Corporation, which is organized and doing business under the laws of Nevada.

4. "*Rug cleaning products business*" means the business of formulating, manufacturing, marketing, and selling home rug cleaning products, either in liquid form or applied by aerosol or pump spray, and sold primarily in grocery and general merchandise stores.

## II. THE RESPONDENT

5. Respondent R&C is a corporation organized and existing under the laws of England, with its offices and principal place of business at One Burlington Lane, London, England W4 2RW. R&C does business in the United States through its wholly owned subsidiary, Reckitt & Colman Inc., a corporation with its offices and principal place of business at 1655 Valley Road, Wayne, New Jersey.

6. For purposes of this proceeding, R&C is, and at all times relevant

herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

### III. THE ACQUIRED COMPANY

7. AHP is a corporation organized and existing under the laws of the State of Delaware, with its headquarters at 685 Third Avenue, New York, New York.

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

9. Boyle, to be acquired by Reckitt, consists of four corporations, all of whose voting securities are held directly or indirectly by AHP: Boyle-Midway, Inc., Boyle-Midway Household Products, Inc., both of which are Delaware corporations, and Boyle-Midway Subsidiary Corporation, a Nevada corporation, all with headquarters at 685 Third Avenue, New York, New York; and Boyle-Midway Puerto Rico, Inc., a Puerto Rico corporation, with its address at G.P.O. Box 70115, San Juan, Puerto Rico.

10. Boyle is, and at all times relevant herein has been engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and all four entities constituting Boyle as defined in paragraph 5 are corporations whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

### IV. THE ACQUISITION

11. On or about March 9, 1990, R&C and AHP agreed in principle to enter into an agreement whereby R&C will acquire all of the voting securities of Boyle from AHP for a price of approximately \$1.25 billion, to be paid in cash. The parties wish to consummate the transaction in late June, 1990, or as soon thereafter as possible.

### V. THE RELEVANT MARKET

12. For purposes of this complaint, the relevant line of commerce in which to analyze R&C's acquisition of Boyle from AHP is the rug cleaning products business.

13. For purposes of this complaint, the relevant section of the country is the United States.

14. The relevant market set forth in paragraphs 8 and 9 is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

15. Entry into the relevant market is difficult.

16. R&C and AHP are actual competitors in the relevant market.

#### VI. EFFECTS OF THE ACQUISITION

17. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. Actual competition between R&C and AHP will be eliminated;
- b. R&C may acquire a dominant market position in the relevant market; and
- c. The likelihood of collusion in the relevant market would be increased.

#### VII. VIOLATIONS CHARGED

18. The acquisition agreement described in paragraph 7 does constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

19. The acquisition described in paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

#### DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a 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 described 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 Reckitt & Colman plc ("R&C") is a corporation organized and existing under the laws of England, with its offices and principal place of business at One Burlington Lane, London 4W 2RW, England. R&C does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its office and principal place of business at 1655 Valley Road, Wayne, New Jersey.

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

#### ORDER

##### I.

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

A. "*R&C*" means Reckitt & Colman plc, a corporation organized, existing, and doing business under and by virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors,



assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations.

B. "*AHP*" means American Home Products Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

C. "*Boyle*" means the Boyle-Midway Division, which includes four corporations, all directly or indirectly, wholly-owned by AHP: Boyle-Midway, Inc. and Boyle-Midway Household Products, Inc., both of which are Delaware corporations, and Boyle-Midway Subsidiary Corporation, a Nevada corporation, all with their principal offices at 685 Third Avenue, New York, N.Y.; and Boyle-Midway Puerto Rico, Inc., a Puerto Rico corporation, with its address at G.P.O. Box 70115, San Juan, Puerto Rico.

D. "*Commission*" means the Federal Trade Commission.

E. "*Acquisition*" means the acquisition by R&C of Boyle from AHP.

F. "*Acquirer*" means the party or parties to whom R&C divests the assets herein ordered to be divested.

G. "*R&C's rug cleaning products*" means R&C's rug cleaning products, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

H. "*R&C's rug cleaning products business*" means the business of manufacturing, marketing, and selling R&C's rug cleaning products.

I. "*R&C's Assets to be Divested*" means the following assets constituting or otherwise related to R&C's rug cleaning products business:

- 1) The R&C product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

- 2) All trademarks (including without limitation, Glamorene, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush) relating to R&C's rug

cleaning products, except that R&C may require the Acquirer to grant to R&C a license, for a reasonable royalty, for a period of not longer than three (3) years, to sell household products other than rug cleaning products under the Glamorene trademark;

3) A list of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which each R&C rug cleaning product is sold and which are used in records of sales and inventories;

4) A Bill of Materials for each R&C rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

5) All artwork and mechanical drawings currently in use relating to the R&C rug cleaning products;

6) All dedicated molds and equipment currently in use for R&C's rug cleaning products;

7) A list of all customers who have bought R&C's rug cleaning products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

8) All currently available marketing information in the possession of R&C relating to R&C's rug cleaning products and the rug cleaning business generally, including but not limited to R&C's consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991, *provided, however* that marketing information relating to Woolite obtained by R&C after the acquisition shall not be provided to the Acquirer;

9) All inventories of finished goods, packaging, and unique raw materials relating to R&C's rug cleaning products;

10) All names of manufacturers under contract with R&C to produce R&C's rug cleaning products from 1988 to the present;

11) All product testing and laboratory research data from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to R&C's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

12) All consumer correspondence and related documents from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to R&C rug cleaning products business;

13) All price lists for R&C's rug cleaning products from January 1, 1987 to the present;

14) All information from January 1, 1987 until the Assets to be Divested are divested pursuant to this order relating to costs of production for each of R&C's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

15) All sales data relating to R&C's rug cleaning products, from 1987 until the Assets to be Divested are divested pursuant to this order;

16) All assignable agreements relating to Good Housekeeping Approvals for R&C's rug cleaning products.

J. "*Woolite's rug cleaning products*" means Woolite's home rug cleaning products, Woolite Deep Cleaning Carpet Cleaner, Woolite Self Cleaning Carpet Cleaner, Woolite Spot & Stain Remover and Woolite Upholstery Cleaner, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

K. "*Woolite's rug cleaning products business*" means the business of manufacturing, marketing, and selling Woolite's rug cleaning products.

L. "*Woolite's Assets to be Divested*" means the following assets constituting or otherwise related to Woolite's rug cleaning products business:

1) The Woolite product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

2) A royalty-free license to use the Woolite trademarks for all Woolite rug cleaning products;

3) A list of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which each Woolite rug cleaning product is sold and which are used in records of sales and inventories;

4) A Bill of Materials for each Woolite rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

5) All artwork and mechanical drawings currently in use relating to the Woolite rug cleaning products;

6) All dedicated molds and equipment currently in use for Woolite's rug cleaning products;

7) A list of all customers who have bought Woolite's rug cleaning

products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

8) All currently available marketing information in the possession of R&C relating to Woolite's rug cleaning products and the rug cleaning business generally, including but not limited to Woolite consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991;

9) All inventories of finished goods, packaging, and unique raw materials relating to Woolite rug cleaning products;

10) All names of manufacturers under contract with Woolite to produce Woolite's rug cleaning products from 1988 to the present;

11) All product testing and laboratory research data from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to Woolite's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

12) All consumer correspondence and related documents from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to Woolite rug cleaning products business;

13) All price lists for Woolite's rug cleaning products from January 1, 1987 to the present;

14) All information from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this order relating to costs of production for each of Woolite's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

15) All sales data relating to Woolite's rug cleaning products, from 1987 until the Woolite Assets to be Divested are divested pursuant to this order;

16) All assignable agreements relating to Good Housekeeping Approvals for Woolite's rug cleaning products.

## II.

*It is ordered, That:*

A. R&C shall divest, absolutely and in good faith, within eight (8)

months of the date this order becomes final, the R&C Assets to be Divested.

B. R&C shall divest the R&C Assets to be Divested only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the R&C Assets to be Divested is to ensure the continuation of the R&C Assets to be Divested as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. R&C shall comply with all terms of the Hold Separate Agreement, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until such time as R&C has divested the R&C Assets to be Divested or until such time as R&C has divested the Woolite Assets to be Divested or until such other time as the Hold Separate Agreement provides.

D. R&C shall take such action as may be necessary to maintain the viability and marketability of the R&C and Woolite Assets to be Divested and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the R&C and Woolite Assets to be Divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Assets to be Divested.

### III.

*It is further ordered, That:*

A. If R&C has not divested, absolutely and in good faith and with the Commission's approval, the R&C Assets to be Divested within eight (8) months of the date this order becomes final, and if an application for Commission approval of such divestiture is not pending before the Commission, R&C shall divest the Woolite Assets to be Divested within six (6) months thereafter only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. If R&C has not divested the Woolite Assets to be Divested within that subsequent six (6) month period, R&C shall consent to the appointment by the Commission of a trustee to divest the Woolite Assets to be Divested. *Provided, however,* that if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date the

application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. In the event the Commission or the Attorney General brings an action pursuant to Section 5 (l) of the Federal Trade Commission Act, 15 U.S.C. 45 (l), or any other statute enforced by the Commission, R&C shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5 (l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by R&C to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, R&C shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of R&C, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Woolite Assets to be Divested.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Woolite Assets to be Divested, or any other relevant information, as the trustee may reasonably request. R&C shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. R&C shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by R&C shall extend the time for divestiture under this paragraph in an amount equal to

the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to R&C's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each Acquirer for the divestiture of the Woolite Assets to be Divested. The divestiture shall be made in the manner set out in paragraph II, *provided, however*, if the trustee receives bona fide offers from more than one Acquirer, and if the Commission determines to approve more than one such Acquirer, the trustee shall divest to the Acquirer selected by R&C from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of R&C, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of R&C, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of R&C and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Woolite Assets to be Divested.

7. R&C shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, R&C shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Woolite Assets to be Divested.

12. The trustee shall report in writing to R&C and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV.

*It is further ordered,* That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until R&C has fully complied with the provisions of paragraphs II and III of this order and with the Hold Separate Agreement, R&C shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. R&C shall include in its compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations with respect to divestiture, including the identity of all parties contacted. R&C also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

#### V.

*It is further ordered,* That:

For a ten (10) year period commencing on the date this order becomes final, R&C shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, or the whole or any part of the stock or share capital of, any person or business that is engaged in the rug cleaning products business in the United States, or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in), the rug cleaning products business. One year from the date this order becomes final and annually for nine years thereafter, R&C shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.



## VI.

*It is further ordered,* That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to R&C made to the principal office of R&C's United States subsidiary, Reckitt & Colman Inc., R&C shall permit any duly authorized representatives of the Federal Trade Commission:

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

B. Upon five days notice to R&C, made to Reckitt & Colman Inc., and without restraint or interference from R&C, to interview officers or employees of R&C, who may have counsel present, regarding such matters.

## VII.

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

## HOLD SEPARATE AGREEMENT

This Hold Separate Agreement (the "Agreement") is by and among Reckitt & Colman plc ("R&C"), a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business at One Burlington Lane, London 4W 2RW, England, which does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of business at 1655 Road, Wayne, New Jersey; and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

## PREMISES

*Whereas*, on March 9, 1990, R&C entered into an agreement in principle with American Home Products Corporation (“AHP”) to acquire all the voting securities of the Boyle-Midway Division of AHP, consisting of four directly or indirectly, wholly-owned subsidiaries of AHP (hereinafter “acquisition”); and

*Whereas*, Boyle-Midway, with its principal office and place of business located at 685 Third Avenue, New York, New York, produces and markets, among other things, rug cleaning products; and

*Whereas*, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

*Whereas*, if the Commission accepts the attached Agreement Containing Consent Order (“Consent Order”), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of R&C’s rug cleaning products business during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

*Whereas*, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission’s ability to require the divestiture of the Assets to be Divested as described in paragraph I of the Consent Order and the Commission’s right to have R&C’s rug cleaning products business continued as a viable competitor; and

*Whereas*, the purpose of the Agreement and the Consent Order is to:

1. Preserve the viability of R&C’s rug cleaning products business pending the divestiture of the Assets to be Divested, as defined in paragraph I.I of the Consent Order, as a viable and ongoing enterprise,
2. Remedy any anticompetitive effects of the acquisition, and
3. Preserve R&C’s rug cleaning products business as an ongoing, viable rug cleaning products business until divestiture is achieved; and

*Whereas*, R&C's entering into this Agreement shall in no way be construed as an admission by R&C that the acquisition is illegal; and

*Whereas*, R&C understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws of the Federal Trade Commission Act by reason of anything contained in this Agreement.

*Now, therefore*, the parties agree, upon the understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from R&C with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets to be Divested pursuant to the Consent Order, as follows:

1. R&C agrees to execute and be bound by the attached Consent Order.

2. R&C agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 2.a and 2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order has been completed.

3. Because complete isolation of R&C's rug cleaning products business from R&C's marketing and sales operations could cause irreparable harm to that business and make it difficult or impossible to divest the Assets to be Divested as an ongoing, viable rug cleaning products business, R&C will manage and maintain the Assets to be Divested, as they are presently constituted, on the following terms and conditions:

a. R&C shall appoint four individuals, one each from among R&C's current employees working in R&C's marketing, sales, materials management, and finance operations to manage and maintain R&C's rug cleaning products business. These individuals ("the management team") shall manage R&C's rug cleaning products business indepen-

dently of the management of R&C's other businesses, except that these individuals will arrange for the rug cleaning products (Spray 'n Vac, Apply 'n Vac, and Spray 'n Brush) to be marketed and sold by R&C's marketing and sales forces. The management team shall not thereafter until the Assets to be Divested are divested pursuant to the Consent Order be in any way involved in the marketing, selling or materials management of any competing Woolite product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by R&C. The independent auditor/manager shall have exclusive control over the operations of R&C's rug cleaning products business, with responsibility for the management of R&C's rug cleaning products business and for maintaining the independence of that business.

c. R&C shall not exercise direction or control over, or influence directly or indirectly the independent auditor/manager or the management team or any of its operations relating to the operations of R&C's rug cleaning products business or the Assets to be Divested; *provided, however,* that R&C may exercise only such direction and control over the management team and the Assets to be Divested as is necessary to assure compliance with this Agreement.

d. R&C shall maintain the viability and marketability of the Assets to be Divested and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

e. Except for the management team, R&C shall not permit any other R&C employee, officer, or director to be involved in the management of the Assets to be Divested, except to the extent the services of R&C's sales, marketing, and materials management personnel are necessary as set forth in subparagraph 3.a.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, R&C shall not receive or have access to, or the use of, any material confidential information about R&C's rug cleaning products business or the activities of the management team in managing that business not in the public domain nor shall the management team receive or have access to, or the use of, any material confidential information about any competitive Woolite product or the activities of R&C in managing the Woolite business not

in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set forth in this subparagraph. ("*Material confidential information*," as used herein, means competitively sensitive or proprietary information not independently known to R&C from sources other than the management team, and includes but is not limited to customer lists, price lists, marketing methods (except to the extent marketing and sales plans need to be divulged to the R&C marketing and sales force in the ordinary course of business), patents, technologies, processes, or other trade secrets.)

g. R&C shall not change the composition of the management team and the independent auditor/manager shall have the power to remove employees only for cause.

h. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a-3.g hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

i. R&C shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of R&C's rug cleaning products business and the conduct of the management team in accordance with this Agreement. R&C shall also circulate to its employees and appropriately display a notice of this Hold Separate Agreement and Consent Order in the form attached hereto as Appendix A.

j. All earnings and profits of R&C's rug cleaning products business shall be available for use in that business until divestiture. In computing earnings and profits for R&C's rug cleaning products business until divestiture, R&C shall deduct from revenues generated by R&C's rug cleaning products business all direct product costs and indirect overheads allocated to that business. R&C shall make available for use in its rug cleaning products business until divestiture an amount not lower than an annualized \$1.7 million for advertising and consumer and trade promotion of the rug cleaning products, and shall pay all direct product costs and indirect overheads for its rug cleaning products business. R&C's rug cleaning products business shall not be charged with the compensation and expenses of the independent auditor/manager.

k. Should the Federal Trade Commission seek in any proceeding to compel R&C to divest itself of the R&C Assets to be Divested or the Woolite Assets to be Divested, as defined in the Consent Order, R&C

shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. R&C also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to R&C made to its principal office in the United States, R&C shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of R&C and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of R&C relating to compliance with this Agreement;

b. Upon five (5) days notice to R&C, and without restraint or interference from it, to interview officers or employees of R&C, who may have counsel present, regarding any such matters.

c. Information obtained by the Commission pursuant to this provision shall be given confidential treatment pursuant to Sections 6(f) and 21(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 56(f).

5. This agreement shall not be binding until approved by the Commission.

#### APPENDIX A

##### NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Reckitt & Colman ("R&C") has entered into a Consent Order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain R&C rug cleaning assets and products, including Spray 'n Vac, Apply 'n Vac and Spray 'n Brush. Until such assets and products are divested, they must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of R&C. All competition information relating to these three product lines must be retained and maintained by the persons responsible for the management of these products on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such

information to or with any other person whose employment involves any R&C competing rug cleaning product, including Woolite. Similarly, all such persons responsible for the management of Woolite rug cleaning products, shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any competition information about those products to or with any person responsible for Spray 'n Vac, Apply 'n Vac and Spray 'n Brush.

Any violation of the Consent Order or the Asset Management and Maintenance Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

IN THE MATTER OF  
TWIN STAR PRODUCTIONS, INC., ET AL.

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

*Docket C-3307. Complaint, Oct. 2, 1990—Decision, Oct. 2, 1990\**

This consent order prohibits, among other things, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and impotence for any products or services; from using endorsements, unless the respondents have good reason to believe that the endorsements reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commercials are independent programs and not paid advertising. In addition, the consent order requires the corporation and five of the six individuals to pay a total of \$1.5 million in consumer redress.

*Appearances*

For the Commission: *Tracy S. Thorleifson, Charles A. Harwood*  
and *Patricia A. Hensley.*

For the respondents: *Robert Fleishman, Steptoe & Johnson,*  
Washington, D.C. and *Sheldon Lustigman,* New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Twin Star Productions, Inc., a corporation, and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers 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:

\*Prior to leaving the commission, former Commissioner Calvani registered a vote in the affirmative for issuing the complaint and the order in this matter.



PARAGRAPH 1. (a) Respondent Twin Star Productions, Inc. ("Twin Star"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware.

(b) Twin Star has its principal office and place of business at 7345 E. Evans Road, Scottsdale, Arizona. Twin Star advertises, markets, and sells numerous products throughout the United States, and intends to market and sell new products. Among other things, Twin Star advertises, markets, and sells a weight-loss product, the "EuroTrym Diet Patch," a hair-loss product, "Foliplexx," and an impotence treatment, "Y-Bron."

(c) Respondent Jerald H. Steer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 4906 East Desert Fairways, Paradise Valley, Arizona.

(d) Respondent Allen R. Singer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 6809 North 48th Street, Paradise Valley, Arizona.

(e) Respondent Judith P. Singer is or was an officer of Twin Star. Individually or in concert with others, she formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. She resides at 6809 North 48th Street, Paradise Valley, Arizona.

(f) Respondent Douglas E. Gravink is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 14836 North 57th Place, Scottsdale, Arizona.

(g) Respondent Peter Claypatch is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 6514 East Paradise Lane, Scottsdale, Arizona.

(h) Respondent Steven L. Singer is an officer and shareholder of Twin Star. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. He resides at 5702 East LeMarche, Scottsdale, Arizona.

PAR. 2. Respondents are now and for some time have been engaged in advertising, marketing and selling numerous products throughout the United States, primarily by means of television advertisements made to simulate independent investigative news programs, talk shows, or regular television programs. Among other things, respondents have advertised, marketed and sold a weight-loss product, the "EuroTrym Diet Patch," a hair-loss product, "Foliplexx," an impotence treatment, "Y-Bron," and a book titled *How to Start Your Own Business By Doing Business with the Government*. Respondents' program-length commercials, which run for 30 minutes or less and fit within normal television broadcasting time slots, are broadcast on network, independent and cable television stations an aggregate of approximately 1,000 to 2,500 times each month on approximately 500 television stations throughout the United States.

PAR. 3. Respondents are engaged in the advertising, offering for sale, sale and distribution of food, drugs, devices, cosmetics, and other general products found in commerce. In particular, the EuroTrym Diet Patch, Foliplexx, and Y-Bron come within the classification of "drug," as that term is defined in Section 15(c) of the FTC Act, 15 U.S.C. 55(c).

PAR. 4. The acts and practices of respondents alleged in this complaint have been or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

#### EUROTRYM DIET PATCH

PAR. 5. Since at least 1988, respondents promoted the sale of and sold numerous packages of the EuroTrym Diet Patch to consumers in various areas of the United States. Respondents sold a one-month supply of the EuroTrym Diet Patch for \$49.95, plus shipping and handling costs of \$4.00. Sales of the EuroTrym Diet Patch totalled approximately \$4,833,000. To promote the sale of the EuroTrym Diet Patch, respondents used a 30-minute television commercial identified as "The Michael Reagan Show," which was broadcast in various areas throughout the United States.

PAR. 6. By and through the "Michael Reagan Show" and other statements and depictions, respondents represented, directly or by implication, that:

- (a) Use of the EuroTrym Diet Patch prevents feelings of hunger.
- (b) Use of the EuroTrym Diet Patch enables users to lose substantial amounts of weight.

(c) Use of the EuroTrym Diet Patch enables users to lose weight in a large majority of cases.

(d) Competent and reliable tests or studies establish that the EuroTrym Diet Patch promotes weight loss.

PAR. 7. In truth and in fact:

(a) Use of the EuroTrym Diet Patch does not prevent feelings of hunger.

(b) Use of the EuroTrym Diet Patch does not enable users to lose substantial amounts of weight.

(c) Use of the EuroTrym Diet Patch does not enable users to lose weight in a large majority of cases.

(d) No competent and reliable test or study establishes that the EuroTrym Diet Patch promotes weight loss.

Therefore, each of the representations set forth in paragraph 6 was and is false, misleading or deceptive.

PAR. 8. Through the use of the statements and representations set forth in paragraph 6 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 6 at the time such representations were made.

PAR. 9. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 6 at the time such representations were made. Therefore, the representation set forth in paragraph 8 was and is false, misleading or deceptive.

#### FOLIPLEXX

PAR. 10. Since at least 1988, respondents promoted the sale of and sold numerous packages of Foliplexx to consumers in various areas of the United States. Respondents sold each package of Foliplexx for \$49.95, plus shipping and handling costs of \$4.00. Total sales of Foliplexx exceeded \$4,900,000. To promote the sale of Foliplexx, respondents used a 30-minute television commercial identified as "Breakthrough '88," which was broadcast in various areas throughout the United States.

PAR. 11. By and through "Breakthrough '88" and other statements and depictions, respondents represent, directly or by implication, that:

- (a) Use of Foliplexx curtails loss of hair, thus relieving or preventing baldness.
- (b) Use of Foliplexx promotes growth of new hair where hair has already been lost, thus curing or reversing the advance of baldness.
- (c) Foliplexx is an effective remedy for baldness in a large percentage of cases.
- (d) Competent and reliable tests or studies establish that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

PAR. 12. In truth and in fact:

- (a) Use of Foliplexx does not curtail loss of hair, and does not relieve or prevent baldness.
- (b) Use of Foliplexx does not promote growth of new hair where hair has already been lost, and does not cure or reverse the advance of baldness.
- (c) Foliplexx is not an effective remedy for baldness in a large percentage of cases.
- (d) No competent and reliable test or study establishes that Foliplexx relieves, cures, prevents, or reverses the advance of baldness.

Therefore, each of the representations set forth in paragraph 11 was and is false, misleading or deceptive.

PAR. 13. Through the use of the statements and representations set forth in paragraph 11 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 11 at the time such representations were made.

PAR. 14. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 11 at the time such representations were made. Therefore, the representation set forth in paragraph 13 was and is false, misleading and deceptive.

Y-BRON

PAR. 15. Since at least 1988, respondents promoted the sale of and sold numerous packages of Y-Bron to consumers in various areas of the United States. Respondents sold each package of Y-Bron for \$49.95, plus shipping and handling costs of \$4.50. Total sales of Y-Bron exceeded \$8,000,000. To promote the sale of Y-Bron, respondents used a 30-minute television commercial identified as "Let's Talk," which was broadcast in various areas throughout the United States.

PAR. 16. By and through "Let's Talk" and other statements and depictions, respondents represent, directly or by implication, that:

- (a) Use of Y-Bron relieves, cures, prevents, or reverses impotence.
- (b) Use of Y-Bron increases sexual drive, ability, desire, or libido.
- (c) Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) Competent and reliable tests or studies establish that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

PAR. 17. In truth and in fact:

- (a) Use of Y-Bron does not relieve, cure, prevent, or reverse impotence.
- (b) Use of Y-Bron does not increase sexual drive, ability, desire, or libido.
- (c) Y-Bron is not an effective remedy for impotence nor does it increase sexual drive, ability, desire, or libido in a substantial percentage of cases.
- (d) No competent and reliable test or study establishes that Y-Bron is an effective remedy for impotence or increases sexual drive, ability, desire, or libido.

Therefore each of the representations set forth in paragraph 16 was and is false, misleading or deceptive.

PAR. 18. Through the use of the statements and representations set forth in paragraph 16 and others not specifically set forth herein, respondents represented, directly or by implication, that they possessed and relied upon a reasonable basis for each of the representations set forth in paragraph 16 at the time such representations were made.

PAR. 19. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making each of the representations set forth in paragraph 16 at the time such representations were made. Therefore, the representation set forth in paragraph 18 was and is false, misleading or deceptive.

DECEPTIVE FORMAT

PAR. 20. By and through "The Michael Reagan Show," "Break-through '88," and "Let's Talk," respondents represent, directly or by implication, that:

(a) "The Michael Reagan Show" is an independent consumer program that discusses a variety of topics, including products like the Eurotrym Diet Patch.

(b) "Breakthrough '88" is an independent consumer program that conducts independent and objective investigations of products like Foliplexx.

(c) "Let's Talk" is an independent consumer program that discusses a variety of topics, including products like Y-Bron.

PAR. 21. In truth and in fact:

(a) "The Michael Reagan Show" is not an independent consumer program or anything other than paid commercial advertising;

(b) "Breakthrough '88" is not an independent consumer program or anything other than paid commercial advertising;

(c) "Let's Talk" is not an independent consumer program or anything other than paid commercial advertising.

Therefore, the representations set forth in paragraph 20 are false, misleading or deceptive.

PAR. 22. Respondents are producing or have produced other program-length commercials for the purpose of advertising, marketing, or selling various products. By and through these program-length commercials, respondents, in numerous instances, represent, directly or by implication, that such commercials are something other than paid commercial advertising.

PAR. 23. In truth and in fact, respondents' program-length commercials are paid commercial advertising. Therefore, the representation set forth in paragraph 22 was and is false, misleading or deceptive.

#### ENDORSEMENTS

PAR. 24. By and through their program-length commercials and other statements and depictions, respondents, in numerous instances, represent, directly or by implication, that endorsements appearing in advertisements for the Eurotrym Diet Patch, Foliplexx and Y-Bron:

(a) Reflect the honest opinions, findings, beliefs, or experience of the endorser;

(b) Reflect the typical or ordinary experience of members of the public who have used these products; and

(c) Were obtained from individuals or other entities who, at the time of providing their endorsements, were independent from all of the individuals and entities marketing the product.

PAR. 25. In truth and in fact, in numerous instances, the

endorsements appearing in advertisements for the EuroTrym Diet Patch, Foliplexx, Y-Bron:

- (a) Do not reflect the honest opinions, findings, beliefs, or experience of the endorser;
- (b) Do not reflect the typical or ordinary experience of members of the public who have used these products; and
- (c) Were obtained from individuals or other entities who, at the time of providing their endorsements, were not independent from all of the individuals and entities marketing the product.

Therefore, each of the representations set forth in paragraph 24 was and is false, misleading and deceptive.

#### CONCLUSION

PAR. 26. Respondents' dissemination of the false and misleading representations as alleged in this complaint constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5(a) and 12 of the FTC Act.

PAR. 27. Respondents' unfair or deceptive acts or practices as alleged in this complaint have caused substantial injury to consumers.

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents

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

1. Twin Star Productions, Inc., is a Delaware corporation. Its principal office or place of business is at 7345 E. Evans Road, Scottsdale, Arizona.

2. Jerald H. Steer resides at 4906 East Desert Fairways, Paradise Valley, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

3. Allen R. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

4. Judith P. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona. She is or was an officer of Twin Star Productions, Inc.

5. Douglas E. Gravink resides at 14836 North 57th Place, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

6. Peter Claypatch resides at 6514 East Paradise Lane, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

7. Steven L. Singer resides at 5702 East LeMarche, Scottsdale, Arizona. He is an officer and shareholder of Twin Star Productions, Inc.

8. 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 respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respond-



ents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The 30-minute television advertisement for the EuroTrym Diet Patch described in the complaint and sometimes known as "The Michael Reagan Show."

B. The 30-minute television advertisement for Foliplexx described in the complaint and sometimes known as "Breakthrough '88."

C. The 30-minute television advertisement for Y-Bron described in the complaint and sometimes known as "Let's Talk" or "Let's Talk with Lyle Waggoner."

D. The 30-minute television advertisement for the book *How to Start Your Own Business By Doing Business With the Government* described in the complaint and sometimes known as "Government Grants."

## II.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the EuroTrym Diet Patch or any other substantially similar weight control or weight reduction product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of such product or service prevents feelings of hunger;
- (2) Use of such product or service enables users to lose substantial amounts of weight;
- (3) Use of such product or service enables users to lose weight in a large majority of cases; or
- (4) Any competent and reliable test or study establishes that such product or service promotes weight loss.

For purposes of this Part II a “*substantially similar weight control or weight reduction product*” shall be defined as any product that is advertised to cause or aid weight loss through acupuncture, acupathy or homeopathy or that uses a bandaid or patch to apply a solution to the skin or that purportedly contains as its active ingredient *calcarea carbonica*.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that:

- (1) Use of the product or service prevents or reduces feelings of hunger;
- (2) Use of the product or service enables users to lose substantial amounts of weight;
- (3) Use of the product or service enables users to lose weight in a substantial number of cases; or
- (4) Any competent and reliable test or study establishes that use of the product or service promotes weight loss,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation. Competent and reliable scientific evidence shall mean for purposes of this order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

C. Failing to disclose clearly and prominently in any advertisement for any weight control or weight reduction product or service in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, that dieting and/or exercise is required in order to lose weight; *provided, however*, that this disclosure shall not be

required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the product or service in question is effective without dieting and/or exercise.

### III.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Foliplexx or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of such product curtails loss of hair;
- (2) Use of such product promotes growth of new hair where hair has already been lost;
- (3) Use of such product relieves, cures, prevents or reverses baldness;
- (4) Such product is an effective remedy for baldness in a large majority of cases; or
- (5) Any competent and reliable test or study establishes that such product relieves, cures, prevents or reverses the advance of baldness.

For purposes of this Part III, a "*substantially similar product*" shall be defined as any product that is advertised as preventing or reversing baldness or hair loss and that purportedly contains as an ingredient: sulfanated muccopolysaccharides, polysorbates, trichopeptides, takanal, kallikrein, alpha-tocopheral, methyl nicotinate, retinyl palmitate, allantoin, or bovine serum albumin.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of the product prevents or reduces loss of hair;

- (2) Use of the product promotes growth of new hair where hair has already been lost;
- (3) Use of the product relieves, cures, prevents or reverses baldness;
- (4) The product is an effective remedy for baldness in a substantial number of cases; or
- (5) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses baldness,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### IV.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Y-Bron or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

- (1) Use of such product relieves, cures, prevents or reverses impotence;
- (2) Use of such product increases sexual drive, ability, desire or libido;
- (3) Such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido in a substantial number of cases; or
- (4) Any competent and reliable test or study establishes that such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido.

For purposes of this Part IV, a "*substantially similar product*" shall be defined as any product that is advertised for sale over-the-counter as a sexual stimulant or as a treatment for impotence and that

purportedly contains as its active ingredient yohimbine or any derivative thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product relieves, cures, prevents, reverses or is an effective remedy for impotence;

(2) Use of the product increases sexual drive, ability, desire or libido;

(3) The product is an effective remedy for impotence or increases sexual drive, ability, desire or libido at any stated measure of efficacy; or

(4) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses impotence or increases sexual drive, ability, desire or libido,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

#### V.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in Section 15 of the FTC Act, 15 U.S.C. 55, unless at the time of making the representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under Subpart V.A above), unless at the time of making the representation respondents possess and rely upon a reasonable basis for each such representation.

## VI.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Alien R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in 16 CFR 255(b)), unless respondents have good reason to believe that at the time of such use, publication or reference, the endorsement reflects the honest opinions, findings, beliefs or experience of the endorser and contains no representation that would be false or unsubstantiated if made directly by respondents.

B. Failing to disclose, clearly and prominently, a material connection, where one exists, between an endorser of any product or service and any respondent or respondents. For purposes of this Part VI, a "*material connection*" shall mean any relationship between an endorser of any product or service and any individual or other entity advertising, promoting, offering for sale, selling or distributing such product or service, which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

C. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless the representation is true.

## VII.

*It is further ordered,* That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement;

B. Any commercial or other advertisement for any such product or service fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR  
[THE PRODUCT OR SERVICE]."

## VIII.

*It is further ordered,* That respondent Twin Star Productions, Inc., shall pay to the Federal Trade Commission the total amount of one million dollars (\$1,000,000) in three installments in the following manner:

A. The first installment payment of four hundred thousand dollars (\$400,000) shall be paid by respondent Twin Star Productions, Inc., on or before the tenth day following the date of entry of this order.

B. The second installment payment of three hundred fifty thousand dollars (\$350,000) shall be paid by respondent Twin Star Productions,

Inc., no later than one (1) year following the date of entry of this order.

C. The third installment payment of two hundred fifty thousand dollars (\$250,000) shall be paid by respondent Twin Star Productions, Inc., no later than eighteen (18) months following the date of entry of this order.

D. All payments required by Subparts VIII.A, VIII.B and VIII.C of this order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington 98174.

E. Should Twin Star Productions, Inc., default on any portion of any payment required by Subparts VIII.A, VIII.B or VIII.C of this order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by Subpart VIII.F of this order.

F. In the event of default of any payment required by Subparts VIII.A, VIII.B or VIII.C of this order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondent Twin Star Productions, Inc., and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. Respondent Twin Star Productions, Inc., shall execute and record a mortgage, in compliance with the laws of the State of Arizona, on or before the tenth day following the date of entry of this order, to grant and perfect a security interest to the Federal Trade Commission in property acceptable to the Federal Trade Commission and valued by an independent appraisal to have a value of one million dollars (\$1,000,000) or more, in excess of all other perfected security interests, as security for the payments required to be paid by Twin Star Productions, Inc. under Subparts VIII.B and VIII.C of this order and for the payments required to be paid by Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under Subparts IX.B and IX.C of this order. The appraisal required by this Subpart shall be conducted by an appraiser acceptable to the Federal Trade Commission and paid by Twin Star Productions, Inc. Default by Twin Star Productions, Inc. or by Jerald H. Steer, Allen R.



Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under the terms of this order will entitle the Federal Trade Commission to enforce this security interest after ten (10) days' notice to respondents. The Federal Trade Commission will release this security interest upon receipt of all payments required by Subparts VIII.B, VIII.C, IX.B and IX.C of this order.

H. The funds paid by respondent Twin Star Productions, Inc., shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent Twin Star Productions, Inc., shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

I. Within ninety (90) days after the date of entry of this order, Twin Star Productions, Inc., shall furnish to the Federal Trade Commission a complete written list containing the name, last known address, telephone number, date of purchase and amount of any refund for each past purchaser of the EuroTrym Diet Patch, Foliplexx and Y-Bron. Twin Star Productions, Inc., shall also provide this list of purchasers in computer readable form, on standard MS-DOS diskettes or IBM-mainframe compatible tape. Further, Twin Star shall provide the name and last known address of each purchaser on pressure-sensitive labels.

## IX.

*It is further ordered,* That respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall pay to the Federal Trade Commission the total amount of five hundred thousand dollars (\$500,000) in three installments in the following manner:

A. The first installment payment of one hundred thousand dollars (\$100,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer on or before the tenth day following the date of entry of this order.

B. The second installment payment of one hundred fifty thousand

dollars (\$150,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than one (1) year following the date of entry of this order.

C. The third installment payment of two hundred fifty thousand dollars (\$250,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than eighteen (18) months following the date of entry of this order.

D. All payments required by Subparts IX.A, IX.B and IX.C of this order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington 98174.

E. Should Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer default on any portion of any payment required by Subparts IX.A., IX.B or IX.C of this order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by Subpart IX.F of this order.

F. In the event of default of any payment required by Subparts IX.A, IX.B or IX.C of this order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. The funds paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be notified as to how the funds are disbursed, but shall

have no right to contest the manner of distribution chosen by the Commission.

X.

*It is further ordered,* That respondent Twin Star Productions, Inc., shall:

A. Within thirty (30) days after service of this order, provide a copy of the order to each of respondent's current principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this order.

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of respondent's principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this order who are associated with respondent or any subsidiary, successor or assign, within three (3) days after the person assumes his or her position.

XI.

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

XII.

*It is further ordered,* That each individual respondent shall, for a period of ten (10) years from the date of entry of this order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a state-

ment describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this Part XII shall not affect any other obligation arising under this order.

### XIII.

*It is further ordered,* That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon reasonable request make available to the Federal Trade Commission, at a place designated by Commission staff for inspection and copying:

A. All advertisements and promotional materials subject to this order;

B. All materials relied on as substantiation for any representation covered by this order;

C. All test reports, studies or other materials in respondents' possession or control at any time that contradict, qualify or call into question any representation of respondents covered by this order or the basis on which respondents relied for such claim or representation; and

D. All other materials and records that relate to respondents' compliance with this order.

This Part XIII shall expire ten (10) years after the date of entry of this order.

### XIV.

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

IN THE MATTER OF  
MONEY MONEY MONEY, INC., ET AL.

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

*Docket C-3308. Complaint, Oct. 2, 1990—Decision, Oct. 2, 1990*

This consent order prohibits, among other things, a California corporation and its officer, that create and distribute television programs and commercials for various products, from selling, broadcasting, or disseminating the "Government Grants" commercial, which purports to show people how to secure government grants. The consent order also prohibits respondents from making unsubstantiated claims; from using, publishing or referring to any endorsement, unless it reflects the honest opinion of the endorser, in any future advertisements and from making any commercial that misrepresents that it is an independent program and not a paid commercial. In addition, the consent order requires respondents to turn over \$175,000 to the FTC to be used to establish a consumer redress fund.

*Appearances*

For the Commission: *Steven A. Shaffer, Jeffrey A. Klurfeld and Sylvia J. Kundig.*

For the respondents: *Montie Day, Day Law Corporation, Oakland, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Money Money Money, Inc., a corporation; and Hal Morris, individually and as an officer of Money Money Money, Inc. ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Money Money Money, Inc., is a California corporation. Its principal office or place of business is at 155 South El Molino, Suite 203, Pasadena, CA.

(b) Respondent Hal Morris ("Morris") is an officer of respondent Money Money Money, Inc. He formulates, directs and controls the acts and practices of corporate respondent, including the acts and practices

alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

(c) Respondents have cooperated and acted together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents have directed, participated in, and assisted others in the creation and dissemination to the public of advertisements and promotional materials that offer for sale various materials that are represented to feature information on obtaining government grants to start small businesses, including but not necessarily limited to a book titled *How To Start Your Own Business By Doing Business With The Government* (hereinafter "the government grants book") and a service called the "Grant Alert Service."

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

PAR. 4. Typical of respondents' advertising for the government grants book and the Grant Alert Service, but not necessarily all-inclusive thereof, is a 30-minute commercial that appears in the form of a talk show titled "Money Money Money" (hereinafter "the Government Grants commercial"), a complete transcript of which is attached hereto as Exhibit A. In the Government Grants commercial, respondent Hal Morris and Debra Morris are represented to be the hosts of a talk show "about how to get government grants. Grants means the government gives you the money to go out and get involved in a business." Wayne Phillips, allegedly "America's foremost expert on low interest government loans and government grants," and the author of the government grants book, is purported to be a guest of the talk show.

#### COUNT I

PAR. 5. The Government Grants commercial contains the following statements:

- (a) Debra Morris: "How much money does the government give out to help people start new businesses?  
Wayne Phillips: "Well, for small businesses, Debbie, there's 33 billion dollars."
- (b) Wayne Phillips: "Understand, folks, with 33 billion dollars sitting out there for small businesses. . . . If you were only to receive one one-thousandth of one percent of this money, you would have a \$330,000 grant. And that's a lot of money. So I mean there is just so much money available, we couldn't sell enough books to get rid of all the money. Its almost an unlimited amount of money available out there for any kind of job and opportunity."

PAR. 6. By and through the use of the statements referred to in paragraph five, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses.

PAR. 7. In truth and in fact, there is not 33 billion dollars in grants available from federal, state, and local governments to start small businesses. Therefore, respondents' representation as set forth in paragraph six is false and misleading.

#### COUNT II

PAR. 8. The Government Grants commercial contains the following statements:

- (a) Wayne Phillips: "You can start a part-time business right now—you can go out and start a part-time business in your house. Or if you wanted to you can go out and get a franchise; a Pizza Hut, Burger King franchise. Or, export or import goods.  
Hal Morris: "And you can get government money for those types of things?  
Wayne Phillips: "Well this is grant money or award money where they give you the money, and again, you are not borrowing the money, you don't have to pay it back, so if the business doesn't do too great, you don't have to worry about going bankrupt city, or anything like that."
- (b) Wayne Phillips: "There's programs that you can go out and use and get some free money, you know. There's just about money available for every purpose that you can think of. There's programs for women and minorities, there's programs for people who own a business, and want to sort of get rid of that high debt load, you name it, there's something for everybody out there."
- (c) Wayne Phillips: "They want to know what you are going to do with the money, what type of jobs you are going to provide, and there is 108 business that are approved by the government that you could start and this money would qualify for. For instance, travel services . . ."
- (d) Hal Morris: "Now you created "Wayne's Road to Wealth." You have come up with 5 steps that people need to follow . . ."  
Wayne Phillips: "Five proven steps that if they follow they can get \$25,000 of this money very quickly and rather easily, Hal."
- (e) Wayne Phillips: ". . . I show the people how to get this information, but more important than that, I show the people how to answer the government's questions. And Hal, I'm telling you, this is exciting. When you learn how to answer the government's questions, man, the government answers your questions, and you get your money. And that is what this is all about, getting your money, starting your business . . ."
- (f) Wayne Phillips: "But the point I'm trying to make is that in a short period of

time, the government will provide funds for you so that you can start your own business. I mean, how many people here right now today are just sick and tired of working from paycheck to paycheck, and who would love to tell your boss and bill collectors to go shove it—come on, let me see your hands out there. Sure, everybody would, wouldn't you? Here's an opportunity where you can start your own business without having any risk involved, they pay you to start your own business."

- (g) Audience member: "... so we're exporting American-made products to other countries. And, we need start-up capital, we were going to go the conventional system with the bank loans. . ."

Wayne Phillips: "Right. Don't do that."

\* \* \*

So the answer to your question, yes, there is money available, either award or grant money . . ."

- (h) Wayne Phillips: "... you can get \$25,000 rather quickly, and safely, and very fast, and there's no risk involved."

PAR. 9. By and through the use of the statements referred to in paragraph eight, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that it is easy for the average consumer to obtain a government grant to start virtually any type of small business.

PAR. 10. In truth and in fact, it is not easy for the average consumer to obtain a government grant to start virtually any type of small business. Therefore, respondents' representation as set forth in paragraph nine was and is false and misleading.

#### COUNT III

PAR. 11. The Government Grants commercial contains the following statements:

- (a) Hal Morris: "Now you created "Wayne's Road to Wealth." You have come up with 5 steps that people need to follow . . ."
- Wayne Phillips: "Five proven steps that if they follow they can get \$25,000 of this money very quickly and rather easily, Hal."
- (b) Wayne Phillips: "... I show the people how to get this information, but more important than that, I show the people how to answer the government's questions. And Hal, I'm telling you, this is exciting. When you learn how to answer the government's questions, man, the government answers your questions, and you get your money. And that is what this is all about, getting your money, starting your business . . ."



- (c) Audience member: "Would you have to be very very thorough, like maybe do premarketing or whatever to present a proposal for a grant?"  
Wayne Phillips: "An excellent question, and the answer to that, and this is my little pet baby right here, in my book, I have a business plan, and I'm telling you something, this is the piece de resistance that I've worked on for two years. This business plan takes you step by step and shows you how not only, to answer your question, but more importantly, how to answer the government's questions. . . . And you show the government what the government is going to get if they give you a three to four hundred thousand dollar award. And when you show the government what's in it for them, you are going to show it, how the government to give you the money, and you are going to get your business started, you're going to get your money. And that is so important. So that is what the business plan is all about here."
- (d) Hal Morris: "All right, review for people, I'm sure they're going to want to get your book. Review for people what they're going to get and how much it is."  
Wayne Phillips: "Well they're going to get the only book of its kind, Hal, ever written in the United States. How to Start Your Own Business by Doing Business With the Government, where you don't borrow money, the government pays you or gives you the money for providing a service or exporting goods . . . There's programs in here if you want to go to the trade shows. Perhaps you can apply for money, and they'll fly you over to Frankfurt to annual trade show over there. They'll make you fly on an American airline, though, they want that money to stay with the United States. If you have a travel agency, you can expand your business. If you own a business now, you can get money to sort of pay down your overhead and refinance it. You know, you get everything that you need to get started. Take advantage of this information. The opportunities are there, the programs are there, and whether you do something or not about it, folks, somebody else will be doing it if it is not you. And I think that is the essence of this program. It is affordable, you can get \$25,000 rather quickly, and safely, and very fast, and there's no risk involved."

PAR. 12. By and through the use of the statements referred to in paragraph eleven, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that the government grants book consists primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business.

PAR. 13. In truth and in fact, the government grants book does not consist primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business. Therefore, respondents' representation as set forth in paragraph twelve was and is false and misleading.

## COUNT IV

PAR. 14. The Government Grants commercial contains the following statement:

- (a) Wayne Phillips: "There is one program I would like to take just a moment to mention, it is called an SBIR, I was mentioning that to Diane a little while before the show, this is the Small Business Innovation Research Program, where there is 400 million dollars in grants available right now. It is a federal program administrated through the state government. You can apply through the State government and get \$25,000 very, very easily, and in a short period of time."

PAR. 15. By and through the use of the statements referred to in paragraph fourteen, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that the Small Business Innovation Research program provides grants to consumers to start virtually any kind of small business, and that average consumers can obtain a \$25,000 grant from the Small Business Innovation Research program to start a small business quickly and easily.

PAR. 16. In truth and in fact, the Small Business Innovation Research program does not provide grants to consumers to start virtually any kind of small business and average consumers cannot obtain a \$25,000 grant from the Small Business Innovation Research program to start a small business quickly or easily. Therefore, respondents' representations as set forth in paragraph fifteen were and are false and misleading.

## COUNT V

PAR. 17. The Government Grants commercial contains the following statements:

- (a) Wayne Phillips: "And this is exciting because you can have bankruptcy or bad credit. It is not a loan—you don't apply for it. You are given the money or you are paid to start your own business."
- (b) Audience member: "My name is JoAnne Joiner, and my question is, what sort of credit rating do they want to look at?"
- Wayne Phillips: "Good, JoAnne. You know, you don't need a credit rating, because you are not borrowing money. You see, you are given money, or you are paid to start a business. This is my whole point, and I failed if I haven't brought that across JoAnne to you. This is not a loan; you don't apply for anything. . . . You could have filed bankruptcy this morning, and go out and get this money tomorrow afternoon. . . . Show the government what's in it for them and, you

know, you can forget about going to a bank and qualifying. See that is the beauty of this. You are absolutely paid or given money where you don't have to qualify. And if you make 100,000 or 2 million dollars a year, or if you file for bankruptcy, it doesn't make a difference, because you are not borrowing money.

Audience member: "I see. Thank you.

Hal Morris: "So Wayne, you don't even fill out a financial statement?"

Wayne Phillips: "You don't even fill out a financial statement."

PAR. 18. By and through the use of the statements referred to in paragraph seventeen, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources.

PAR. 19. In truth and in fact, federal, state, and local governments do not provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources. The financial history and resources of the applicants are factors that are considered by the federal, state, and local governments in making grants. Therefore, respondents' representation as set forth in paragraph eighteen was and is false and misleading.

#### COUNT VI

PAR. 20. The Government Grants commercial contains the following statements:

- (a) Wayne Phillips: "A couple of years ago I was sitting on the plane and a gentlemen next to me recognized me from one of my many television appearances and said, 'Well I have made money with government programs, but a little bit different than you have, Wayne. The government pays me or gives me grant money to start my own business.' And the gentleman's name is Bill McConarty from back in Maryland. He has a company called AMAF, where they make circuit boards for computers for the GSA office. And one thing led to another and we talked for the entire plane trip across the country, and Bill got me started looking into programs available for people who have little or no money, or own a business, maybe you need to refinance it, where you can start your own business without having, one, to borrow money and put your house and your spouse and yourself in hock, where the government will pay you to start your own business."
- (b) Wayne Phillips: "Sandy Taylor, who came to one of my lectures and my seminars, . . . [s]he came to my seminar, one because it wasn't free, there is no free lunch, and two it wasn't too expensive, it was I think \$30 at that time. Sandy went out and she used the information and this is a copy of her very first

bank statement that she got from a contract award, when the government paid her to do business, she received the very first month, \$66,675 and change. That's \$800,000 a year, just for going out and providing a service for the government. Now I'm not going to promise to people, you know, here in the audience today, that you're going to get such great success as Sandy, but on the other hand, maybe your success will be a lot bigger than that. But the point I'm trying to make is that in a short period of time, the government will provide funds for you so that you can start your own business."

(c) [SUPER: Fred Arbab, former taxi driver who used Wayne's system—Now Grossing \$400,000 Monthly.]

PAR. 21. By and through the use of the statements referred to in paragraph twenty, and others of similar import and meaning in the Government Grants commercial or in other advertisements or promotional materials and not specifically set forth herein, respondents have represented, directly or by implication, that respondents' claimed success stories are true and/or illustrate and substantiate that the information provided in the government grants book has been used successfully by average consumers to start small businesses.

PAR. 22. In truth and in fact, respondents' claimed success stories are not true and do not illustrate or substantiate that the information provided in the government grants book has been used successfully by average consumers to start small businesses. Therefore, respondents' representations as set forth in paragraph twenty-one were and are false and misleading.

PAR. 23. Dissemination of the aforesaid false and misleading representations by respondents as alleged in this complaint constitutes unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Azcuenaga dissenting.\*

#### EXHIBIT A

##### TRANSCRIPT OF "GOVERNMENT GRANTS" COMMERCIAL

[MUSIC, "MONEY MONEY MONEY" IDENTIFICATION]

Hal Morris: Thank you. Welcome to our show today. Today you're going to learn about how to get government grants.

[SUPER: HAL MORRIS and DEBRA MORRIS]

Hal Morris: Grants means the government gives you the money to go out and get involved in a business. We have America's foremost expert on low interest government loans and government grants, Mr. Wayne Phillips, who has a brand new

\* Prior to leaving the Commission, former Commissioner Calvani registered a vote in the affirmative for issuing the complaint and consent order in this matter.

book called, "How to Start Your Own Business By Doing Business With the Government." And Deb, you may be interested in knowing that Wayne used to be with the Charlie Byrd jazz band. He was a jazz drummer. You have come a long way from the jazz band to America's foremost expert on low interest government loans and grants.

Wayne Phillips: It has been a long road.

Hal Morris: Bring us up to date on what has been happening as far as you are concerned and what has been happening in the area of the government grants.

Wayne Phillips: Well, the last two years, Hal and Debbie, and thank you again for inviting me on your program here today. [SUPER: WAYNE PHILLIPS, GOVERNMENT GRANT EXPERT] I've been doing a lot of research, basically doing the same thing I have been doing for the last 11 years, researching and using government programs. A couple of years ago I was sitting on the plane and a gentlemen next to me recognized me from one of my many television appearances and said, 'Well I have made money with government programs, but a little bit different than you have, Wayne. The government pays me or gives me grant money to start my own business.' And the gentleman's name is Bill McConarty from back in Maryland. He has a company called AMAF, where they make circuit boards for computers for the GSA office. And one thing led to another and we talked for the entire plane trip across the country, and Bill got me started looking into programs available for people who have little or no money, or own a business, maybe you need to refinance it, where you can start your own business without having, one, to borrow money and put your house and your spouse and yourself in hock, where the government will pay you to start your own business.

Debra Morris: Why?

Wayne Phillips: Why, because number one, Debbie, the government is going to give you the money, you are going to provide jobs. You are going to put money back into the economy, you are going to hire people, and number two, you know, the government is the biggest employer in the world, they need paper clips, they need pencils provided for them. How about, a little bit later on you are going to meet a gentlemen who is exporting. If 10,000 people were to do what this one gentlemen did, we would reduce our trade deficit by 50 billion dollars, and that would have a tremendous impact. And this is exciting because you can have bankruptcy or bad credit. It is not a loan—you don't apply for it. You are given the money or you are paid to start your own business.

Hal Morris: Okay, so you go through a process where you go to the government and say "I'd like to go into the business of selling products to some foreign country" or . . .

Wayne Phillips: Or right in your own backyard, Hal. You can start a part-time business right now—you can go out and start a part-time business in your house. Or if you wanted to you can go out and get a franchise, a Pizza Hut, Burger King franchise. Or, export or import goods.

Hal Morris: And you can get government money for those types of things?

Wayne Phillips: Well this is grant money or award money where they give you the money, and again, you are not borrowing the money, you don't have to pay it back, so if the business doesn't do too great, you don't have to worry about going bankrupt city, or anything like that.

Debra Morris: How much money does the government give out to help people start new businesses?

Wayne Phillips: Well, for small businesses, Debbie, there's 33 billion dollars.

Debra Morris: (laughs)

Wayne Phillips: Just . . . under Executive Orders 11625 and 12138 the government has set aside special money just for women and minorities. There's programs that you can go out and use and get some free money, you know. There's just about money available for every purpose that you can think of. There's programs for women and minorities, there's programs for people who own a business, and want to sort of get rid of that high debt load, you name it, there's something for everybody out there.

Debra Morris: Now if they give you, okay, let's say they give me a grant, what do they expect in return?

Wayne Phillips: Well, Debbie, the government is just not going to say, "Here's \$100,000, Debbie, go out and have a party." They want to know what you are going to do with the money, what type of jobs you are going to provide, and there is 108 businesses that are approved by the government that you could start and this money would qualify for. For instance, travel services, or perhaps if you had an idea or an invention there is money available for you inventors that would be out there who are trying to raise, what do they call it, capital, you know, venture fund capital, the government has money available for that. So basically, if you answer the government's questions, Debbie, the government is going to answer your questions and you get your money. And that is the bottom line, is getting your money.

Hal Morris: Now you created "Wayne's Road to Wealth." You have come up with 5 steps that people need to follow . . .

Wayne Phillips: Five proven steps that if they follow they can get \$25,000 of this money very quickly and rather easily, Hal.

Hal Morris: All right. Let's go to that right now. Let's go to the screen and take a look at "Wayne's Road to Wealth."

[SUPER: WAYNE'S ROAD TO WEALTH  
 1. FIND A BUSINESS YOU WOULD ENJOY  
 2. ORDER "HOW TO START YOUR OWN BUSINESS"  
 3. APPLY FOR YOUR GOVERNMENT GRANTS AND AWARDS  
 4. OBTAIN GOVERNMENT GRANTS  
 5. REPEAT THE PROCESS]

Wayne Phillips: Okay, now step number one, obviously is, I recommend that you find a business that you'd be happy in, obviously you don't want to be in a business that you're not going to be happy with. Number two is get the information. This is the only book of its kind in the United States.

Hal Morris: Order your book.

Wayne Phillips: Get this information. There is no other book like it. Three, you really have got to go out and use the information and apply for these awards and the grants. Number four, get the government contracts, so that you are paid for providing these services. And the most important thing of all, Hal and Debbie, is once you've done this, don't stop doing this just one or two times, repeat the process over, use it to start another business or perhaps employ your family members. So it is an easy process, and the most important thing is that it is very affordable. You know, a lot of people, you see them march across television, talking about everybody making money with a good program, but it costs three or four hundred dollars to buy the program.

What I have done this time, is I made it affordable for everyone. So that everybody can go out and get this information.

Hal Morris: Okay, now one of the things that impressed me is this is 338 pages, packed full of information . . .

Wayne Phillips: It is about the size of an average city telephone book. Look, it is two years of my life into that darn thing, and it is hot off the press, and I mean literally, hot off the press.

Hal Morris: And it's not just how to get the grants, but it shows you also how to do business with governments.

Wayne Phillips: It shows you, well for instance, ah, Hal, I show people how to get the information from the government. Here is a copy of a letter from the United States embassy in Cairo, Egypt, where I wrote to them, I think it was for 5 or 10 bucks, I asked for this information, and the government sent me this telephone-sized book, it is called, the A-Z Directory for Doing Business in Egypt. [STILL PHOTOGRAPH OF LETTER DATED MAY 22, 1988 TO W. PHILLIPS, ASI, SCOTTSDALE, ARIZONA, ON U.S. EMBASSY LETTERHEAD] Now this is just one country. Addresses, phone numbers, banks, contacts there, and as you see on the letter there, you know there is a lot of doubting Thomases out there, "Oh, there is no grant money available," that is a bunch of poppycock. Right in that letter from the embassy in Cairo, Egypt it says on page 37, "Mr. Phillips, you will find the information that you requested about the grants and the low interest rate loans." So, Hal and Debbie, now . . .

Hal Morris: So at no charge, you can get hold of it . . .

Wayne Phillips: Right, it costs about five or ten bucks, you know, the government is running into tough times now. You know, you have to help them out a little bit here and there. But I show the people how to get this information, but more important than that, I show the people how to answer the government's questions. And Hal, I'm telling you, this is exciting. When you learn how to answer the government's questions, man, the government answers your questions, and you get your money. And that is what this is all about, getting your money, starting your business, putting people back to work, exporting, reducing that federal trade deficit, this is the most—I haven't been this excited about anything since I got that first low interest rate government loan back in 1980, and that was a long time ago. This is incredible.

Hal Morris: Okay, so now you have a check, a copy of a check there. Tell us of the story about the lady who, and show us this check.

Wayne Phillips: Well, this check right here, this a copy of a . . . Sandy Taylor, who came to one of my lectures and my seminars [STILL PHOTOGRAPH OF BANK STATEMENT CONTAINING CREDIT ENTRY OF \$66,675.] She came to my seminar, one because it wasn't free, there is no free lunch, and two it wasn't too expensive, it was I think \$30 at that time. Sandy went out and she used the information and this is a copy of her very first bank statement that she got from a contract award, when the government paid her to do business, she received the very first month, \$66,675 and change. That's \$800,000 a year, just for going out and providing a service for the government. Now I'm not going to promise to people, you know, here in the audience today, that you're going to get such great success as Sandy, but on the other hand, maybe your success will be a lot bigger than that. But the point I'm trying to make is that in a short period of time, the government will provide funds for you so that you can start your own business. I mean, how many

people here right now today are just sick and tired of working from paycheck to paycheck, and who would love to tell your boss and bill collectors to go shove it—come on, let me see your hands out there. Sure, everybody would, wouldn't you? Here's an opportunity where you can start your own business without having any risk involved, they pay you to start your own business. And if you are a female or a minority, there are special programs under the Executive Orders 11625 and 12138. This is the most, you know Hal, this is an opportunity that people, that they can use in a short period of time to get control of their financial destiny. And I think that is important. It is not get rich quick, or make a million dollars, but you can dramatically improve your financial well being.

Debra Morris: If you would like to order Wayne Phillips book, for only \$49.95, you can call the phone number on the bottom of your screen [NO PHONE NUMBER LISTED]. Dad, why don't you go get some questions from the audience, and Wayne, you can introduce the two people we've just been joined by.

Wayne Phillips: Well, thanks Debbie. On my immediate left here, this lovely young lady, her name is Diane Tavares. She is a former government employee who is a business consultant. Diane actually writes the grants for the government.

Debra Morris: Wow!

Wayne Phillips: And the gentlemen, to Diane's left, now my good friend, Mr. Fred Arbab, and fate brought Fred and I together, who has an incredible story that I think that if Fred has done, just about anybody can do it.

Debra Morris: Okay, well, why don't you start by introducing, or telling us how you and Fred met.

Wayne Phillips: Well, I'll let Fred tell the story, I came back off of a plane trip from overseas and . . .

Fred Arbab: About a year ago I was a taxi driver. Mr. Wayne Phillips came in as a passenger into my taxi, as I was loading his luggage into the back, in the trunk of the taxi, I noticed a card frequent flyers, which one of the, most of the airlines they have that for their frequent flyers. Sitting in the cab, I noticed that he is very tired. I ask him if he has been overseas, he said yes, he has come overseas, he is very tired. I wanted a very short conversation with him. I told him, yes, I noticed that frequent flyers, you must be doing a lot of travelling. He said yes, I do. I'm almost 4 days of the week out of town, and giving seminars. I asked him what kind of seminars, he told me the government loan, and how to start making your own business. During the 20 minute drive to his house in Scottsdale, I tried to pump him out as much as I could . . . [LAUGHTER] . . . After he told me what it cost to get that package I tried to get as much as I could, because I didn't have the money to pay for that. After that several times I bothered him again at home, I called him, and, about starting in March, I stopped driving a cab and I start my own import-export company. Within two months after I start the company, or three months rather, I got a contract from one of the companies overseas for \$400,000 a month, for one year. Total of four million dollars.

[SUPER: FRED ARBAB  
FORMER TAXI DRIVER WHO USED WAYNE'S  
SYSTEM—NOW GROSSING \$400,000 MONTHLY.]

Wayne Phillips: Four million, eight hundred thousand dollars on the first order!

Fred Arbab: First order.

Debra Morris: Oh wow!



Fred Arbab: That order is going to commence starting at the beginning of next month, and will be going until October of 1989.

Debra Morris: And what are you . . . ?

Fred Arbab: This was through reading his book, talking to him, and get an initial start and motivation, and the way he talked, very simple, very easy, so if I could understand, everybody else could too.

Debra Morris: So, let me understand, you went from driving a taxicab to a contract now making \$400,000.

Fred Arbab: To the owner of an import-export company making \$400,000.

Wayne Phillips: A month! That's 4.8 million—just imagine, Debbie, if we can help 10,000 people do what Fred has done, we would reduce the federal trade deficit by almost 50 billion dollars, and that folks would have a significant impact on our financial future in this country. See, the, inch by inch, Debbie, it's a cinch. Now Diane here, she is the lady that puts the mechanics, you know, I have the technique, she puts the mechanics, and Diane has a very interesting story that as a former employee of the state of Nevada.

Diane Tavares: Nevada.

[SUPER: DIANE TAVARES  
GOVERNMENT GRANT WRITER]

Diane Tavares: I worked for the State of Nevada for 12 and 1/2 years, and decided to go out on my own as a consultant, and one of the things I had done as an employee was write grants, or work with people who were writing grants. And a state agency will ask for 10,000 up to 30, 40, 50,000 dollars, whatever is available. You are told in advance that this money will be available and different states will apply for it. And so when I left the state agency, I talked with Wayne, had some conversations with him, and a little bit like Fred, kept getting in touch with him about more information. And now I'm working with people, particularly women, in small businesses that are wanting to start businesses with child care centers, restaurants, franchises, whatever.

Debra Morris: That is exciting!

Wayne Phillips: Yes.

Diane Tavares: Thank you.

Wayne Phillips: There are special programs just for women and minorities and there's opportunities there for people, there's also if you happen to be a retired person, there's special opportunities out there so that if you just don't want to go out and play 9 rounds, 9 holes of golf there, that you can start a little business and perhaps travel the world, go to trade shows, and things like that. Its very gratifying, Debbie, to know that, yes, I make money doing this, Fred and Diane and the people watching, now they'll make money doing this, but I think that the bottom line is that you are really helping people. And that's, that's very gratifying.

Debra Morris: And what I like about it is you can choose a business that you enjoy doing. . . .

Wayne Phillips: Right.

Debra Morris: So many people are in jobs that they are unhappy in. And when you can start your own business, that's exciting.

Wayne Phillips: Right. There is one program I would like to take just a moment to mention, it is called an SBIR, I was mentioning that to Diane a little while before the show, this is the Small Business Innovation Research Program, where there is 400 million dollars in grants available right now. It is a federal program administrated

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through the state government. You can apply through the State government and get \$25,000 very, very easily, and in a short period of time. And just think, if you started your own business, Debbie, and you provided x y z service for the State of California, and your profit was only \$10,000, wouldn't that make a substantial impact on your financial well being, and take care of some of those credit card payments that we have all ran up . . .

Debra Morris: Oh, yeah!

Wayne Phillips: . . . during the last year or two? That is just one program that you can get started with immediately. It's very exciting though.

Hal Morris: One of the programs that are out there has to do with minority programs, and also welfare. I saw something the other day, where women who have been on welfare are being set up in their own business and many times they are operating it from at home while they are still taking care of the kids. But there are grant programs in all types of different areas, isn't that correct?

Wayne Phillips: Well, that's true, Hal, and more importantly, the government will pay professionals like Diane to help you set up your own business.

[MUSIC]

[MONEY MONEY MONEY IDENTIFICATION]

[SUPER: "HOW TO START YOUR OWN BUSINESS BY  
DOING BUSINESS WITH THE GOVERNMENT"  
\$49.95 & \$4 SHIPPING & HANDLING

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1-800-453-3300

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VISA, MASTERCARD, AMEX  
OR SEND CHECK OR MONEY ORDER TO:  
GOVERNMENT GRANTS  
P.O. BOX 54880  
PHOENIX, AZ 85078]

Wayne Phillips (vocal only): Go to the telephone, order this information now. Call the toll-free number you see on your screen, or send your check or money order to the address you see on the screen. Look, think about all of the ways that you can be making money with this opportunity. Think about the people that you can be helping. And . . .

[SUPER: SPECIAL BONUS IF YOU ORDER NOW!  
#1 GOVERNMENT GRANT ALERT SERVICE  
#2 LIST OF PRODUCTS & SERVICES THE GOVERNMENT  
WILL PAY YOU FOR ON A DAILY BASIS.]

. . . if you do that, the first thousand people that order from this broadcast, I will send you as a special bonus, my "Grant Alert Service." Look, this is the only service of its kind in the entire country, where you will be alerted before anyone else to these government awards and contracts in your area. And, as a second special bonus, I'll even send you the list of businesses that the government will pay you on a daily basis for.

[SUPER: "HOW TO START YOUR OWN BUSINESS BY  
DOING BUSINESS WITH THE GOVERNMENT"  
\$49.95 & \$4 SHIPPING & HANDLING

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[SUPER: ORDER NOW! CALL TOLL FREE!  
1-800-453-3300]

Audience member: Would you have to be very very thorough, like maybe do premarketing or whatever to present a proposal for a grant?

Wayne Phillips: An excellent question, and the answer to that, and this is my little pet baby right here, in my book, I have a business plan, and I'm telling you something, this is the piece de resistance that I've worked on for two years. This business plan takes you step by step and shows you how not only, to answer your question, but more importantly, how to answer the government's questions. As a matter of fact, I have examples here, obviously you want to take my name off of it and put your name on there, otherwise, what, if you want to put my name on then I'll be happy to start a business with you, but I take you step by step. And you show the government what the government is going to get if they give you a three to four hundred thousand dollar award. And when you show the government what's in it for them, you are going to show it, how the government to give you the money, and you are going to get your business started, you're going to get your money. And that is so important. So that is what the business plan is all about here.

Audience member: My question is, I'm interested in starting a riding school for handicapped children. The second part of my question deals with, would the livestock which are needed for this type of child come under that grant program?

Wayne Phillips: Well, the answer is yes and no. It all depends. You have to remember the government wants to know that the more money they give you, the more jobs they want you to put people to work with. So if you were to get a small award, say \$25,000, the answer would probably be "no." However, if you were to apply and receive say 250, or 3 or 400,000, and hire 2 or 3 or 4 full-time employees, then the chances are very good that could in fact pay for the livestock that would be included in your business.

Hal Morris: Diane, you're shaking your head in agreement with that?

Diane Tavares: Yes, I agree with Wayne and also I have found that the government tends to go with grants that are dedicated to either women, children, handicapped, or those things, and it may be your creative idea that they would choose to fund.

Audience member: I fell like fate brought me here . . .

Wayne Phillips: Well good.

Audience member: . . . because I am involved in a start-up business right now. It is women and minority owned. . . .

Wayne Phillips: That's great.

Audience member: We are making plastic products, and exporting them to other countries, . . .

Wayne Phillips: Great!

Audience member: . . . so we're exporting American-made products to other countries. And, we need start-up capital, we were going to go the conventional system with the bank loans . . .

Wayne Phillips: Right. Don't do that.

Audience member: So do you have any suggestions?

Wayne Phillips: Yes, absolutely Linda, for instance, and I'm glad you asked that question, I have right here the name and address where you can apply for a mailing list, this is a mailing list of 160,000 businesses overseas that are looking to buy your product. In addition to that, something more important, if you are not a female or a minority, and I would certainly qualify for that, what you do is that you form a little sub-S corporation, have your wife, mother, sister, or daughter own 51% or more, Linda, of that corporation, presto, you have formed a minority/female corporation. So the answer to your question, yes, there is money available, either award or grant money, plus, more important than that, you have the mailing list, the export mailing list in here, that you can use for 160,000 businesses overseas looking to buy your products.

Audience member: That's terrific. Thank you.

Wayne Phillips: Good luck to you. Thank you.

Audience member: My name is JoAnne Joiner, and my question is, what sort of credit rating do they want to look at?

Wayne Phillips: Good, JoAnne. You know, you don't need a credit rating, because you are not borrowing money. You see, you are given money, or you are paid to start a business. This is my whole point, and I failed if I haven't brought that across JoAnne to you. This is not a loan; you don't apply for anything. You have to provide a proposal—a business plan, where people like Diane help you with, or my business plan in the book will help you with. But it is not a loan—you could have filed bankruptcy this morning, and go out and get this money tomorrow afternoon. But you have to remember this, JoAnne, you've got to show the government what's in it for them. How many people are you going to hire if you start a little business? You know, what kind of FICA is the government going to get? You know, the insurance, Social Security insurance. Show the government what's in it for them and, you know, you can forget about going to a bank and qualifying. See that is the beauty of this. You are absolutely paid or given money where you don't have to qualify. And if you make 100,000 or 2 million dollars a year, or if you file for bankruptcy, it doesn't make a difference, because you are not borrowing money.

Audience member: I see. Thank you.

Hal Morris: So Wayne, you don't even fill out a financial statement?

Wayne Phillips: You don't even fill out a financial statement. You have to fill out a business plan and who them where the money's gonna . . . JoAnne, you got to show the government where the money's going to go. I mean, you can't take a trip to Las Vegas and have a party, I mean, that's a no-no.

Hal Morris: Okay.

Audience member: Okay, hi, Wayne. My husband, Wayne, and I'm Elaine, we're interested in starting a home appraisal business. What I want to know about this grant—how stringent are, is the government in policing the grant process, and how often would we expect audits or inspections or whatever if we were granted . . .

Wayne Phillips: Well, why don't I allow Diane to answer that question. That's more of her area of expertise right there.

Diane Tavares: Thank you Wayne. I think that if you write your proposal and particularly the business plan that's in the book I've found it to be very beneficial because you address all the areas. And usually you're not accountable until a time frame has come up, like your grant is for a one-year period, or for six months. And at that time when you are re-applying for a grant, you would be stating what you had done with it. Some of them may ask for a specific time frames, like a report once a month, but very few of them do.

Wayne Phillips: Understand, folks, with 33 billion dollars sitting out there for small businesses. See, the government understands that 7 out of 10 new jobs are going to be created by the small entrepreneur, the small business person. If you were only to receive one one-thousandth of one percent of this money, you would have a \$330,000 grant. And that's a lot of money. So I mean there is just so much money available, we couldn't sell enough books to get rid of all the money. Its almost an unlimited amount of money available out there for any kind of job and opportunity.

Audience member: Thank you.

Wayne Phillips: Thank you. Good luck to you.

Hal Morris: Wayne, earlier in giving your five steps to the road to wealth, you said repeat the process.

Wayne Phillips: Repeat the process.

Hal Morris: And your point is, once you've done it successfully, then you are on the track record, and you can do it over and over again.

Wayne Phillips: Right, and not only that, Hal, but the government will pay people to come out and help set up your business. They will pay professional business consultants like Diane. Or sometimes, there is a special program for instance, Debbie, where the government sends out retired business executives to help you set up your business for free. Why? Because these people have been in business all their lives, they are retired, in their 70's, and they believe in the free enterprise system, and they want to pass this down from generation to generation. Look, this is the greatest country in the world. Now we've gotten off track somewhere along the line, but here's how we can put this country back on track. Reduce that Federal deficit. Yeah, we're going to make a buck out of this, but that is what free enterprise is all about. You know, helping people and helping yourself. And here is an opportunity that you can have a dramatic impact on the financial well being of your life and the country of the United States of America too.

Hal Morris: All right, review for people, I'm sure they're going to want to get your book. Review for people what they're going to get and how much it is.

Wayne Phillips: Well they're going to get the only book of its kind, Hal, ever written in the United States. How to Start Your Own Business by Doing Business With the Government, where you don't borrow money, the government pays you or gives you the money for providing a service or exporting goods, for instance like Fred has done. They get my business plan. And I'll let Diane comment on that. I mean, you'd have to spend what, a thousand dollars or more for a business plan. I give you the names, addresses, telephone numbers of every Federal, state and local agency that wants you to do business with them. There's programs in here if you want to go to the trade shows. Perhaps you can apply for money, and they'll fly you over to Frankfurt to annual trade show over there. They'll make you fly on an American airline, though, they want that money to stay with the United States. If you have a travel agency, you can expand your business. If you own a business now, you can get money to sort of

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pay down your overhead and refinance it. You know, you get everything that you need to get started. Take advantage of this information. The opportunities are there, the programs are there, and whether you do something or not about it, folks, somebody else will be doing it if it is not you. And I think that is the essence of this program. It is affordable, you can get \$25,000 rather quickly, and safely, and very fast, and there's no risk involved.

[MUSIC]

[“MONEY MONEY MONEY” IDENTIFICATION]

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PHOENIX, AZ 85078]

Wayne Phillips (voice only): Go to your telephone and call the toll-free number you see on the screen right now, or send your check into the address on the screen, and get my book, “How to Start Your Own Business by Doing Business With the Government.” So do it now! Heck, it's only \$49.95, which is less than 15 cents a day for all this information, and . . .

[SUPER: SPECIAL BONUS  
IF YOU ORDER NOW!  
#1 GOVERNMENT GRANT  
ALERT SERVICE  
#2 LIST OF PRODUCTS &  
SERVICES THE GOVERNMENT  
WILL PAY YOU FOR ON  
A DAILY BASIS.]

. . . I will also include my special “Grant Alert Service” as a bonus for your benefit, which will alert you to all these opportunities in your area AND you'll also receive the list of businesses the government will pay you for on a daily basis. So go to the telephone, call the toll-free number on your screen, or send your check in to the address on the screen, and think about all the ways you're going to be making money. Do it now!

Hal Morris: Let's just have a few closing thoughts as we go around. Fred, from your vantage point, do you recommend Wayne and his program?

Fred Arbab: Definitely.

Hal Morris: Tell us why.

Fred Arbab: One hundred percent. Because there is an example sitting right in front of you.

[SUPER: FRED ARBAB FORMER TAXI DRIVER WHO USED WAYNE'S  
SYSTEM—NOW GROSSING \$400,000 MONTHLY.]

Hal Morris: You.

Fred Arbab: I did. Yes.

Hal Morris: You went from a taxi driver to a company doing \$400,000 a month. That's exciting. Diane, how about you?

[SUPER: DIANE TAVARES GOVERNMENT GRANT WRITER]

Diane Tavares: I definitely do. Both for the business plan, and the grant writing. It gives the person an opportunity without going into debt to try and get their own business started.

Hal Morris: And you know, there are consultants out there that want \$1,000 to \$1,500 to set up the kind of business plan that Wayne is talking about, aren't there?

Diane Tavares: Yes. That is what I would charge.

Hal Morris: Really?

Diane Tavares: Um-huh.

Hal Morris: And in his book, for \$49.95, you have the same.

Diane Tavares: There is an excellent plan there. It is very thorough, it addresses all the areas that you would need, particularly for grants, but it also starts your business out on a footing that is very solid.

Hal Morris: That's good, practical advice. Okay, Wayne, any last thoughts on your part?

Wayne Phillips: Just do it, folks. Don't listen to the people who tell you what you can't do. Listen to the people who tell you what you can do. You can do it, Fred has done it, Diane's done it, I've done it, and you can do it too.

Hal Morris: Great. Let's give him a hand. Thank you.

Wayne Phillips: God bless you. Thank you very much.

[MUSIC STARTS, CREDITS BEGIN TO ROLL]

Debra Morris: What are some of the different businesses that people can go into?

Wayne Phillips: Well Debbie, there's 108 different businesses, but here's just a few of the different products and services that you will be paid on a daily basis for. For instance, advertising, air conditioning, artwork, audio visual supplies, automobile maintenance, automobile supplies and accessories . . .

[VOICES FADE OUT]

[SUPER EXECUTIVE PRODUCER CONNIE MORRIS  
EDITOR BRAD THOMPSON  
CATERING MICHAEL O'REILLY  
PATI HODGES

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[END]

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

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

1. a. Respondent Money Money Money, Inc., is a California corporation. Its principal office or place of business is at 155 South El Molino, Suite 203, Pasadena, CA.  
b. Respondent Hal Morris is an officer of respondent Money Money Money, Inc. His principal office or place of business is the same as that of the 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

For purposes of this order, "*grant*" shall mean any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

#### I.

*It is ordered,* That respondents Money Money Money, Inc., a



corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Government Grants" commercial described in the complaint.

## II.

*It is further ordered,* That respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses.

B. That it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business.

C. That the book *How To Start Your Own Business By Doing Business With The Government* consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business.

D. That the Small Business Innovation Research program provides grants to consumers to start small businesses.

E. That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources.

## III.

*It is further ordered,* That respondents Money Money Money, Inc.,

a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any direct or implied representation concerning:

- A. The availability of grants from any source for any purpose;
- B. Whether any book or other writing contains information about a particular subject or topic;
- C. The terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization;
- D. The terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or
- E. Any methods or techniques for starting, operating, or financing any profession or business;

unless, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation; *provided, however*, that whenever respondents represent that any book or other writing contains information about a particular subject or topic, subpart B. shall not be construed to require respondents to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

#### IV.

*It is further ordered*, That respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in §255(b), Part 255, Title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by respondents.

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

#### V.

*It is further ordered,* That respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement.

B. Any commercial or other advertisement for any such product or service longer than fifteen (15) minutes in length that does not display visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID  
ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

#### VI.

*It is further ordered,* That respondents Money Money Money, Inc. and Hal Morris are jointly and severally liable for consumer redress in

the amount of one hundred seventy five thousand dollars (\$175,000) and shall, within five (5) days of the date that this order becomes final, deposit the sum of one hundred seventy five thousand dollars (\$175,000) into an escrow account established and managed by the Commission. These funds shall be used to provide redress to consumers who were injured by respondents or others in connection with the acts and practices alleged in the complaint, and to pay any attendant costs of administration. The final determination of eligibility for, and amount of, refunds to be paid to consumers shall rest with the Commission. If the Commission determines that the direct payment of said funds to eligible consumers is wholly or partially impracticable, then, in lieu of making direct consumer redress, the Commission shall cause said funds to be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment. It is further determined that there shall be imposed no fine, penalty, or punitive assessment against respondents with respect to the acts and practices which are the subject matter of the complaint and which occurred prior to the date of entry of the order.

#### VII.

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

- A. All advertisements, promotional materials, documents, or other materials covered by this order;
- B. All materials relied on to substantiate any claim or representation covered by this order;
- C. All materials in their possession or control that contradict, qualify, or call into question such representation or the basis on which respondents relied for such representation; and
- D. All materials that demonstrate respondents' compliance with this order.

#### VIII.

*It is further ordered,* That the respondents shall, for ten (10) years

from the date of entry of this order, distribute a copy of this order to each present and future managerial employee.

IX.

*It is further ordered,* That respondents shall notify the Commission, at least thirty (30) days prior to the proposed change, of 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 that may affect compliance obligations arising out of the order.

X.

*It is further ordered,* That respondent Hal Morris, for a period of ten (10) years from the date of service of this order, shall promptly notify the Commission, in writing, of his discontinuance of his affiliation with respondent Money Money Money, Inc. or his new affiliation with any other business or employment that engages in any acts or practices covered by any provision of this order. For each such new affiliation, the notice shall include the name and address of the new business or employment, and a description of respondent's duties and responsibilities.

XI.

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

Commissioner Azcuenaga dissenting.\*

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\* Prior to leaving the Commission, former Commissioner Calvani registered a vote in the affirmative for issuing the complaint and consent order in this matter.

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Complaint

IN THE MATTER OF  
NATIONWIDE ACCEPTANCE CORPORATION

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

*Docket C-3309. Complaint, Oct. 18, 1990—Decision, Oct. 18, 1990*

This consent order requires, among other things, a Chicago, Ill., based corporation to cease and desist from failing to disclose required information under the Fair Credit Reporting Act. It also requires the respondent to mail informational brochures and letters, which disclose certain required information, to all applicants who were rejected for consumer credit or charged an increased amount for credit, based on a report from a consumer reporting agency or third party, between July 1, 1988 and December 31, 1989.

*Appearances*

For the Commission: *Sandra M. Wilmore.*

For the respondent: *Lawrence X. Pusateri, Peterson, Ross, Schloerb & Siedel, Chicago, IL.*

COMPLAINT

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

PARAGRAPH 1. Respondent Nationwide Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3435 North Cicero Avenue, Chicago, Illinois.

PAR. 2. Respondent has been and is not engaged in the offering and extension of consumer credit.

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

#### DEFINITIONS

For the purposes of the complaint, the following definitions are applicable. The terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

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

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

PAR. 6. Respondent, in the ordinary course and conduct of its business, has denied applications for consumer credit or has increased the charge for such credit based in whole or in part on information obtained from persons other than consumer reporting agencies bearing on consumers' creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living and has failed to advise consumers of the nature of the information considered or of their right to request the nature of the information considered.

PAR. 7. By and through the use of the practices described in paragraph six, respondent has violated the provisions of Section 615(b) of the Fair Credit Reporting Act.

PAR. 8. By its aforesaid failure to comply with Section 615(a) and 615(b) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Fair Credit Reporting Act and 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 Acts, and that complaint should issue stating the 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, Nationwide Acceptance Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of State of Delaware, with its office and principal place of business located at 3435 North Cicero Avenue, Chicago, Illinois.

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

## ORDER

For the purpose of this order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in Sections 603(c), 603(d), and 603(f), respectively, of the



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

I.

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

1. Failing, whenever consumer credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report.

2. Failing, within ninety (90) days after the date of service of this order, to mail a copy of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial of credit or the increased charge for credit based wholly or partly on information contained in the report, to each applicant who was denied credit by Nationwide Acceptance Corporation between July 1, 1988, and December 31, 1989, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of each of the FTC brochures attached hereto as Appendix C and D; *provided, however,* if the applicant was later extended credit or given the notice required by Section 615(a) of the Fair Credit Reporting Act, a copy of the letter attached as Appendix A need not be sent.

3. Failing, whenever consumer credit is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, to disclose to the applicant at the time that the adverse action is communicated to the applicant the nature of the information

considered or the consumer's right to request the nature of the information considered.

4. Failing, within ninety (90) days after the date of service of this order, to mail a copy of the letter attached hereto as Appendix B, completed to provide the nature and source of information obtained from a third party other than a credit reporting agency and to state the reasons for the denial of credit or the increased charge for credit based wholly or partly on such information, to each applicant who was denied credit by Nationwide Acceptance Corporation between July 1, 1988, and December 31, 1989, based in whole or in part on information obtained from a third party other than a credit reporting agency, such letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of each of the FTC brochures attached hereto as Appendix C and D; *provided, however*, if the applicant was later extended credit or given the notice required by Section 615(b) of the Fair Credit Reporting Act, a copy of the letter attached as Appendix B need not be sent.

## II.

*It is further ordered*, That respondent, its successors, and assigns shall maintain for at least two (2) years and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of paragraph I.1 to I.4 of this order, such documents to include, but not be limited to, all credit evaluation criteria, instructions given to employees regarding compliance with the provisions of this order, any notices provided to consumers pursuant to any provisions of this order, and the complete application files to which they relate.

## III.

*It is further ordered*, That respondent shall deliver a copy of this order at least once per year for a period of four (4) years from the date of this order, to all present and future employees engaged in reviewing or evaluating applications for consumer credit.

## IV.

*It is further ordered*, That respondent shall, for a period of four (4)

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

## V.

*It is further ordered,* That respondent shall, within one hundred fifty (150) days of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

## APPENDIX A

Dear Customer:

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

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

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[Name of Consumer Reporting Agency]

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[Street Address]

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

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

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

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Decision and Order

- bankruptcy
- other: \_\_\_\_\_

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

Thank you.

## APPENDIX B

Dear Customer:

Our records show that sometime within the last two years Nationwide Acceptance Corporation denied your application for consumer credit. The federal Fair Credit Reporting Act gives persons who are denied consumer credit the right to know whether the denial was based on information supplied by a third party such as a creditor, an employer or landlord and, if so, to learn the nature of this information.

Our records show that when we denied your application, we may not have told you that our decision was based on information obtained from a third party and may not have given you the reasons for our decision. The information we obtained from a third party led us to deny your application for the following reason(s):

- unable to verify employment
- unable to verify residence
- temporary or irregular employment
- unable to verify income
- unable to verify credit references
- delinquent past or present credit obligations with others
- other: \_\_\_\_\_

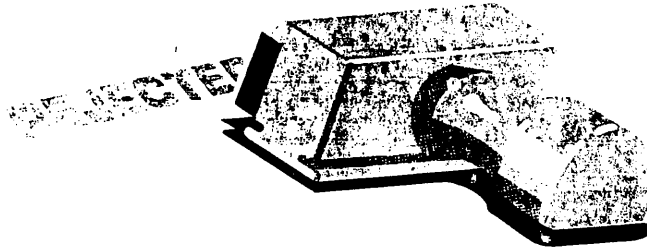
The source of this information was:

- your employer
- your landlord
- another creditor
- other: \_\_\_\_\_

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

Thank you.

## APPENDIX C



## **Fair Credit Reporting**

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

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

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

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

### **How do I locate the CRA that has my file?**

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

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

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

### **Is this information free?**

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

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

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

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

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

FEDERAL TRADE COMMISSION BUREAU OF CONSUMER PROTECTION

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BCP**

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

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

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

**Are reports prepared on insurance and job applicants different?**

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

**How long can CRA's report unfavorable information?**

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

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

**Can anyone get a copy of the report?**

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

**Are there other laws I should know about?**

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

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

**Do women have special problems with credit applications?**

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

**Where should I report violations of the law?**

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

Federal Trade Commission  
Washington, D.C. 20580

Official Business, Penalty  
For Private Use: \$300



POSTAGE AND FEES PAID  
U.S. FEDERAL  
TRADE COMMISSION

## APPENDIX D

# for consumers

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from the Federal Trade Commission

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## EQUAL CREDIT OPPORTUNITY

If you still think only of credit cards when you hear the word "credit," think again. Credit is used by millions of consumers for a variety of purposes: to finance educations, remodel homes, obtain small business loans, and for home mortgages.

A law passed by Congress ensures that all consumers will be given an equal chance to receive credit. The Equal Credit Opportunity Act says it is illegal for creditors to discriminate against applicants on the basis of their sex, marital status, race, national origin, religion, age or because they get public assistance income. This doesn't mean all consumer who apply for credit will get it. Creditors can still use factors such as income, expense, debts, and credit history to judge applicants.

The law protects you when dealing with any creditor who regularly extends credit, including: banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Anyone participating in the decision to grant credit, such as real estate brokers who arrange financing, is covered by the law. Businesses applying for credit are protected by the law, too.

Consumers have equal rights in every phase of the credit application process. Here is a checklist of important rights to remember when you request credit:

### When You Apply For Credit, A Credit May Not . . .

- Discourage you from applying because of your sex, marital status, age, national origin, or because you receive public assistance income.

- Ask you to reveal your sex, race, national origin, or religion. A creditor may ask you to voluntarily disclose this information if you are applying for a real estate loan. This information helps federal agencies enforce anti-discrimination laws. A creditor may ask what your residence or immigration status is.

- Ask whether you are divorced or widowed.

- Ask what your marital status is if you are applying for a separate, unsecured account. A creditor may ask you to reveal this information if you live in the "community property" states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. In any state, a creditor may ask for this information if you apply for a joint account or any account secured by property.

- Ask you for information about your husband or wife. A creditor may ask about your spouse if: your spouse is applying with you; your spouse will be allowed to use the account; you are relying on your spouse's income or on alimony or child support income from a former spouse; or if you reside in a community property state (listed above).

- Ask about your plans for having or raising children.

- Ask if you receive alimony, child support, or separate maintenance payments. A creditor may ask for this information if you are first told that you don't have to reveal it if you won't rely on it to get credit. A creditor may ask if you have to pay alimony, child support, or separate maintenance payments.

### When Deciding To Give You Credit, A Creditor May Not . . .

- Consider your sex, marital status, race, national origin, or religion.
- Consider whether you have a telephone listing in your name. A creditor may consider whether there is a phone in your home.
- Consider the race of the people who live in the neighborhood where you want to buy or improve a house with borrowed money.
- Consider your age, with certain exceptions:
  - if you are too young to sign contracts. Generally, this applies to those 18 and under.
  - if you are 62 or over, and the creditor will favor you because of your age.
  - if it is used to determine the meaning of other factors which are important to credit-worthiness. (For example, a creditor could use your age to see if your income might be reduced because you are about to retire.)
  - if it is used in a scoring system which favors applicants age 62 and over. A credit-scoring system assigns different points to your answers to application questions. (For example, owning a home might be worth 10 points, while renting might be worth 5.) The total number of points helps the creditor to decide if you are credit-worthy.

### When Evaluating Your Income, A Creditor May Not . . .

- Refuse to consider reliable public assistance income in same manner as other income.
- Discount income because of your sex or marital status. (For example, a creditor cannot count a man's salary at 100% and a woman's at 75%.) A creditor may not assume a woman of child-bearing age will stop work to have or raise children.

Discount or refuse to consider income because it is derived from part-time employment or from pension, annuity, or retirement benefit programs.

Refuse to consider consistently-received alimony, child support, or separate maintenance payments. A creditor may ask you for proof that this income has been received consistently.

### You Also Have The Right . . .

- To have credit in your birth name (Mary Smith), your first name and your spouse's last name (Mary Jones), or your first name and a combined last name (Mary Smith-Jones).

To get credit without a co-signer, if you meet the creditor's standards.

- To have a co-signer other than your husband or wife, if one is necessary.
- To keep your own accounts after you change your name, marital status, reach a certain age, or retire, unless the creditor had evidence that you are unable or unwilling to pay.
- To know whether your application was accepted or rejected within 30 days of filing it.
- To know why your application was rejected. The creditor must either immediately give you the specific reasons for your rejection or tell you of your right to learn the reason if you ask them within 60 days. (Examples of reasons are: "Your income was too low," or "You haven't been employed long enough." Examples of unacceptable reasons are: "You didn't meet our minimum standards," or "You didn't receive enough points on our credit-scoring system.") Indefinite and vague reasons are illegal — ask for specifics.
- To learn the specific reasons why you were offered less favorable terms than you applied for. (Examples of less favorable terms include higher finance charges or less money than you requested.) This does not hold if you accept the less favorable terms.
- To know the specific reasons why your account was closed or why the terms of the account were made less favorable to you. This does not hold if these actions were taken because your account was delinquent or because you have not used the account for some time.

### A Special Note To Women

A good credit history, or record of how you paid past bills, is often necessary to obtain credit. Unfortunately, this hurts many married, separated, divorced, and widowed women. There are two common reasons women do not have credit histories in their own names: they lost their credit histories when they married and changed their names, and creditors reported accounts shared by married couples in the husband's name only.



The law says that when creditors report histories to credit bureaus or to other creditors they must report information on accounts shared by married couples in both names. This is true only for accounts opened after June 1, 1977. If you and your spouse opened an account before that time, you should ask the creditor to use both names.

If you are married, divorced, separated, or widowed, you should make a special point to call or visit your local credit bureau(s) to ensure that all relevant information is in a file under your own name. To learn more about building your credit file, write for a free brochure, "Women and Credit Histories," from any of the FTC offices listed below.

### What You Can Do If You Suspect Discrimination . . .

- Complain to the creditor. Make it known that you are aware of the law. The creditor may reverse the decision or detect an error.
- Many states have their own equal credit opportunity laws. Check with your state's Attorney General's office to see if the creditor violated state laws. Your state may decide to take the creditor to court.
- Bring a case in Federal district court. If you win, you can recover your damages and be awarded a penalty. You can also recover reasonable attorney's fees and court costs. An attorney can advise you on how to proceed.
- Join with others to file a class action suit. You may recover punitive damages for the class of up to \$500,000 or 1% of the creditor's net worth, whichever is less.
- Report violations to the appropriate government agency. If you are denied credit, the creditor must give you the name and address of the agency to contact. While the agencies do not resolve individual complaints, they do use consumer comments to decide which companies to investigate. A list of agencies appears at the end of this factsheet.

### Where To Send Complaints and Questions

If retail store, department store, small loan and finance company, mortgage company, oil company, public utility company, state credit union, government

lending program, or travel and expense credit card company is involved, contact the Federal Trade Commission office nearest you:

1718 Peachtree Street, N.W., Suite 1000  
Atlanta, Georgia 30367  
(404) 347-4836

10 Causeway Street, Suite 1184  
Boston, Massachusetts 02222-1073  
(617) 565-7240

55 East Monroe Street, Suite 1437  
Chicago, Illinois 60603  
(312) 353-4423

668 Euclid Avenue, Suite 520-A  
Cleveland, Ohio 44114  
(216) 522-4210

100 N. Central Expressway, Suite 500  
Dallas, Texas 75201  
(214) 767-5501

1405 Curtis Street, Suite 2900  
Denver, Colorado 80202-2393  
(303) 844-2271

11000 Wilshire Boulevard, Suite 13209  
Los Angeles, California 90024  
(213) 209-7890

150 William Street, 13th Floor  
New York, New York 10038  
(212) 264-1207

901 Market Street, Suite 570  
San Francisco, California 94103  
(415) 744-7920

915 Second Avenue, Suite 2806  
Seattle, Washington 98174  
(206) 442-4656

#### FTC HEADQUARTERS

Federal Trade Commission  
6th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
(202) 326-2222  
TDD (202) 326-2502

- If your complaint concerns a nationally-chartered bank (National or N.A. will be part of the name), write to:  
Comptroller of Currency  
Consumer Affairs Division  
Washington, D.C. 20551

- If your complaint concerns a state-chartered bank and it is insured by the Federal Deposit Insurance Corporation, but is not a member of the Federal Reserve System, write to:  
FDIC Consumer Affairs Division  
Washington, D.C. 20429
- If your complaint concerns a federally-chartered or federally-insured savings and loan association, write to:  
Federal Home Loan Bank Board  
Equal Credit Opportunity  
Washington, D.C. 20552
- If your complaint concerns a federally-chartered credit union, write to:  
National Credit Union Administration  
Consumer Affairs Division  
Washington, D.C. 20436
- Complaints against all kinds of creditors can be referred to:  
Department of Justice  
Civil Rights Division  
Washington, D.C. 20530

7/82; 5/88

FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580  
OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE \$300



POSTAGE AND FEES PAID  
U.S. FEDERAL  
TRADE COMMISSION

## IN THE MATTER OF

## AMERICAN LIFE NUTRITION, INC., ET AL.

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

*Docket C-3310. Complaint, Oct. 18, 1990—Decision, Oct. 18, 1990*

This consent order prohibits, among other things, the New York based wholesale distributors of dietary food supplements from making false and unsubstantiated health efficacy claims for any food or drug in the future. In addition, it requires the respondents to publish retractions of previous advertising claims for certain bee pollen, royal jelly, fish oil, and vitamin or mineral products, that were published, between December 1, 1987 and December 1, 1988, in newspapers and magazines, and to send corrective notices to past wholesale and retail purchasers.

*Appearances*

For the Commission: *Harriet Guber Mulhern* and *Michael J. Bloom*.

For the respondents: *Samuel Feldman*, New York, N.Y.

## COMPLAINT

The Federal Trade Commission, having reason to believe that American Life Nutrition, Inc., American Life FarFun, Inc., corporations, and Mr. Ling Won Tong, individually and as an officer and director of the corporations, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, allege:

PARAGRAPH 1. Respondents American Life Nutrition, Inc. and American Life FarFun, Inc., collectively known as "ALN," are New York corporations, with their principal office and place of business located at 60 East Broadway, New York, New York. ALN is a wholesale distributor of dietary food supplements to retailers that sell to the general public in twenty-two (22) states. The retailers include Chinese health food stores, drug stores, supermarkets, grocery stores, and herbal merchants. In addition, ALN makes some local "walk-in" or "door" retail sales from its New York City premises.

PAR. 2. Respondent, Mr. Ling Won Tong, is the President, Executive Director, sole officer and director of ALN. He directs, formulates, and regulates all the policies of ALN, and he personally prepares the format and copy for all advertisements, and places them for publication in Chinese-language newspapers, magazines, radio, television, movie theatres, flyers, and brochures. No advertisements are published in English, and no advertising agency is used in the preparation or placement of ALN's advertisements.

PAR. 3. Since at least March 1986, respondents have advertised, offered for sale, distributed, and sold five (5) dietary food supplements, packaged in plastic bottles, and labeled: (a) LIFE FARFUNG 100% Natural Honeybee Pollen Nuggets ("LIFE FARFUNG Honeybee Pollen"); (b) GELEE ROYALE AMERICAINE Fresh Natural American Royal Jelly ("GELEE ROYALE Royal Jelly"); (c) AMERICAN YUYU KING Supernatural Fish Oil Concentrate ("AMERICAN YUYU KING Fish Oil"); (d) MILLION VITAMING Complete Vitamins and Minerals ("MILLION VITAMING Vitamins and Minerals"); and (e) GOOD DARLING Pure Deep Sea Oyster Shell Calcium With Vitamin D ("GOOD DARLING Calcium"). The wholesale prices are: \$15.50, \$17.50, \$17.50, \$17.50, and \$15.50 respectively. The retail prices of these products are: \$19.50, \$22.50, \$24.50, \$21.50, and \$20.50 respectively.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements for the five (5) dietary food supplements enumerated in paragraph three above. These advertisements have been disseminated by various means, including Chinese-language newspapers, magazines, radio, television, movie theatre commercials, and brochures and flyers accompanying shipments of respondents' products across state lines, for the purpose of inducing the purchase of such products by retail outlets and by members of the public.

PAR. 5. The acts and practices of respondents alleged in this complaint have been, and are, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act.

PAR. 6. LIFE FARFUNG Honeybee Pollen, GELEE ROYALE Royal Jelly, AMERICAN YUYU KING Fish Oil, MILLION VITAMING Vitamins and Minerals, and GOOD DARLING Calcium are a food or a drug, as "food" and "drug" are defined in Section 12 of the FTC Act.

PAR. 7. In the course of marketing, advertising, distributing, and selling LIFE FARFUNG Honeybee Pollen, respondents have made numerous statements to consumers concerning that product. Typical

of respondents' statements, but not necessarily inclusive thereof, are the following:

- (a) "Prevent Breast Tumor"
- (b) "Prevent Diabetes"
- (c) "Prevent Heart Disease"
- (d) "Prevent Flu"
- (e) "Increase Sex Drive"
- (f) "Resist Arthritis"
- (g) "Life Farfun—World known doctors clinically prove that Life FarFun is magnificently effective. It can help to benefit the following conditions: \*Can help reduce skin sensitivity and soothe arthritis pain \*It can help reduce symptoms of dyspepsia and help blood pressure \*Can help with constipation and hemorrhoid piles and moles \*Can help prevent diabetes and prostate gland illness \*Help with symptoms of asthma and hay fever \*Help to prevent dry skin and swollen ankles—Reduce Weight if taken before meals—Increase weight if taken after meal."
- (h) "Manufactured in the U.S.A. from finest ingredients in conformance with government standards."

PAR. 8. In the course of marketing, advertising, distributing, and selling GELEE ROYALE Royal Jelly, respondents have made numerous statements to consumers concerning that product. Typical of respondents' statements, but not necessarily inclusive thereof, are the following:

- (a) "Help nourish the skin and erases wrinkles"
- (b) "Helps delay aging process"
- (c) "Help to improve sexual ability"
- (d) "Helps psilosis"
- (e) "Can help cerebral anemia and insomnia"
- (f) "Help increase appetite, help eczema, and can help children's growth"
- (g) "Helps prevent hands and legs trembling, fainting, stiff muscle"
- (h) "It can also help arteriosclerosis, paralysis, rubella, fatigue"
- (i) "It can help to prevent tuberculosis and hepatitis"

PAR. 9. In the course of marketing, advertising, distributing, and selling AMERICAN YUYU KING Fish Oil, respondents have made numerous statements to consumers concerning that product. Typical of respondents' statements, but not necessarily inclusive thereof, are the following:

- (a) "Take one tablet of YuYu King every meal, don't have heart problems the rest of your life"
- (b) "Get rid of cholesterol in the blood"
- (c) "Prevent blood stream hardening"

(d) "American YuYu King—helps dissolve the blood clots, reduce fat and cholesterol in the blood and help improve the normal blood flow. Helps prevent angiosclerosis. Helps stop arteriosclerosis. Helps reduce migraines. Helps reduce Rheumatism. Helps prevent cerebral apoplexy. Helps reduce s[c]abies [sic]. Helps protect the kidney. You'll never have to worry about your heart. Take one YuYu with every meal."

(e) "Taking one tablet [of AMERICAN YUYU KING Fish Oil] after each meal can eliminate the fat and cholesterol contained in the blood streams. It has been found to dissolve thromboeyle, and help prevent arterial sclerosis of the blood vessels and apoplexy."

(f) In close proximity to the above statements and representations: "A 20-year intensive investigation by scientists; A masterpiece of 800 people getting involved in the clinical practice; 100 world-level institutes making research; 13 prestigious publications carrying the research reports."

PAR. 10. In the course of marketing, advertising, distributing, and selling MILLION VITAMING Vitamins and Minerals, respondents have made numerous statements to consumers concerning that product. Typical of respondents' statements, but not necessarily inclusive thereof, are the following:

- (a) "Guards against and resists all easily contracted diseases"
- (b) "Helps prevent and resist any kind of contraction"
- (c) "Protect/help Eyes"
- (d) "Increase Red Blood Cells"
- (e) "Prevent Prostate Gland Enlargement"

PAR. 11. In the course of marketing, advertising, distributing, and selling GOOD DARLING Calcium, respondents have made numerous statements to consumers concerning that product. Typical of respondents' statements, but not necessarily inclusive thereof, are the following:

- (a) "Because of Lacking Calcium Therefore the body changes its shape," "Shrinkage," "Rickets," "Hunchback," "This can happen to every woman" [in conjunction with an illustration of a hump-backed woman walking with a cane]
- (b) "Resists Osteoporosis"
- (c) "All you need to do is take 2 tablets of American Good Darling every day to eliminate all the above worries"
- (d) "American Good Darling—Women suffer transfiguration, body shrinkage, hunchback, weak legs, body-shape unfitted for clothes, after 35 or menopause. The percentage is high for women after 50; one out of every four women dies; some die within months. It can happen to any women. There are 14 Million Victims Each Year!!!"
- (e) "A middle age woman has lived through so many sad things, how can she stand the torture of fragile bones? Nobody wants to have a deformed body that is short and humpbacked which makes a person ugly even in their middle ages. But do not be

afraid, osteoporosis can be prevented as long as you take two tablets of American Good Darling every day."

PAR. 12. Through the use of the statements referred to in paragraph seven above, and other statements not specifically set forth herein, respondents have represented, directly or by implication:

- (a) LIFE FARFUN Honeybee Pollen will prevent breast cancer.
- (b) LIFE FARFUN Honeybee Pollen will prevent diabetes.
- (c) LIFE FARFUN Honeybee Pollen will prevent heart disease.
- (d) LIFE FARFUN Honeybee Pollen will prevent influenza.
- (e) LIFE FARFUN Honeybee Pollen will increase sex drive.
- (f) LIFE FARFUN Honeybee Pollen will prevent arthritis.
- (g) LIFE FARFUN Honeybee Pollen has been clinically proven by recognized medical experts to be effective in the treatment of skin sensitivity, dry skin, arthritis pain, dyspepsia, high blood pressure, constipation, hemorrhoid piles and moles, colds, weight control, diabetes, prostate gland illness, asthma, hay fever, and swollen ankles.
- (h) LIFE FARFUN Honeybee Pollen will prevent and treat serious or life-threatening diseases.
- (i) LIFE FARFUN Honeybee Pollen is, or consists of ingredients that are specified, approved, endorsed, or found to be safe and effective in the treatment or prevention of various diseases, disorders, or conditions, by a governmental agency or spokesperson.

PAR. 13. In truth and in fact:

- (a) LIFE FARFUN Honeybee Pollen will not prevent breast cancer.
- (b) LIFE FARFUN Honeybee Pollen will not prevent diabetes.
- (c) LIFE FARFUN Honeybee Pollen will not prevent heart disease.
- (d) LIFE FARFUN Honeybee Pollen will not prevent influenza.
- (e) LIFE FARFUN Honeybee Pollen will not increase sex drive.
- (f) LIFE FARFUN Honeybee Pollen will not prevent arthritis.
- (g) LIFE FARFUN Honeybee Pollen has not been clinically proven by recognized medical experts to be effective in the treatment of skin sensitivity, dry skin, arthritis pain, dyspepsia, high blood pressure, constipation, hemorrhoid piles or moles, colds, weight control, diabetes, prostate gland illness, asthma, hay fever, or swollen ankles.
- (h) LIFE FARFUN Honeybee Pollen will not prevent or treat serious or life-threatening diseases.
- (i) LIFE FARFUN Honeybee Pollen is not, nor does it consist of ingredients that are, specified, approved, endorsed, or found to be safe

or effective in the treatment or prevention of various diseases, disorders, or conditions, by a governmental agency or spokesperson.

Therefore, the representations set forth in paragraph twelve were, and are, false and misleading.

PAR. 14. Through the use of the statements referred to in paragraph eight above, and other statements not specifically set forth herein, respondents have represented, directly or by implication:

(a) GELEE ROYALE Royal Jelly helps nourish the skin and erase wrinkles.

(b) GELEE ROYALE Royal Jelly helps delay the aging process.

(c) GELEE ROYALE Royal Jelly helps to improve sexual ability.

(d) GELEE ROYALE Royal Jelly helps psilosis (hair loss).

(e) GELEE ROYALE Royal Jelly helps prevent or treat cerebral anemia and insomnia.

(f) GELEE ROYALE Royal Jelly helps increase appetite, helps prevent or treat eczema, and helps children's growth.

(g) GELEE ROYALE Royal Jelly helps prevent hands and legs from trembling, and helps prevent or treat fainting, and stiff muscles.

(h) GELEE ROYALE Royal Jelly helps prevent or treat arteriosclerosis, paralysis, rubella, and fatigue.

(i) GELEE ROYALE Royal Jelly can help prevent tuberculosis and hepatitis.

PAR. 15. In truth and in fact:

(a) GELEE ROYALE Royal Jelly does not help nourish the skin and erase wrinkles.

(b) GELEE ROYALE Royal Jelly does not help delay the aging process.

(c) GELEE ROYALE Royal Jelly does not help improve sexual ability.

(d) GELEE ROYALE Royal Jelly does not help prevent or treat psilosis (hair loss).

(e) GELEE ROYALE Royal Jelly does not help prevent or treat cerebral anemia or insomnia.

(f) GELEE ROYALE Royal Jelly does not help increase appetite, help prevent or treat eczema, or help children's growth.

(g) GELEE ROYALE Royal Jelly does not help prevent hands or legs from trembling, or prevent or treat fainting or stiff muscles.

(h) GELEE ROYALE Royal Jelly does not help prevent or treat arteriosclerosis, paralysis, rubella, or fatigue.



(i) GELEE ROYALE Royal Jelly does not help prevent tuberculosis or hepatitis.

Therefore, the representations set forth in paragraph fourteen were, and are, false and misleading.

PAR. 16. Through the use of the statements referred to in paragraph nine above, and other statements not specifically set forth herein, respondents have represented, directly or by implication:

(a) AMERICAN YUYU KING Fish Oil will prevent heart problems for the rest of the user's life and take away any need to worry about the heart.

(b) AMERICAN YUYU KING Fish Oil will help reduce rheumatism.

(c) AMERICAN YUYU KING Fish Oil will help prevent cerebral apoplexy.

(d) AMERICAN YUYU KING Fish Oil will help reduce scabies.

(e) AMERICAN YUYU KING Fish Oil will reduce fat and cholesterol in the blood.

(f) AMERICAN YUYU KING Fish Oil will prevent and help stop arteriosclerosis (hardening of the arteries) and help improve the normal blood flow.

(g) AMERICAN YUYU KING Fish Oil will help reduce migraine headaches, and help protect the kidneys.

PAR. 17. In truth and in fact:

(a) AMERICAN YUYU KING Fish Oil will not prevent heart problems for the rest of the user's life and will not take away any need to worry about the heart.

(b) AMERICAN YUYU KING Fish Oil will not help reduce rheumatism.

(c) AMERICAN YUYU KING Fish Oil will not help prevent cerebral apoplexy.

(d) AMERICAN YUYU KING Fish Oil will not help reduce scabies.

Therefore, the representations set forth in paragraph sixteen (a), (b), (c), and (d) were, and are, false and misleading.

PAR. 18. Through the use of the statements referred to in paragraph ten above, and other statements not specifically set forth herein, respondents have represented, directly or by implication:

(a) MILLION VITAMING Vitamins and Minerals will prevent, resist, or treat all contractible diseases.

(b) MILLION VITAMING Vitamins and Minerals will increase the number of red blood cells.

(c) MILLION VITAMING Vitamins and Minerals will prevent eye diseases, conditions, or poor eyesight.

(d) MILLION VITAMING Vitamins and Minerals will prevent prostate gland enlargement.

PAR. 19. In truth and in fact:

(a) MILLION VITAMING Vitamins and Minerals will not prevent, resist, or treat all contractible diseases.

(b) MILLION VITAMING Vitamins and Minerals will not increase the number of red blood cells.

(c) MILLION VITAMING Vitamins and Minerals will not treat or prevent eye diseases, conditions, or poor eyesight.

(d) MILLION VITAMING Vitamins and Minerals will not prevent prostate gland enlargement.

Therefore, the representations set forth in paragraph eighteen were, and are, false and misleading.

PAR. 20. Through the use of the statements referred to in paragraph eleven above, and other statements not specifically set forth herein, respondents have represented, directly or by implication:

(a) GOOD DARLING Calcium will prevent and treat osteoporosis.

(b) GOOD DARLING Calcium will prevent and treat humpback resulting from osteoporosis.

(c) GOOD DARLING Calcium will prevent and treat body shrinkage resulting from osteoporosis.

(d) GOOD DARLING Calcium will prevent and treat rickets.

(e) GOOD DARLING Calcium will prevent and treat weak legs resulting from rickets or osteoporosis.

(f) GOOD DARLING Calcium will prevent and treat fragile bones resulting from osteoporosis.

PAR. 21. Through the use of the statements set forth in paragraphs seven, eight, nine, ten, and eleven, and other statements not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraphs twelve, fourteen, sixteen, eighteen, and twenty, respondents possessed and relied upon a reasonable basis for those representations.

PAR. 22. In truth and in fact, at the time of making the representations set forth in paragraphs twelve, fourteen, sixteen,

eighteen, and twenty, respondents did not possess and rely upon a reasonable basis for making those representations. Therefore, respondents' representation, as set forth in paragraph twenty one, was, and is, false and misleading.

PAR. 23. Through the use of the statements set forth in paragraphs seven (g) and nine (f), and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraphs twelve (g) and sixteen, they possessed and relied upon one or more well-controlled clinical tests as a reasonable basis for those representations.

PAR. 24. In truth and in fact, at the time of making the representations set forth in paragraphs twelve (g) and sixteen, respondents did not possess and rely upon well-controlled clinical tests as a reasonable basis for making those representations. Therefore, respondents' representation, as set forth in paragraph twenty three, was, and is, false and misleading.

PAR. 25. The dissemination of the aforesaid false and misleading representations by respondents, as alleged in this complaint, constitutes unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5 and 12 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 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, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

(1) Respondents American Life Nutrition, Inc. and American Life FarFun, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their headquarters located at 60 East Broadway, New York, New York. Respondent Ling Won Tong is the President of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business are located at the above stated address.

(2) The consent agreement executed by the respondents, their attorney, and counsel for the Commission is premised upon the respondents' sworn financial statement and related documents previously provided to the Commission. Upon duly noticed motion to the Commission, filed no later than three (3) years after the entry of this consent order, the Commission may make a determination whether there are any material misrepresentations in said sworn financial statement and related documents. If the Commission finds any material misrepresentations in the sworn financial statement and related documents submitted by the respondents, in addition to such other remedies as may be provided by law, that finding shall cause the consent order to be set aside and the Commission in that event shall be permitted to reopen this matter and take such action as it deems appropriate. Prior to the making of any such determination, the Commission shall notify the respondents of any discrepancy and provide them with a reasonable opportunity to explain or justify the disputed entry in the sworn financial statement or related document.

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

## ORDER

## I.

*It is ordered,* That respondents, American Life Nutrition, Inc. and American Life FarFun, Inc., corporations, their officers, and Ling Won Tong, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, their successors and assigns, directly or through any corporation, affiliate, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any food or drug, including any dietary food supplement, in or affecting commerce, as "food," "drug," and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Representing, directly or by implication, that any honeybee pollen product:

- (1) Will or can help prevent or effectively treat breast cancer;
- (2) Will or can help prevent or effectively treat diabetes;
- (3) Will or can help prevent or effectively treat heart disease;
- (4) Will or can help prevent or effectively treat influenza;
- (5) Will or can help prevent or effectively treat arthritis;
- (6) Will or can help prevent or effectively treat dyspepsia (indigestion);
- (7) Will or can help prevent or effectively treat high blood pressure;
- (8) Will or can help prevent or effectively treat constipation;
- (9) Will or can help prevent or effectively treat hemorrhoids or moles;
- (10) Will or can help prevent or effectively treat the common cold;
- (11) Will or can help cause a weight gain or loss;
- (12) Will or can help prevent or effectively treat prostate gland illness;
- (13) Will or can help prevent or effectively treat asthma;
- (14) Will or can help prevent or effectively treat hay fever;
- (15) Will or can help prevent or effectively treat skin sensitivity or dry skin;
- (16) Will or can help prevent or effectively treat swollen ankles;
- (17) Will or can help increase sex drive; or,
- (18) Will or can help prevent or effectively treat serious or life-threatening diseases.

(B) Representing, directly or by implication, that any royal jelly product:

- (1) Will or can help erase or prevent wrinkles;
- (2) Will or can help delay or prevent the aging process;
- (3) Will or can help improve sexual ability;
- (4) Will or can help prevent or effectively treat psoriasis (hair loss);
- (5) Will or can help prevent or effectively treat cerebral anemia or insomnia;
- (6) Will or can help prevent or effectively treat eczema;
- (7) Will or can help increase appetite, or promote the growth of children;
- (8) Will or can help prevent or effectively treat trembling of hands or legs, fainting, or stiff muscles;
- (9) Will or can help prevent or effectively treat arteriosclerosis, paralysis, rubella, or fatigue; or,
- (10) Will or can help prevent or effectively treat tuberculosis or hepatitis.

(C) Representing, directly or by implication, that any fish oil product:

- (1) Will or can help prevent heart problems for the rest of the user's life, or will remove any need for a user to worry about the heart;
- (2) Will or can help prevent or effectively treat rheumatism;
- (3) Will or can help prevent or effectively treat cerebral apoplexy; or,
- (4) Will or can help prevent or effectively treat scabies.

(D) Representing, directly or by implication, that any vitamin or mineral product:

- (1) Will or can help prevent or effectively treat all contractible diseases;
- (2) Will or can help prevent or effectively treat eye diseases, ailments, or poor eyesight;
- (3) Will or can help increase the number of red blood cells; or,
- (4) Will or can help prevent or effectively treat prostate gland enlargement.

## II.

*It is further ordered,* That respondents, their officers, agents, representatives, and employees, and their successors and assigns,

directly or through any corporation, affiliate, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any food or drug, including any dietary food supplement, in or affecting commerce, as "food," "drug," and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(A) That any such food or drug is, or consists of ingredients that are, specified, approved, endorsed, or found to be safe or effective in the treatment or prevention of any disease, disorder, or condition, by any governmental or other agency or spokesperson, unless such is the fact.

(B) The efficacy, safety, or performance of any such food or drug, unless, at the time the representation is made, they possess and rely upon competent and reliable scientific evidence that substantiates such representation; *provided however*, that for any test or study to be "competent and reliable" it shall be one conducted by a person with skill and expert knowledge in the field to which the test or study pertains, with the results evaluated in an objective manner using procedures generally accepted in the profession to yield accurate and reliable results.

### III.

*It is further ordered*, That respondents shall disseminate, in each publication in which respondents placed a print advertisement between December 1, 1987 and December 1, 1988, a print advertisement giving a full and accurate Chinese-language translation of the text contained in paragraphs III (A), (B), (C), and (D) of this order. Each such advertisement shall appear on the same day of the week as the original advertisements in that publication appeared most frequently, and on the same or comparable page(s) on which the original advertisements in that publication appeared most frequently. Each advertisement in "WORLD JOURNAL DAILY," "UNITED JOURNAL," "SING TAO JIH PAO," "THE YOUNG CHINA DAILY," and "CHINESE TIMES" shall consist of one full page which shall be divided into four equal quarters, each of which shall be enclosed in a black or red border and shall contain a different one of the statements required to be made under paragraphs III (A), (B), (C), and (D) of this order. Each advertisement in "CHINA TIMES WEEKLY," "WORLD JOURNAL WEEKLY," and "NEW YORK WEEKLY ENTERTAIN-

MENT” shall consist of two adjacent full pages, each of which shall be divided into two equal halves, each of which shall be enclosed in a black or red border and shall contain a different one of the statements required to be made under paragraphs III (A), (B), (C), and (D) of this order. Each statement required by this order shall appear without additional text and shall clearly and conspicuously provide, in Chinese translation:

(A) Contrary to prior advertising claims, LIFE FARFUNG 100% Natural Honeybee Pollen Nuggets will not help prevent or effectively treat breast cancer; will not help prevent or effectively treat diabetes; will not help prevent or effectively treat heart disease; will not help prevent or effectively treat influenza; will not help prevent or effectively treat arthritis; will not help prevent or effectively treat dyspepsia (indigestion); will not help prevent or effectively treat high blood pressure; will not help prevent or effectively treat constipation; will not help prevent or effectively treat hemorrhoids or moles; will not help prevent or effectively treat the common cold; will not help cause a weight gain or loss; will not help prevent or effectively treat prostate gland illness; will not help prevent or effectively treat asthma; will not help prevent or effectively treat hay fever; will not help prevent or effectively treat skin sensitivity or dry skin; will not help prevent or effectively treat swollen ankles; will not help increase sex drive; will not help prevent or effectively treat serious or life-threatening diseases; and, has not been approved or endorsed by the United States Government.

(B) Contrary to prior advertising claims, GELEE ROYALE AMERICAIN Fresh Natural American Royal Jelly will not help erase or prevent wrinkles; will not help delay or prevent the aging process; will not help improve sexual ability; will not help prevent or effectively treat psoriasis (hair loss); will not help prevent or effectively treat cerebral anemia or insomnia; will not help prevent or effectively treat eczema; will not help increase appetite, or promote the growth of children; will not help prevent or effectively treat trembling of hands or legs, fainting, or stiff muscles; will not help prevent or effectively treat arteriosclerosis, paralysis, rubella, or fatigue; and will not help prevent or effectively treat tuberculosis or hepatitis.

(C) Contrary to prior advertising claims, AMERICAN YUYU KING Supernatural Fish Oil Concentrate will not prevent heart problems for the rest of the user’s life, and will not remove any need for a user to worry about the heart; will not help prevent or effectively treat



rheumatism; will not help prevent or effectively treat cerebral apoplexy; and, will not help prevent or effectively treat scabies.

(D) Contrary to prior advertising claims, MILLION VITAMING Complete Vitamins and Minerals will not help prevent or effectively treat all contractible diseases; will not help prevent or effectively treat eye diseases, ailments, or poor eyesight; will not help increase the number of red blood cells; and, will not help prevent or effectively treat prostate gland enlargement.

#### IV.

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

#### V.

*It is further ordered,* That a period of ten (10) years from the date of entry of this consent order, respondent Ling Won Tong shall promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with any new business or employment whose activities include the advertising, labeling, distribution, promotion, offering for sale, or sale of any food or drug, including any dietary food supplement, each such notification to include respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

#### VI.

*It is further ordered,* That respondents shall maintain for at least three (3) years from the date of service of this order and upon request make available to the Commission for inspection and copying:

(A) All records and documents to demonstrate respondents' compliance with this consent order;

(B) All materials relied upon by respondents for any representation covered by this order;

(C) All test reports, studies, surveys, demonstrations, or other evidence in respondents' possession or control that contradict, qualify, or call into question any representation covered by this order;

(D) All advertising and promotional materials for products covered by this order;

(E) All corrective advertising statements furnished pursuant to this order;

(F) Any materials offering, directly or by implication, any money-back or satisfaction guarantee for any product covered by this order; and

(G) All requests for refunds and all correspondence and other records relating to such requests, as well as documentation sufficient to show the date, manner, amount, and recipient of refunds made.

#### VII.

*It is further ordered,* That respondents shall distribute a copy of this order, along with a full and accurate Chinese-language translation of Part III thereof, to every present or future officer, director, agent, representative, independent contractor, and employee with sales or marketing functions, and every person in active concert or participation with them, involved in the advertising, labeling, distribution, promotion, offering for sale, or sale of any food or drug, including any dietary food supplement, and to every manufacturer of any product marketed by respondents, and shall secure from each such person a signed and dated statement acknowledging receipt of said consent order.

#### VIII.

*It is further ordered,* That respondents shall distribute to all persons, including every wholesale and retail distributor, who purchased any of respondents' products between January 1, 1987, and the date of service of this order, and for whom respondents either possess a mailing address or whose mailing address is provided to respondents by staff of the Federal Trade Commission, a notice comprised of full and accurate Chinese-language translations of paragraph III (A), (B), (C), and (D) of this order. This notice shall include, immediately preceding these translations, a full and accurate Chinese-language translation of the following statement: "IMPOR-

TANT NOTICE: THE FOLLOWING INFORMATION REGARDING OUR PRODUCTS IS PROVIDED PURSUANT TO A CONSENT ORDER ISSUED BY THE UNITED STATES FEDERAL TRADE COMMISSION AGAINST AMERICAN LIFE NUTRITION, INC. WE ARE PROVIDING THIS INFORMATION TO OUR CUSTOMERS THROUGH YOU AND THROUGH ADVERTISEMENTS IN VARIOUS PUBLICATIONS.”

IX.

*It is further ordered,* That respondents shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order. Such report shall include full and accurate English-language translations of all Chinese-language advertising then in use, or contemplated to be used, by respondents.