IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, Jan. 21, 1982

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent American Home Products Corporation ("AHP") has requested Commission reconsideration of its opinion and final order in this matter, pursuant to Rule 3.55 of the Commission's Rules of Practice. Rule 3.55 reads, in relevant part, that any request for reconsideration "must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

Respondent argues that reconsideration should be granted because it was not given an opportunity to address the "substantial question" theory which it alleges was the basis for the substantiation and disclosure requirements in the final order. It notes that the Commission decided the so-called "substantial question" allegations of the complaint on deception grounds, and argues that it could not have anticipated such a result given that the Administrative Law Judge relied on a theory of unfairness in resolving these allegations against respondent. AHP also challenges the basis for the Commission's conclusion that consumers were deceived by AHP's failure to disclose the existence of a substantial question in the scientific-medical community. AHP argues that the conclusion rests on assumptions regarding consumer beliefs about the level of proof for its comparative superiority claims for Anacin that were not in issue below and are unsupported by the record of this proceeding. Finally, AHP argues that it is especially important for the Commission to consider anew its decision in this matter not only because of the allegedly "new" question of consumer beliefs, but because the composition of the Commission has changed since the opinion and final order were issued on September 9, 1981.

We believe that granting respondent's request for reconsideration would be inappropriate. The complaint made it clear that the alleged failure to disclose the existence of a substantial question about AHP's comparative superiority claims, if proven, was an unfair or deceptive practice in violation of Section 5 of the FTC Act. (Comp. ¶¶ 12–14, 25, 27). Thus, AHP was placed on notice from the very beginning that there was a "substantial question" issue which might be decided on the basis of a finding of deception. Further, as the record clearly demonstrates and as complaint counsel point out, Answer to Motion at 2–3, Respondent AHP has vigorously litigated

and argued the merits of the "substantial question" allegations of the complaint throughout this proceeding before the Commission. Respondent's assertion that it was denied notice and opportunity to address the "substantial question" theory as such is thus without merit. (See also C.Op. at 36–38).

In addition, AHP's charge that the differing legal theories of the Initial Decision and the Commission's Opinion on the "substantial question" issue constitute grounds for reconsideration—because it could not have anticipated that the Commission would depart from the approach taken by the ALJ—is also unfounded. The allegations of the complaint, and not the theory of the Initial Decision, set the bounds for decision by the Commission. In this case, as we have noted, the complaint alleged that AHP's failure to disclose the existence of a substantial question was deceptive or unfair. Contrary to what respondent's argument seems to imply, the mere fact that the ALJ's decision was based on an unfairness theory obviously could not have operated to erase the pleaded theory of deception from the case, or otherwise limit or foreclose the Commission's ability to decide the case on that ground. In any event, the distinction between the theories adopted by the Commission and the ALJ was not as dramatic as AHP implies. Both the ALJ and the Commission focused on the untrue implication in AHP's advertisements, absent disclosure of the existence of a substantial question, that it had a reasonable basis for the comparative claims made for its products. That the ALJ couched his conclusion in terms of unfairness rather than deception is, in the context of this case, a difference more of form than of substance.

We also reject respondent's contention that the question of consumer belief, which underlies its motion for reconsideration, was not an issue in the trial or could not have been anticipated by respondent to be an element of the Commission's decision. Again, we refer to the complaint. Paragraph 14 of the complaint alleged that in light of the comparative superiority claims allegedly made by AHP, "the existence of such a substantial question is a material fact, which, if known to consumers, would be likely to affect their consideration of whether or not to purchase such products." This count clearly implied an allegation that consumers may reasonably believe that unqualified comparative superiority claims signaled the absence of any substantial question about them in the scientific-medical community. From the outset, therefore, the nature of reasonable consumer beliefs about the level of support for these claims in the scientific-medical community was in issue.

Furthermore, the question of reasonable consumer beliefs re-

mained very much in issue throughout this litigation. Respondent had abundant opportunity both to challenge the legal argument that extrinsic evidence of consumer beliefs was not essential to a finding of deception under complaint counsel's "substantial question" theory, and to offer such evidence of its own to demonstrate that, contrary to the allegations of the complaint and the Commission's conclusion, consumers would not reasonably believe that AHP's comparative superiority claims were established beyond substantial question in the scientific-medical community.[1]

Finally, we believe respondent's view that the "new" Commission should have an opportunity to consider this case is improperly raised in the context of a motion for reconsideration under Rule 3.55, which speaks solely in terms of new questions and not new Commissions.

For lack of a majority, *it is ordered,* that respondent AHP's motion for reconsideration and accompanying application for oral argument on its motion,[2] filed October 30, 1981, are hereby denied.

Chairman Miller and Commissioner Clanton favor reconsideration. See their attached separate statements.

SEPARATE STATEMENT OF CHAIRMAN JAMES C. MILLER III

I agree with the views expressed by Commissioner Clanton in his separate statement. Given the posture of this case, I too think it would be wise for the Commission to stay, or reconsider, its order pending resolution of *Bristol-Myers Company,* No. 8917 and *Sterling Drug, Inc.,* No. 8919, the other two analgesic cases that are before the Commission. Such action would give the Commission the opportunity to modify its order in *AHP,* if necessary, and thereby ensure consistency with respect to the similar issues raised in all three cases.

SEPARATE STATEMENT OF COMMISSIONER DAVID A. CLANTON

Respondent argues that the Commission majority's treatment of

[1] The Commission's ruling was based on the capacity of the unqualified advertising claims in question to deceive reasonable consumers, and therefore rested upon evidence tending to show how the advertising could reasonably have been interpreted by consumers, as well as upon the evidence of actual deception that is in the record. *See* C.Op at 29–32. While the evidence of actual deception, or countervailing evidence suggesting that consumers, in fact, had not been misled might have been relevant, it was not dispositive of the issue.

[2] In this application, respondent argues for the first time in connection with its motion for reconsideration that the Commission may want to reconsider its opinion and order in this matter in order to consider and possibly avoid potential conflict between its decision in this case and two other pending analgesics cases, *Bristol-Meyers Co.,* Docket No. 8917 and *Sterling Drug, Inc.,* Docket No. 8919. The Commission was fully aware of the possible interrelationship between those cases and this one when it decided to issue its opinion and order in this matter. AHP's concern that after all these cases are decided it could be the only one of the three companies operating under the kind of order issued in this case rests at present on sheer speculation. Should the situation that APH fears be the end result of these proceedings, AHP may, of course, pursue whatever relief it believes is warranted through the reopening procedures of 16 C.F.R. 3.72.

the substantial question issue in its opinion of September 9, 1981, raises a new question warranting reconsideration under Rule 3.55. I dissented from the majority position on the substantial question issue, but I do not believe that respondent's motion satisfies the criteria for further briefing on the matter.

I do believe, however, that the Commission should preserve the option of reviewing the case at the time it resolves the appeals of the other analgesics proceedings (*Bristol-Myers Company,* No. 8917, and *Sterling Drug, Inc.,* No. 8919). The three analgesics cases, at least in part, raise similar issues. It is conceivable that the opinion and order in *American Home Products* will require some modification to ensure that the company and its competitors are treated equally.

Consequently, I think that, purely as an exercise of its discretion, the Commission should have either stayed the order against American Home Products or voted to reconsider the case pending resolution of the other analgesics appeals.

IN THE MATTER OF

AMERICAN HONDA MOTOR COMPANY, INC.

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

Docket C-3082. Complaint, Jan. 22, 1982—Decision, Jan. 22, 1982

This consent order requires, among other things, a Gardena, Calif. motor vehicle dealer to cease failing to mail to each owner of a Honda automobile which was purchased as new, or is currently registered in certain states, a "notice package" containing information regarding the company's redress program for premature fender rusting. The company must timely remove and replace, at no cost to the owner, the front fenders of any Honda automobile experiencing premature rusting within 36 months-in-service, and reimburse eligible owners of affected vehicles for monies spent in trying to correct the premature rusting problem. Respondent is also required to inform its dealers of the firm's obligations under the provisions of the order, and provide them with adequate supplies or reimbursements for replacing rusted fenders. Additionally, the order requires respondent to maintain documents demonstrating compliance with the order for a period of not less than three years.

Appearances

For the Commission: *Joel Winston* and *Jeffrey Karp.*

For the respondent: *Henry P. Sailer, Covington & Burling,* Washington, D.C., and *James J. Short, Lyon & Lyon,* Los Angeles, Calif.

COMPLAINT

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

PARAGRAPH 1. Respondent American Honda Motor Co., Inc. is a California corporation, with its principal office and place of business at 100 West Alondra Boulevard, Gardena, California.

PAR. 2. Respondent is now, and has been, engaged in the advertising, offering for sale, sale and distribution of Honda automobiles to members of the public.

PAR. 3. In the course and conduct of its aforesaid business,

respondent causes and has caused automobiles to be shipped to purchasers in various States, and therefore maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. For the purpose of this complaint, "premature fender rusting" shall mean hole(s), blister(s) or bubble(s) in the exterior paint or metal of the front fenders, which is caused by rusting of the metal and is not attributable to normal deterioration of the metal as a result of age.

PAR. 5. In the course and conduct of its aforesaid business, respondent offered for sale, sold and distributed 1975–1978 model year Honda automobiles which were subject, in a significant number of instances, to premature fender rusting.

PAR. 6. In the course and conduct of its business, respondent has failed to disclose facts concerning the existence, nature, extent, prevention or proper repair of premature fender rusting affecting certain Honda automobiles manufactured between the period from 1975 to 1978, notwithstanding that it knew or should have known of such facts.

PAR. 7. The facts referred to in Paragraph Six would have been material to many prospective purchasers, because, if known, they would have been likely to affect those persons' decisions concerning the purchase of such automobiles. Respondent has therefore failed to disclose material facts to prospective purchasers of Honda automobiles.

PAR. 8. The facts referred to in Paragraph Six are material to many owners, because, if known, they would be likely to affect those persons' decisions concerning the maintenance, repair, use or care of such automobiles. Respondent has therefore failed, and is failing, to disclose material facts to owners of Honda automobiles.

PAR. 9. Respondent's acts and practices in failing to disclose material facts, as alleged in Paragraphs Six through Eight above, have had, and now have, the capacity and tendency to mislead members of the public, including prospective purchasers and owners of Honda automobiles. Such acts and practices also cause and have caused substantial economic harm to members of the public, including prospective purchasers and owners of Honda automobiles, who make payments for goods or services which they might otherwise not make; or fail to take measures which they might otherwise take to prevent damage to their automobiles.

PAR. 10. Respondent's acts and practices, as alleged herein, were and are all to the prejudice and injury of the public and constituted,

and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

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

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

1. Respondent American Honda Motor Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 100 West Alondra Boulevard, in the City of Gardena, State of California.

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

ORDER

For the purposes of this Order, the following definitions shall apply:

1. *Honda automobile(s)* shall mean all 1975, 1976, 1977 and 1978 model year Civics and all 1976, 1977 and 1978 model year Accords sold or distributed by respondent in the United States.

2. *Premature rusting* shall mean the presence of hole(s), blister(s) or bubble(s) in the exterior paint or metal of the front fender, (a) which is caused by rusting of the metal from the underside of the fender, (b) any part of which is within two feet of the rear edge and one foot of the top edge of the fender, and (c) that appeared within the automobile's first thirty-six (36) months-in-service.

3. *Remove and replace* shall mean removal of the fender and replacement with a new fender which has been treated with a zinc coating process similar to Zincrometal with a nominal thickness of 0.5 mils or greater; *provided,* that if said new fender is not reasonably available due to circumstances beyond respondent's control, respondent may use a fender which has been one-side galvanized with a nominal weight of 60 grams per square meter (gm/m2) or greater and which has been primed using a cathodic electrodeposition process. This term shall also include all parts and labor necessary to (a) install and paint the replacement fender in as close to a matching color as possible, (b) re-affix all pre-existing trim and accessory items and replace any such items damaged during removal and replacement with identical items, if reasonably available, or similar items, if identical items are not reasonably available, (c) make all adjustments to the automobile necessitated by the removal and replacement of the fender, and (d) repair or replace, as is appropriate, any rusted structural or support component for the fender to the extent necessary to permit proper and sound installation of the fender.

4. *Dealers(s)* shall mean all persons, partnerships, firms or corporations which, pursuant to a Honda Automobile Dealer's sales and service agreement with respondent, receive on consignment or purchase new Honda automobiles from respondent for resale or lease to the public, including any person(s), partnerships(s), firm(s) or corporation(s) owned or operated by respondent.

5. *Owner(s)* shall mean any person, partnership, firm or corporation having custody and/or possession of a Honda automobile, including those automobiles held for resale. This term shall include, but not be limited to, any registered owner or lessee, or person acting on their behalf. This term shall not include insurers, warrantors or

automobile repair facilities which are not registered owners or lessees of the automobile, whether or not acting on behalf of an owner.

6. *Past or current owner(s)* shall mean any person, partnership, firm or corporation having custody and/or possession of a Honda automobile, or which had at any time in the past custody and/or possession of a Honda automobile, including those automobiles held for resale. This term shall include, but not be limited to, any registered owner or lessee, or person acting or who acted on their behalf. This term shall not include insurers, warrantors or automobile repair facilities which are not, and were not, registered owners or lessees of the automobile, whether or not acting on behalf of a past or current owner.

7. *Months-in-service* shall be calculated as beginning on the date on which respondent began warranty coverage on the automobile. If that date cannot be established by respondent, the months-in-service shall be calculated as beginning not earlier than:

1975	Civic 1200, Civic CVCC & Civic Wagon	November 26, 1975
1976	Civic 1200, Civic CVCC & Accord	December 6, 1976
	Civic Wagon	December 8, 1976
1977	Civic 1200	December 14, 1977
	Civic CVCC	December 20, 1977
	Civic Wagon & Accord	December 5, 1977
1978	Civic 1200	October 12, 1978
	Civic CVCC & Civic Wagon	October 26, 1978
	Accord	October 17, 1978

I

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

A. Failing to send by first-class mail, within sixty (60) days after the date of service of this Order, a notice package consisting of (i) a copy of the letter attached to this Order as Attachment A, incorporated herein by reference, (ii) a copy of the form attached to this Order as Attachment B, incorporated herein by reference, and (iii) a self-addressed, postage-paid envelope. Respondent shall com-

plete all insertions in Attachment A and the top portion of Attachment B for each such notice package. The notice package shall be sent in one envelope, similar in all material respects to Attachment C of this Order, incorporated herein by reference. The notice package shall be mailed to each current registered owner of a Honda automobile which was purchased as new, or is currently registered, in any of the following states. Such owners shall be determined by current state motor vehicle records of a commercial locator service and by respondent's warranty registration records.

Connecticut	Missouri
Delaware	Nebraska
District of Columbia	New Hampshire
Illinois	New Jersey
Indiana	New York
Iowa	Ohio
Kansas	Pennsylvania
Kentucky	Rhode Island
Maine	Vermont
Maryland	Virginia
Massachusetts	West Virginia
Michigan	Wisconsin
Minnesota	

Respondent shall also send or cause to be sent a notice package, with all insertions provided for in Attachment A and the top portion of Attachment B completed, to the extent that information provided by the inquiring past or current owner permits, within thirty (30) days of the inquiry, or sixty (60) days after the date of service of this Order, whichever date is later, to each past or current owner of a Honda automobile who inquires before July 1, 1982* to respondent or a dealer about respondent's redress program for premature fender rusting, and who:

i. Was sent a notice package but has not received it by the seventieth (70th) day after the date of service of this Order;

ii. Was not sent, and is not scheduled to be sent, a notice package; or

iii. Received a notice package but subsequently lost it.

B. Failing to remove and replace, at no cost to the owner, within 180 days after the owner presents the automobile to a dealer for an inspection with his or her pre-printed Attachment B form, the front

* Modified by direction of the Commission dated March 4, 1982.

fender(s) of any Honda automobile experiencing premature rusting. Said inspections shall be available at all times during the dealer's normal service hours and shall be performed within a reasonable period of time. At the inspection, respondent shall cause to be returned to each owner three copies of Attachment B with all appropriate insertions completed. Except as otherwise provided by this Order, no owner shall be required to submit an automobile for any purpose or at any time, to a dealer or respondent, in order to receive any benefits under this Order, other than on one occasion for an inspection, and one occasion, at a time mutually agreed upon between the owner and the dealer, for removal and replacement. Each removal and replacement shall be completed within a reasonable period of time after the owner presents the automobile to a dealer for the removal and replacement at a time mutually agreed upon between the owner and the dealer.

Provided further, That in each instance where a dealer rejects a request for removal and replacement, respondent shall cause to be provided to each such owner a written report, completed and signed by the dealer, describing in detail the reasons why the request was rejected and containing instructions on how the owner can seek a review of the rejection by respondent. In each case where the rejection is based upon a determination that the front fender(s) are not experiencing premature rusting, as defined by this Order, said written report shall describe in detail the condition of the fender(s) and all tests performed to determine the cause or source of any rusting. Respondent shall review each rejected request within a reasonable time after an owner requests a review from respondent's zone office. In each case where the rejection was based solely upon the dealer's determination that the hole(s), blister(s) or bubble(s) in the exterior paint or metal of the fender were not caused by rusting of the metal from the underside, and unless said rejection is reversed, said review shall include, if requested by the owner, an inspection of the fender(s) by an employee of respondent. Respondent shall provide to each such owner a second written report describing in detail the findings of this inspection.

Provided further, That in each instance where the fender(s) on a Honda automobile have not been replaced within 180 days after the owner presented the automobile with the pre-printed Attachment B form to a dealer for an inspection, respondent shall offer the owner the option of receiving either a cash settlement of $150 per rusted fender, or replacement of the fender within a reasonable period of time set by the dealer. Within sixty (60) days after respondent receives from the owner a completed and signed copy of Attachment

B requesting the cash settlement, respondent shall mail to each such owner a check for $150 for each front fender experiencing premature rusting. Respondent's obligation under this proviso to offer the cash settlement shall not extend to any owner who fails to present his or her Honda automobile for removal and replacement, within said 180 day period, at the time(s) mutually agreed upon between the owner and the dealer or reasonably scheduled by the dealer if the owner will not agree to a reasonable time.

Provided further, That respondent may require any owner whose automobile exceeds thirty-six (36) months-in-service to sign the statement, contained in Attachment B, certifying that the automobile experienced premature rusting, and that the individual was an owner of the automobile, within its first thirty-six (36) months-in-service and is currently an owner.

Provided further, That respondent shall not offer any form of compensation for premature rusting to any such owner other than the compensation specifically provided for by this Order.

C. Failing to reimburse any past or current owner of a Honda automobile for all expenses incurred for repairs or replacements which were intended to eliminate premature rusting, whether or not they eliminated the premature rusting. Such reimbursement shall consist of all monies expended by the past or current owner, if the services were performed by a dealer or subcontractor of the dealer; or all monies expended by the past or current owner, or the usual and customary charges in the past or current owner's trade area for the work performed, whichever is lower, if the services were performed by a person, partnership, firm or corporation other than a dealer or subcontractor of the dealer.

Such reimbursement shall be made within sixty (60) days after respondent receives from the past or current owner (i) a completed and signed copy of Attachment B, certifying that the automobile experienced premature rusting, and that the individual was a past or current owner of the automobile, within its first thirty-six (36) months-in-service, and (ii) reasonable evidence of repair or replacement expenses.

Provided, That respondent's obligations under this Paragraph shall apply only if such repairs or replacements were made prior to the past or current owner's receipt of a notice package from respondent as provided for by Paragraph A of Section I of this Order.

Provided further, That respondent may require any owner to submit his or her Honda automobile to a dealer for an inspection as a condition of reimbursement under this Paragraph.

D. Failing to provide all dealers with adequate supplies of, or in

the alternative to reimburse all dealers to the extent of respondent's normal warranty reimbursement policy and procedures for obtaining, new front fenders and all other items necessary to effectuate the reasonably forseeable removal and replacement of the fenders.

E. Failing to provide all dealers with adequate supplies of Attachment B, with pre-printed portions blank.

F. Failing to notify all dealers in writing within ten (10) days after the date of service of this Order of the existence of premature rusting, of the terms and conditions of respondent's obligations under this Order, and of the necessity for dealers to avoid any practices which might hinder, delay, restrict or frustrate the proper administration of this Order.

II

It is further ordered, That respondent's obligations under this Order shall not extend to the following:

A. Under Paragraph B of Section I of this Order, (i) to those owners who initially present their automobile to a dealer for an inspection after their automobiles have reached forty-two (42) months-in-service, or after six (6) months after the date of service of this Order, whichever date is later; (ii) to those owners who fail, before May 1, 1983, to present their automobiles for removal and replacement at a time mutually agreed upon between the owner and a dealer, or to mail to respondent a completed and signed copy of Attachment B requesting a cash settlement; or (iii) to more than one owner for each Honda automobile.

B. Under Paragraph C of Section I of this Order, to those past or current owners who mail Attachment B to respondent after their automobiles have reached forty-two (42) months-in-service, or after six (6) months after the date of service of this Order, whichever date is later.

III

It is further ordered, That respondent shall provide to each dealer, within thirty (30) days after date of service of this Order, a display poster, no smaller than 30 inches by 40 inches, in the form of Attachment D to this Order, incorporated herein by reference. Respondent shall advise dealers to place the poster in a conspicuous and accessible location in the service writer's area of the dealership, and to keep the poster posted until July 15, 1982.

IV

It is further ordered, That respondent maintain documents demonstrating compliance with this Order for a period not less than three (3) years. Such documents shall be made available to the Commission or its staff for inspection and copying upon reasonable request, and shall include, but are not necessarily limited to, those revealing:

A. The name and last known address of each owner who was sent the notice package required by Paragraph A of Section I of this Order.

B. The name and last known address of each owner whose notice package was returned by the U.S. Postal Service undelivered.

C. The name and last known address of each owner who requested removal and replacement.

D. The name and last known address of each owner whose fender(s) were removed and replaced, pursuant to Paragraph B of Section I of this Order, within 180 days after the owner presented the automobile to a dealer for an inspection with his or her Attachment B form.

E. The name and last known address of each owner whose fender(s) were removed and replaced more than 180 days after the owner presented the automobile to a dealer for an inspection with his or her Attachment B form, and the number of days in excess of 180 that the fender(s) of each such owner were replaced.

F. The name and last known address of each owner who received a cash settlement due to a dealer's inability to remove and replace the fender(s) within said 180 day period.

G. The name and last known address of each past or current owner who requested reimbursement for prior repairs or replacement of front fender(s) with premature rusting.

H. The name and last known address of each past or current owner who was reimbursed for prior repairs or replacement of premature rusted fender(s), pursuant to Paragraph C of Section I of this Order.

I. All communications between respondent and any zone representative, dealer or past or current owner concerning removal and replacements or reimbursements for repairs or replacements made to Honda automobiles affected by premature rusting. Such documents shall include, but not be limited to (a) all written communications; and (b) all oral communications which are reduced to writing and maintained in the ordinary course of business.

J. Each instance arising under Paragraph C of Section I of this Order where respondent reimbursed a past or current owner of a

Honda automobile for less than one hundred percent (100%) of the actual charges for parts and labor, and those documents revealing the underlying basis for determining the usual and customary charges in each such instance.

K. Each instance arising under Paragraphs B or C of Section I of this Order involving a dispute over months-in-service or ownership within the first thirty-six (36) months, unless respondent determined to remove and replace front fenders, make a cash settlement or reimburse an owner in accordance with said paragraphs, notwithstanding said dispute.

L. Each instance arising under Paragraph B of Section I of this Order where respondent failed to remove and replace the front fenders of any Honda automobile, and the underlying basis for each such failure. Such documents shall include all written reports required by Paragraph B of Section I of this Order.

M. Each instance arising under Paragraph C of Section I of this Order where respondent failed to reimburse any past or current owner, and the underlying basis for each such failure.

N. The number of one-side galvanized fenders used by respondent for replacements and the underlying basis for the unavailability of fenders treated with a zinc coating process similar to zincrometal.

V

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

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, and at one year intervals thereafter through 1983, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form in which it has complied and will comply with this Order.

— ATTACHMENT A — AMS 3061 8107

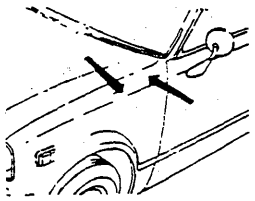
HONDA

AMERICAN HONDA MOTOR CO., INC.
100 WEST ALONDRA BOULEVARD, GARDENA, CALIFORNIA 90247
AUTOMOBILE SERVICE DEPARTMENT, P.O. BOX 80 - GARDENA, CALIF.
CABLE ADDRESS - AMEHON, GARDENA, CALIFORNIA (213) 327-8280

IMPORTANT: FREE FENDER REPLACEMENT OFFER

Dear Honda Owner:

We have become aware of a condition in some Honda cars which you should know about. This condition may result in the front fenders of some 1975—1978 cars rusting prematurely. By agreement with the Federal Trade Commission, American Honda will correct this problem free, if you qualify. If we cannot replace the fenders within six months of when you apply (see paragraph 3), we will offer you the option of receiving a cash settlement (see paragraph 4). Also, if you paid for repair or replacement of rusted fenders in the past, American Honda will repay you, if you qualify. We are doing this because we want to satisfy our customers and keep them satisfied.



Please read this letter carefully and follow the steps listed to make sure you get the new fender(s) or refund. We are sorry this letter is so long, but we want to make sure you have all the information you need.

HONDA'S PROGRAM FOR FRONT FENDER RUST

1. How to Tell If Your Car Has The Front Fender Rust Condition

This program covers rust on the top part of the front fender, within about two feet of the windshield. The rust first appears in the form of bubbles or blisters in the paint. Soon after, holes in the metal develop. The drawing above shows the problem area.

Only rust which began on the underside of the fender is covered by this program. Conditions *not* covered are:

a. rust on any other part of your car;
b. surface rust;
c. rust due to unrepaired (or poorly repaired) stone chips or collision damage.

2. How to Determine If You Qualify For The Replacement Program

We will replace the rusted fender(s) free, if you meet *all* of these conditions:

a. Your car is a 1975, 1976, 1977 or 1978 Honda, any model;
b. The rust began on the underside of the fender and is in the top, rear part of the front fender (see the drawing);
c. The first signs of rust (usually paint bubbling) appeared within your car's first three years of service. See the dates at the top of the enclosed Application Form. If you first noticed the problem before the "ended" date, you qualify; and
d. You now own (or lease) the car, and owned (or leased) it at some time during its first three years.

 1 of 4

3. **What You Should Do If You Meet These Qualifications — How to Apply**

   a. Visit any Honda new car dealer any time during normal service hours to get your car's fenders inspected. *You must* bring the Application Form with you. (If you lost it, contact your local Honda zone office listed at the end of this letter.) Although the inspection should only take a few minutes, you may want to call the dealer before coming, to avoid possible delays. If the dealer agrees after inspecting your car that you qualify, an appointment will be set for your fender replacement.
   b. At the inspection, the dealer will ask you to sign the statement in the "Replacement" section of the Application Form. This certifies that the rust appeared within your car's first three years, and that you owned it at some point during those three years. The dealer will fill in the inspection and appointment dates on your Form. He will also fill in a date exactly six months from the inspection. If the dealer cannot install your new fender(s) by this six-months date, you have the right to a cash settlement (see paragraph 4 below). *Be sure* to keep your copies of the Form. Mark the date on your calendar so that you know when the six months have passed.
   c. If the dealer says that you do not qualify, ask him for a copy of his inspection report. If you still think you qualify, you have the right to get a review of your case by a Honda zone representative. Contact your local Honda zone office. If the dealer's report says you do not qualify because the rust did not begin on the underside of the fender, you can ask the zone office to do another inspection.
   d. Bring your Application Form with your car to the dealer on your appointment date. The fender(s) will be replaced at no charge to you. Because of the time needed for the paint to dry, it will usually take three or four working days to replace the fender(s). In some cases, it may take even longer. Ask your dealer. Also, you should know that it is not always possible to match exactly the fender paint or accent items. If you cannot make your appointment, call your dealer well in advance to reschedule it.

4. **If The Dealer Can't Replace The Fender(s) Within Six Months**

   If we receive many requests for new fenders under this Program, your dealer may not be able to install your new fender(s) within six months of the inspection date. If your fenders have not been installed by the six-months date on the Application Form, you will have a choice. You can either wait to have the fender(s) replaced when the dealer can schedule the work, or you can receive a check from us for $150 for each rusted fender.

   It is *very important* that you keep your copies of the Application Form and mark the six-months date on your calendar. Then, on that date, or as soon as possible after that, make your choice. If you want to wait to get your fender(s) replaced, call your dealer to set an appointment. If you choose instead to take the money, fill out and sign the "Cash Settlement" section of the Application Form, and mail the white copy to us in the enclosed envelope. We will then mail you a check within 60 days. Only one cash settlement per automobile is permitted.

   Remember, you don't have to accept the $150 per fender. If you prefer, you can choose to wait and have your fender(s) replaced. You *cannot* get both new fenders and the money. The $150 will only be offered if the dealer can't replace the fender(s) within six months. If you miss an appointment and do not reschedule it within the six months you become ineligible for the cash settlement. You should also know that a body shop would probably charge you more than $150 to replace your fender. If you lose your Application Form call the dealer who did your inspection.

5. What You Should Do If You Already Paid For Repairs or Replacement – Before You Got This Letter

We will repay you for reasonable repair or replacement bills which you paid in trying to fix the rusted fender(s). *But*, we will repay you only if you had the repairs or replacement *before* you got this letter.

To get repaid, you must:

a. Meet all the conditions in paragraph 2, *except* you are still eligible even if you don't own the car anymore.
b. Carefully read the statement in the "Repayment" section of the Application Form and sign it. Also, fill in the amount you spent for the repairs or replacement.
c. Send the pink copy of the Form to us in the enclosed envelope, along with a copy of your repair or replacement bill. If you don't have your bill, try to get a copy from the repair shop. If you can't get a copy of the bill, send us a copy of your cancelled check or charge receipt, and a statement from the repair shop describing the repair or replacement and the cost, if you can get one. If you can't, send us the name and address of the repair shop and the date of repair, so we can check the information.
d. We will then repay you within 60 days. If you still own the car, we may ask to inspect it before we repay you. This offer cannot be transferred to anyone else.

6. IMPORTANT REMINDERS

Act promptly. After you find that your car has front fender rust, contact a Honda dealer right away. This program will end May 1, 1983. BUT YOU MUST APPLY BEFORE (six months after Order served), OR YOUR CAR IS 3 1/2 YEARS OLD, WHICHEVER DATE IS LATER, TO BE ELIGIBLE.

Although there is no guarantee, the new fender(s) which we will give you should not develop this type of rust for at least three years, whether or not you have them "rustproofed." The fenders have been factory-treated to resist rust. However, the metal may rust eventually. The effectiveness of rustproofing will depend on many factors. Before purchasing rustproofing, you should consider the age and general condition of your car and how much longer you plan to keep it. Also, keep in mind that you will be charged the rustproofer's regular price if you decide to purchase it. In this instance, we would not generally recommend it.

If you have any questions or problems with our program, call or write your local Honda zone office listed on the next page. We deeply regret any inconvenience this rust condition or our program may cause you.

Sincerely,

AMERICAN HONDA MOTOR CO., INC.

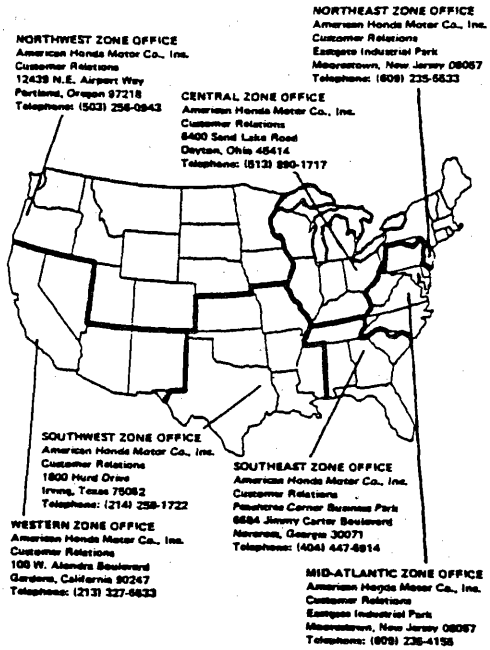
If you are dissatisfied with the service you received at an authorized Honda dealership, you should review the matter with that dealership's Service Manager. This will normally resolve your problem. If it does not, you should appeal the decision with the owner of the dealership.

After following these steps, if you wish to obtain assistance from American Honda you should contact the appropriate Zone Office. The Zone Office to contact is the one covering the area where you are now located. Each Zone's address and area of responsibility is shown on the map.

Please include the following information when you contact the Zone Office:

1. Vehicle Identification Number (VIN)
2. Date of Purchase
3. Servicing Dealer Name and Address
4. Your Name and Address

The Zone Office is staffed to assist Honda owners.



HONDA — Attachment B —

1975–78 FENDER RUST APPLICATION FORM

AMS 2418-3466

You must bring all copies of this form to your dealer when you have the car inspected.

PRE-PRINTED

Write Name/Address Corrections here:

3 years-in-service began PRE-PRINTED ; ended PRE-PRINTED

Complete and sign the applicable sections:

I. REQUEST REPLACEMENT

I request that one ☐ or both ☐ front fenders be replaced. I certify that fender rust or bubbling appeared within my car's first three years-in-service and that I owned or leased the car during that period, and still own or lease it.

(Owner's Signature) (date)

Date car inspected: (date)

Six months from that date is: (date)

Repair appointment: (time) (date)

Dealer Name/Number

(Dealer's Verification Signature) (date)

II. REQUEST CASH SETTLEMENT

My fenders could not be replaced by (6 months date)

Therefore, I request a cash settlement of:

☐ $150 (one rusted fender) or ☐ $300 (two rusted fenders)

(Owner's Signature) (date)

Mail white copy to American Honda.

III. REQUEST REPAYMENT

I paid $ to have my rusted front fender(s) repaired before I received the letter from American Honda. Therefore, I request repayment for that amount. I certify that the rust began on the underside of the fender, and appeared within my car's first three years-in-service and that I owned or leased the car during that period.

(Owner's Signature) (date)

NOTE: To request repayment, you must enclose a copy of the paid repair bill or other proof of repair and mail it with the pink copy of the form to American Honda.

This column for AHM/Dealer Use Only:

CLAIM NO.	DEALER NO.	REPAIR CODE
MODEL V.I.N.		
DEALER R.O. NO.	DEALER R.O. DATE	DATE WORK COMPLETED
AIR CONDITIONER MANUFACTURER		SERIAL NO.

Which fender replaced? LEFT BOTH RIGHT

HONDA/C	QTY.	PARTS DESCRIPTION	DLR. NET

(A) DEALER NET PARTS TOTAL	DOES NOT INCLUDE HANDLING	
(B) PARTS HANDLING		
(C) SUBLET		
SUB TOTAL Lines A & C		
(D) LABOR TOTAL F.R.T.	$	–
(E) CLAIM TOTAL		

SUBLET WORK EXPLANATION SUBLET INVOICE NO.

DEALER CERTIFICATION

DEALER HEREWITH CERTIFIES THAT ALL PARTS AND/OR LABOR DESCRIBED HERE WERE FURNISHED AT NO CHARGE TO THE CUSTOMER PURSUANT TO AMERICAN HONDA MOTOR COMPANY INC. WARRANTY POLICIES. ALL CREDITED ITEMS SUBJECT TO AUDIT AND PARTS RETURN.

SERVICE MANAGER SIGNATURE

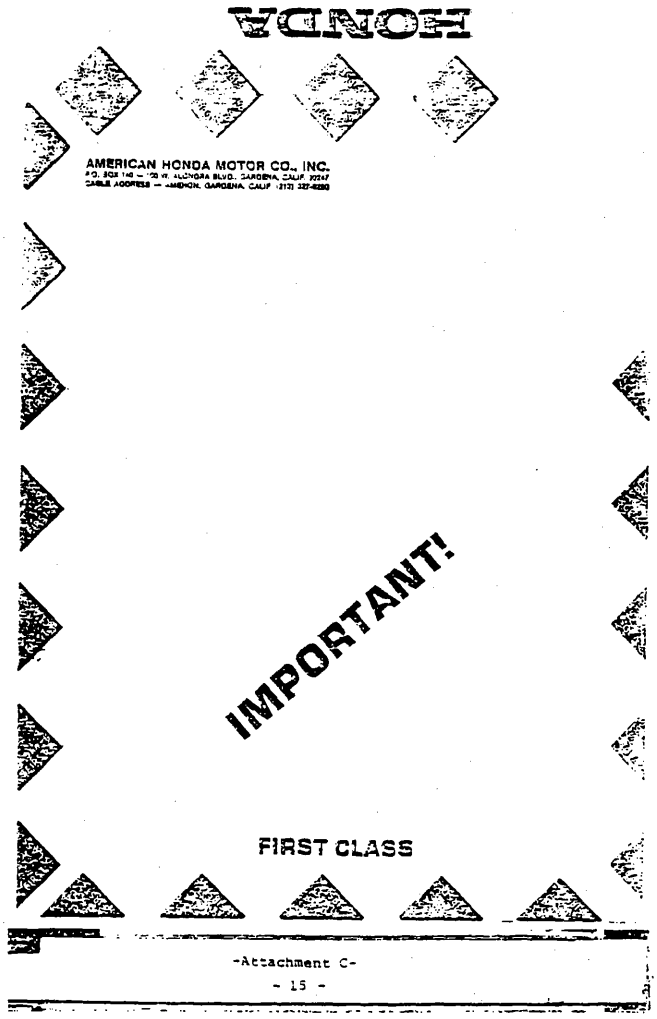
FACTORY COMMENTS

AHM SIGNATURE

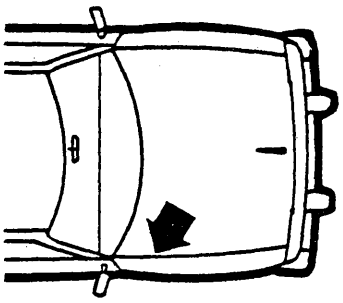
AUTHORIZATION SIGNATURE DATE

CODES A B C D E

COPIES: WHITE OWNER MAILS TO HONDA FOR CASH SETTLEMENT OR DEALER MAILS TO HONDA FOR FENDER CLAIM PINK OWNER SENDS TO HONDA FOR REPAYMENT GREEN DEALER INSPECTION COPY GOLD OWNER COPY YELLOW DEALER COPY

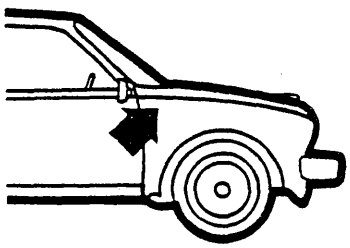

HONDA
AMERICAN HONDA MOTOR CO., INC.
IMPORTANT!
FIRST CLASS
-Attachment C-
- 15 -

ATTACHMENT D



Fender Rust Covered Free

If your 1975—78 Honda car front fender rusted in this area in its first three years of operation,



you may be eligible for a free replacement fender (or a refund for your costs, if you've already had it repaired).

Ask your Honda dealer for more information.

HONDA

IN THE MATTER OF

ABC VENDING CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 7652. Order, Oct. 22, 1964—Modifying Order, Jan. 28, 1982

This order reopens the proceeding and modifies the Commission's order issued on October 22, 1964, 66 F.T.C. 1019, by deleting Paragraph VIII from the order, which limited the amount of time respondents could contract for exclusive concessionary rights at movie theaters.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED OCTOBER 22, 1964

The Federal Trade Commission having considered the September 22, 1981 petition of Ogden Food Service Corporation (successor to ABC Vending Corporation) to reopen this matter and to set aside or, in the alternative, modify the consent order to cease and desist issued by the Commission on October 22, 1964, and having determined that changed conditions of fact warrant reopening and modification of the order,

It is ordered, That this matter be, and it hereby is reopened and that Paragraph VIII of the Commission's order be and it is hereby deleted.

IN THE MATTER OF

D'ARCY-MACMANUS & MASIUS, INC.

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

Docket C-3083. Complaint, Feb. 12, 1982—Decision, Feb. 12, 1982

This consent order requires a St. Louis, Missouri advertiser, among other things, to cease disseminating advertisements for any denture product, toothache drop or gel, which contain representations that contradict or negate the health, safety or efficacy statements appearing on the product's label. Any claims regarding the duration of use of such products trigger a disclosure of any labeling warning. The order further requires that any representation that Snug Denture Cushions can be worn "for weeks" or any other period of time, must be accompanied by a statement that denture cushions should only be used "temporarily, until a dentist can be seen."

Appearances

For the Commission: *Leslie E. Rossen.*

For the respondent: *Stuart L. Friedel, Davis & Gilbert,* New York City.

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 D'Arcy-MacManus & Masius, Inc. ("D'Arcy-MacManus"), a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and that a proceeding with respect to such violations would be in the public interest, hereby issues its complaint, setting forth its charges as follows:

PARAGRAPH 1. D'Arcy-MacManus is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One Memorial Drive, St. Louis, Missouri.

PAR. 2. Respondent D'Arcy-MacManus is now and has been an advertising agency of Mentholatum. It has, in the past, and is now engaged in the preparation for publication, dissemination and distribution of advertising materials, including but not limited to the advertising referred to herein to promote the sale of Snug Denture Cushions.

PAR. 3. In the course and conduct of its business, respondent has

disseminated or caused the dissemination of various advertisements for Snug Denture Cushions across state lines by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in magazines and newspapers and also advertisements broadcast on national television networks. The purpose of all these advertisements has been to induce, directly or indirectly, the purchase of Snug Denture Cushions, and it is likely that these advertisements have succeeded in inducing consumers to purchase this product.

PAR. 4. Typical, but not all inclusive, of the statements and representations in said advertisements are those found in Exhibits A–G attached to this complaint, including such representations as the following:

a. Newspaper and magazine advertisements

(1) ELIMINATES DAILY DENTURE 'FIXINGS' FOREVER-Snug Cushions hold dentures comfortably tight for weeks.

(2) HOLDS DENTURES FIRM WITHOUT DAILY 'FIXINGS'-Snug Cushions hold dentures comfortably tight for weeks.

(3) NEW FREEDOM FROM DAILY DENTURE 'FIXINGS'-Snug Cushions hold dentures comfortably tight for weeks.

b. Television advertisements

(1) Sara: Didn't I tell you about Snug? It's different—you don't need to apply it everyday . . . Snug lasts for weeks. And it'll hold your dentures firm and comfortable. . . . At a point later in time Sara: Didn't you switch to Snug? Helen: Sure . . .

(2) Thousands of denture wearers have long suffered with loose, wobbly, uncomfortable plates. Now many use Snug Brand Denture Cushions. . . .

PAR. 5. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondent has made or is making the following representations:

(a) that Snug Denture Cushions are appropriate for long term use;

(b) that Snug Denture Cushions are for use other than temporary use only until a dentist can be seen.

PAR. 6. In fact, the labeling on Snug Cushions states:

(a) On the package:

Caution: Long term use of an ill-fitting denture, reliner, pad or cushion may lead to swelling, faster bone resorption, or continuing irritation. Use Snug temporarily until you can see your dentist.

(b) On the package insert:

(1) Snug Denture Cushions are for *temporary* use only. . . .

(2) Dentures that do not fit properly cause irritation and injury to the gums and faster bone loss which is permanent and may require a completely new denture. Changes in the gums caused by dentures that do not fit properly may require surgery for correction. Continuing irritation and injury may lead to tumors in the mouth. Use of denture reliners, pads, and cushions may temporarily decrease the discomfort. However, their use will not make the denture fit properly. Special training and tools are needed to fit properly. You must see your dentist for a new denture or a repair as soon as possible.

PAR. 7. The representations referred to in Paragraph Five are inconsistent with, negate, and contradict the labeling on respondent's product as set forth in Paragraph Six hereof. Such inconsistency, negation, and contradiction has the tendency and capacity to mislead and deceive purchasers of said product as to its proper duration of use, and to negate the import and purposes of and to detract from the effectiveness of the warnings, cautions, limitations and instructions for use found in the labeling.

Therefore, the advertisements, acts and practices, referred to in Paragraph Five above were and are unfair and deceptive.

PAR. 8. Furthermore, in their advertising for Snug Denture Cushions, respondent has been and now is making claims as to the duration of use of said product without clearly and conspicuously disclosing to the purchasing public that the labeling for Snug Denture Cushions states that said product should be used only on a temporary basis until a dentist can be seen.

PAR. 9. The existence and substance of the above-mentioned labeling warning is a material fact in light of the representations set forth in Paragraphs Four and Five regarding duration of use, in that disclosure of the warning to consumers would be likely to affect their decisions of whether or not to purchase said product and of how properly to use it. Respondent's failure to disclose this material fact has the tendency and capacity to mislead and deceive consumers into the mistaken belief that no such warning exists.

Therefore, the advertisements, acts and practices referred to in Paragraphs Four and Five above were and are false, deceptive, and unfair.

PAR. 10. In the course and conduct of aforesaid business, and at all times mentioned herein, respondent D'Arcy-MacManus has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 11. The aforesaid unfair and deceptive acts and practices of respondent have had and now have, the capacity to induce members of the purchasing public to purchase substantial quantities of said product.

PAR 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudices and injury of the public and of respondent's competitors and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.


SNUG DENTURE CUSHIONS
SNUG
BRAND
DENTURE CUSHIONS
Ever-soft Plastic Cushions
For Upper or Lower Plates
Contents 2 Cushions
THE MENTHOLATUM CO., BUFFALO, N.Y. 14213
SNUG DENTURE CUSHIONS

Page 1

Masius, Wynne-Williams, Street & Finney, Inc. EDITORIAL DEPARTMENT

IDENTIFICATION NO.

ADVERTISER The Mentholatum Company

FOR SNUG DENTURE CUSHIONS
"POWDERS & STICKUMS" (A)
(#SN-11-30C)

DATE August 22, 1969

JOB NO. 1COTV33
As filmed: 8/19/69
As recorded: 8/22/69

	VIDEO		AUDIO
1.	OPEN ON CAN OF ADHESIVE POWDER, POURING POWDER ONTO LIMBO SURFACE.	1. ANNCR: (VO)	Some people with lo wobbly dentures—
2.	PULL BACK - ACTION CONTINUES.	2. ANNCR: (VO)	use adhesive powde every morning and
3.	HAND SETS CAN ON SURFACE BEHIND SPRINKLE OF POWDER.	3. ANNCR: (VO)	every night.
4.	BESIDE PILE OF POWDER, RIBBON OF ADHESIVE CREAM IS SQUEEZED OUT ONTO LIMBO SURFACE.	4. ANNCR: (VO)	Others use cream
5.	TUBE OF CREAM IS SET DOWN BEHIND RIBBON. NOW BOTH PRODUCTS AND THEIR CONTENTS ARE SEEN SIDE BY SIDE.	5. ANNCR: (VO)	day after day.
6.	THE CAN AND PILE OF POWDER POPS OFF.	6. ANNCR: (VO)	But some never bot
7.	THE TUBE AND RIBBON OF CREAM POP OFF.	7. ANNCR: (VO)	with daily fixing--
8.	CU PKG OF SNUG.	8. ANNCR: (VO)	they line their de with Snug Brand De Cushions.
9.	PULL BACK AS HAND REMOVES CUSHION WITH BOTH LINERS ON FROM BOX. SUPER: "LASTS FOR WEEKS".	9. ANNCR: (VO)	One lining lasts f weeks.
10.	WITH ONE LINER ON BACK, SHOWING SNUG CUSHION ON TOP, HAND BEGINS TO CUT SHAPE OF DENTURE.	10. ANNCR: (VO)	Apply Snug at home minutes.

IDENTIFICATION NO.

DATE August 22, 1969

ADVERTISER The Mentholatum Company

JOB NO. 100TV33
As filmed: 8/19/69
As recorded: 8/22/69

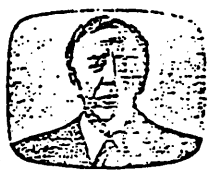
FOR SNUG DENTURE CUSHIONS

"POWDERS & STICKUMS" (A)
(#SN-11-30C)
Page 2.

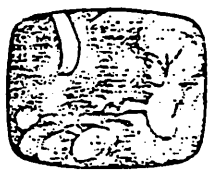
	VIDEO	AUDIO	
11.	NOW "U" SHAPE OF DENTURE IS HELD IN HAND, WHILE BACKING LINEN IS REMOVED. SUPER: "HOLDS DENTURES TIGHT".	11. ANNCR: (VO)	It holds dentures tight
12.	HAND FLEXES CUSHION.	12. ANNCR: (VO)	and cushions the gum lasts for weeks
13.	CUT BACK TO SET UP OF POWDER AND CREAM WITH CONTAINERS.	13. ANNCR: (VO)	without daily fixing
14.	POWDER IS POPPED OFF.	14. ANNCR: (VO)	Try the no-mess
15.	CREAM IS POPPED OFF.	15. ANNCR: (VO)	no-bother way ...
16.	CU SNUG PACKAGE. SUPER: "HOLD DENTURES TIGHT". THEN POP ON: "2 CUSHIONS $1.50".	16. ANNCR: (VO)	get Snug to hold dentures tight.

SNUG DENTURE CUSHIONS

TELEVISION COMMERCIAL, 1976-77
"SPOKESMAN"

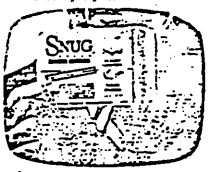


1. SPOKESMAN: (DV) What do you use to hold loose wobbly dentures comfortably tight?

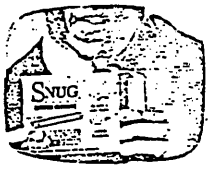


2. Powder?

3. Cream?

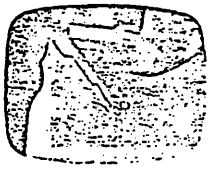


4. Or long-lasting Snug Brand Denture Cushions.



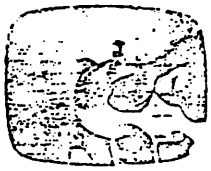
5. Snug is a cushion –

6. not only holds plates tight, but makes them feel so comfortable.



7. (VO) Easy to fit.

8. Snug sticks to your plates... lasts for weeks...



9. so no daily fixing..no mess... no after taste.

10. Easily cleaned or removed.

11. (DV) To hold dentures comfortably tight for weeks ...

12. (VO) get Snug Denture Cushions!

MASIUS, WYNNE-WILLIAMS INC.

CLIENT THE MENTHOLATUM COMPANY

TITLE "SPOKESMAN" (C) (#MVSN2123)
:30 TV COMM'L.

DATE SEPT. 15, 1972

70 w

SNUG DENTURE CUSHIONS
As Produced: 8/30/72
As Filmed: 8/17/72

OPEN ON CU SPOKESMAN	SPOKESMAN (OC): What do you use to hold loose, wobbly dentures comfortably tight?
CUT TO CU AS HE SHAKES POWDER ON HIS PALM	Powder?
CU AS HE SQUEEZES CREAM ON PALM	Cream? Or long-lasting
CUT TO CU SNUG PKG AS HE PICKS IT UP	Snug Brand Denture Cushions.
HOLD CU AS HANDS SLIP OUT SNUG	Snug is a cushion --
PULL BACK TO MCU MAN	not only holds plates tight...but makes them feel so comfortable.
CUT TO CU MAN'S HANDS CUTTING SNUG INTO SHAPE WITH SCISSORS	Easy to fit...
DISS TO HIS HANDS FITTING U-SHAPED SNUG ONTO CLEAR LUCITE U-SHAPE	Snug sticks to your pla lasts for weeks...so no daily fixing...no mess. no after-taste.
PAN AS HIS HANDS SCRUB SNUG ON LUCITE U-SHAPE, WITH TOOTHBRUSH UNDER RUNNING FAUCET	Easily cleaned or remov
CUT TO CU MAN	To hold dentures comfortably tight for week
CUT TO CU SNUG PKG	get Snug Denture Cushio

SNUG DENTURE CUSHIONS

TELEVISION COMMERCIAL, "SPOKESWOMAN"

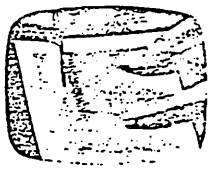
1. SPOKESWOMAN: (DV) Thousands of denture wearers have long suffered

2. with loose, wobbly, uncomfortable plates.

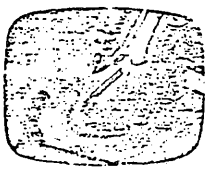
3. Now many use Snug Brand Denture Cushions and

4. are so grateful for the way Snug holds dentures tight...

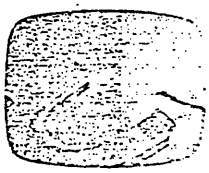
5. and being a cushion, Snug makes dentures feel so comfortable.



6. (VO) Easy to fit ...

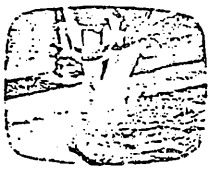


7. Snug sticks to your plates... lasts for weeks ...



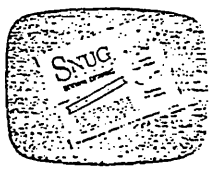
8. so no daily fixing ... no mess ... no after-taste.

9. (SFX) Easily cleaned



10. or removed.

11: (DV) To hold dentures comfortably tight for weeks...



12. (VO) get Snug Denture Cushions.

MASIUS, WYNNE-WILLIAMS INC. · Page 2

CLIENT THE MENTHOLATUM COMPANY

TITLE "SPOKESWOMAN" (C) (#MVSN2133)
:30 TV COMM'L

DATE SEPT 15, 1972

75 w

SNUG DENTURE CUSHIONS
As Produced: 8/30/72
As Filmed: 8/17/72

OPEN ON CU SPOKESWOMAN	SPOKESWOMAN (OC): Thousands of denture wearers have long suffered with loose, wobbly, uncomfortable plates.
SHE PICKS UP SNUG PKG	Now many use...
CUT TO CU PKG IN HER HAND	Snug Brand Denture Cushion and are so grateful
CUT TO CU WOMAN	for the way Snug holds dentures tight...and being a cushion, Snug makes dentures feel so comfortab
CUT TO CU WOMAN'S HANDS CUTTING SNUG INTO SHAPE WITH SCISSORS	Easy to fit...
CUT TO HER HANDS FITTING U-SHAPED SNUG ONTO CLEAR LUCITE U-SHAPE	Snug sticks to your plates lasts for weeks... so no daily fixing...no mess... no after-taste.
PAN AS HER HANDS SCRUB SNUG ON LUCITE U-SHAPE, WITH TOOTHBRUSH UNDER RUNNING FAUCET	Easily cleaned or removed.
CUT TO CU WOMAN	To hold dentures comfortabl tight for weeks...
CUT TO CU SNUG PKG	get Snug Denture Cushions.

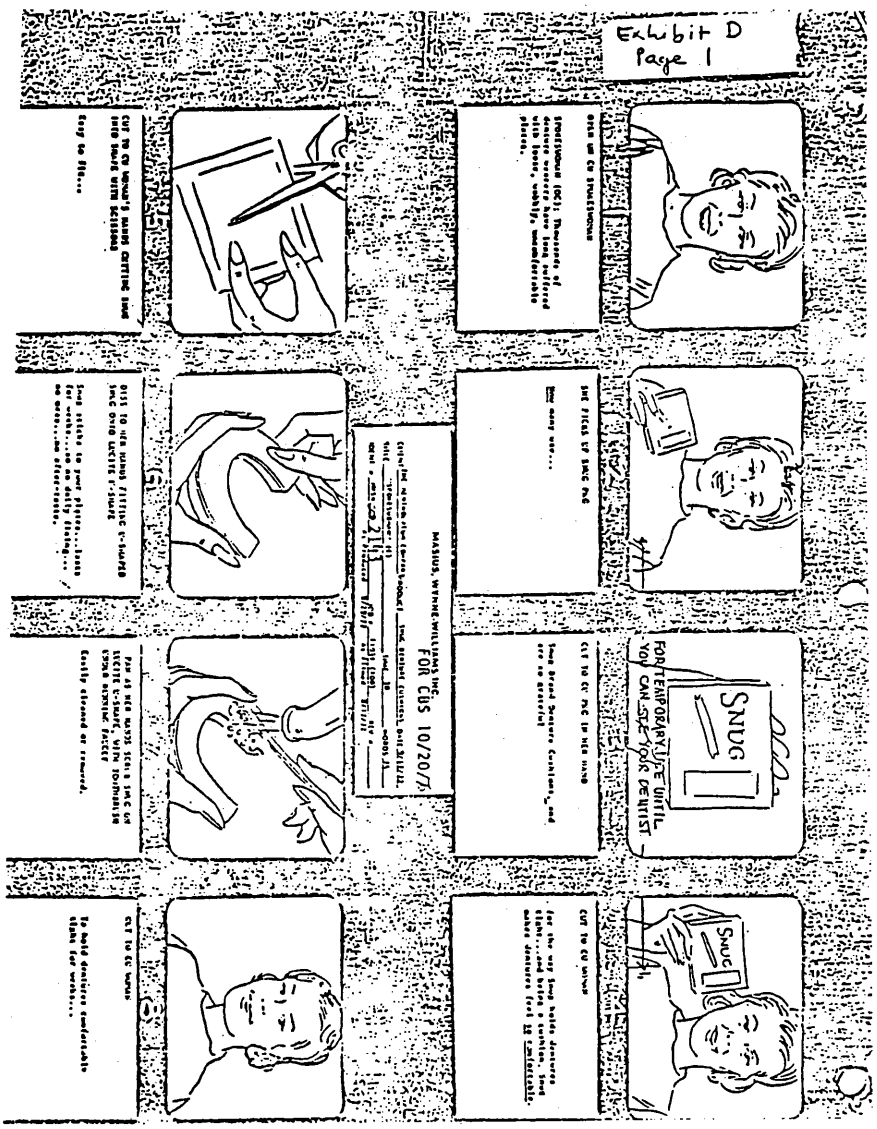


Exhibit D
Page 1
SNUG
FOR TEMPORARY LIFE UNTIL YOU CAN SEE YOUR DENTIST
MASIUS, WYNNE-WILLIAMS INC.
FOR CUS 10/20/71

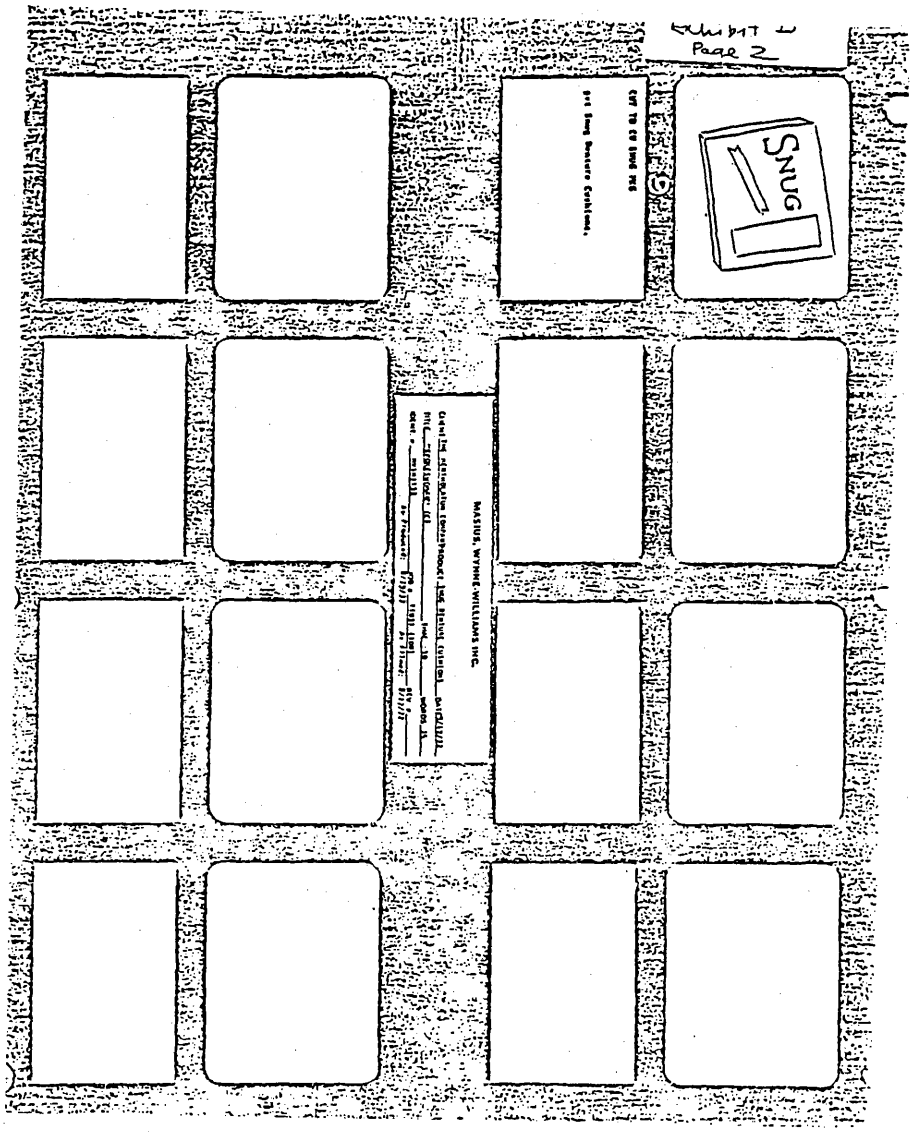
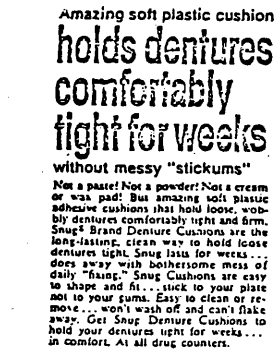
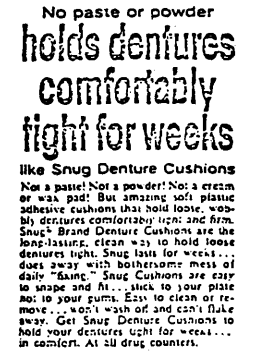


Exhibit D
Page 2
SNUG



The Mentholatum Co.—U.S. (Snug) Ad No. SN 75-702
1/20 Page (1¾ x 3")
Sunday Supplements—1975
Job No. 74-108
Printed in U.S.A.
D'ARCY, MacMANUS & MASIUS, Inc., New York



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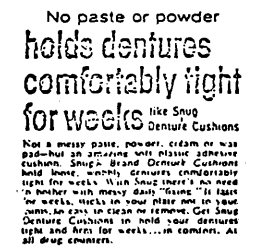
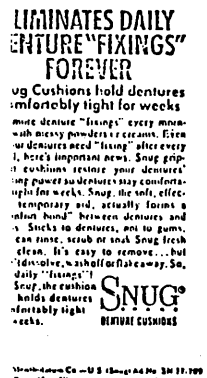
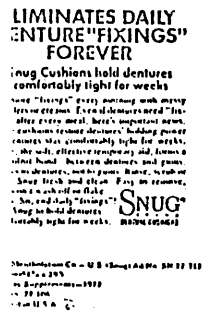
1/20 Page (1¾ x 3")
Sunday Supplements—1975
Job No. 74-109
Printed in U.S.A.
D'ARCY, MacMANUS & MASIUS, Inc., New York

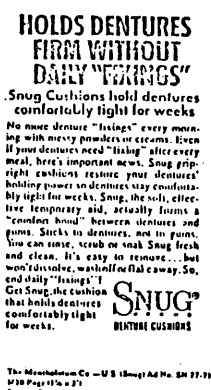
The Mentholatum Co.—U.S. (Snug) Ad No. SN 75-703
29 lines (1¾ x 29")
Sunday Supplements—1975
Job No. 74-108A
Printed in U.S.A.
D'ARCY, MacMANUS & MASIUS Inc., New York



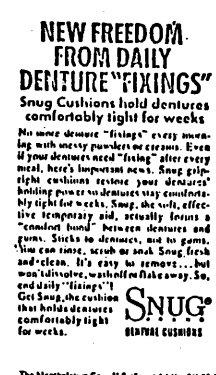
The Mentholatum Co.—U.S. (Snug) Ad No. SN 75-705
29 lines (1¾ x 29")
Sunday Supplements—1975
Job No. 74-108A
Printed in U.S.A.
D'ARCY, MacMANUS & MASIUS, Inc., New York

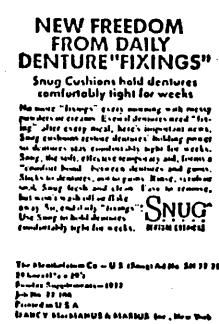

LIMINATES DAILY
ENTURE"FIXINGS"
FOREVER
ug Cushions hold dentures
mfortably tight for weeks
SNUG
DENTURE CUSHIONS


LIMINATES DAILY
ENTURE"FIXINGS"
FOREVER
nug Cushions hold dentures
comfortably tight for weeks
SNUG


HOLDS DENTURES
FIRM WITHOUT
DAILY "FIXINGS"
Snug Cushions hold dentures
comfortably tight for weeks
SNUG
DENTURE CUSHIONS


HOLDS DENTURES
FIRM WITHOUT
DAILY "FIXINGS"
Snug Cushions hold dentures
comfortably tight for weeks
SNUG


NEW FREEDOM
FROM DAILY
DENTURE "FIXINGS"
Snug Cushions hold dentures
comfortably tight for weeks
SNUG
DENTURE CUSHIONS


NEW FREEDOM
FROM DAILY
DENTURE "FIXINGS"
Snug Cushions hold dentures
comfortably tight for weeks
SNUG

Page 1

D'Arcy-MacManus & Masius

437 MADISON AVENUE
NEW YORK, NEW YORK 10022

Television Continuity

The Mentholatum Co.
ACCOUNT
Snug Denture Cushion
PRODUCT
"Movie"
TITLE
:30
LENGTH
MVSN 2153
SCRIPT NUMBER

As filmed 11/28/77

VIDEO		AUDIO
OPEN ON TWO WOMEN EXITING MOVIE HOUSE ONTO STREET	HELEN:	They don't make movies lik they used to.
WOMEN WALK DOWN STREET	SARA:	Let's have some of my pec pie, that never changes.
CUT TO HELEN'S FACE, LOOKING EMBARRASSED.	HELEN:	Uh-Uh... It's been a while s I fixed my dentures... they' loose again.
2-SHOT AS SARA TALKS TO HELEN.	SARA:	Didn't I tell you about Snug?
ECU OF SNUG PACKAGE. WOMAN'S HAND PULLS CUSHION OUT. SUPER: 'FOR TEMPORARY USE UNTIL YOU SEE YOUR DENTIST."	SARA:	It's different -- you don't n to apply it every day.
CUT TO HAND HOLDING DENTURE SHAPED LUCITE AS OTHER HAND PRESSES SHAPED CUSHION ONTO LUCITE.	SARA:	It's a cushion you just shape
PALM DOWN HAND PRESSES AGAINST TOP OF LUCITE WHICH CLINGS TO HAND WITHOUT ANY OTHER SUPPORT.	SARA:	Snug lasts for weeks. And i hold your dentures firm and comfortable.
DISSOLVE TO SIMILAR SCENE AT A POINT LATER IN TIME.	SARA:	Pecan pie?
	HELEN:	Uh -- Uh --
	SARA:	Didn't you switch to Snug?

Page 2

D'Arcy-MacManus & Masius

437 MADISON AVENUE
NEW YORK, NEW YORK 10022

Television Continuity

The Mentholatum Co.
ACCOUNT

Snug Denture Cushio
PRODUCT

"Movie"
TITLE

:30
LENGTH

MVSN 2153
SCRIPT NUMBER

VIDEO	AUDIO
SCENE CONTINUES	HELEN: Sure --
	SARA: Well?
	HELEN: I'm on a diet.
ECU SNUG PACKAGE	
SUPER: SNUG LASTS WEEKS HOLDS DENTURES FIRM	

D'Arcy-MacManus & Masius
Advertising

CLIENT: MENTHOLATUM
PRODUCT: SNUG
TITLE & FILM NO: "MOVIE" - MVSN2153
FIRST USE: 3/7/78

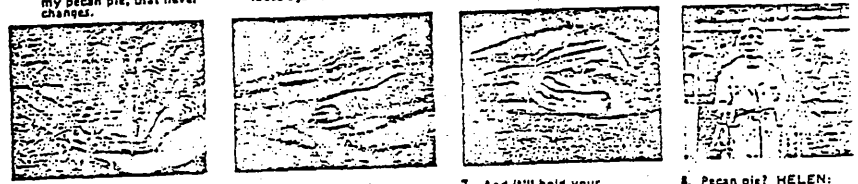
LENGTH: 30 SECOND

1. HELEN: They don't make movies like they used to. SARA: Let's have some of my pecan pie, that never changes.

2. HELEN: Uh-Uh...it's been a while since I fixed my dentures...they're loose again.

3. SARA: Didn't I tell you about Snug? It's different –

4. you don't need to apply Snug every day.



5. It's a cushion you just shape.

6. Snug lasts for weeks.

7. And it'll hold your dentures firm and comfortable.

8. Pecan pie? HELEN: Uh – Uh –

9. SARA: Didn't you switch to Snug?

10. HELEN: Sure – SARA: Well?

11. HELEN: I'm on a diet. SARA: Oh.

12. (SILENT)

DECISION AND ORDER

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

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

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

1. Respondent D'Arcy-Macmanus is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One Memorial Drive, St. Louis, Missouri.

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

ORDER

I.

It is ordered, That respondent, D'Arcy-MacManus & Masius, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (hereinafter "respondent"), in connection with the advertising, offering for sale, sale or distribution

of any denture product or toothache drops or gel, forthwith cease and desist from disseminating or causing the dissemination of any advertisement by any means in or affecting commerce which makes any representation directly or indirectly that is inconsistent with, negates or contradicts any statement concerning matters of health, safety or efficacy set forth on the labeling of any such product or which in any way limits or qualifies any such statement appearing on the labeling of any such product.

II.

It is further ordered, That respondent, in connection with the advertising, offering for sale, sale or distribution of any denture product or toothache drops or gel (except denture cushions as provided for in Paragraph 3) shall, in disseminating or causing the dissemination by any means in or affecting commerce of an advertisement which makes any representation directly or indirectly (other than those prohibited in I above) regarding duration of use of any such product, disclose clearly and conspicuously any labeling warning regarding duration of use of such a product.

It is agreed, for the purpose of this Order, that in the event a label or packaging warning regarding duration of use is no longer utilized for any such product, advertisements for said product need not bear a disclosure regarding duration of use.

III.

It is further ordered, That respondent, in connection with the advertising, offering for sale, sale or distribution of the product Snug Denture Cushions or any other denture cushion, when making any representation regarding the duration of use of said product (other than those prohibited in I, above), shall disclose clearly and conspicuously that said product is only appropriate for short-term use until a denture wearer is able to see a dentist for the adjustment of his or her loose or ill-fitting dentures. For the purposes of this Order, it is agreed that respondent may use the term "for weeks" in the advertising of denture cushion products so long as the terms "temporary" and "only until a dentist can be seen" are included, and the advertisement does not imply the product should be used on a long term basis.

For the purposes of this order, in the event that the Snug Denture Cushion product is no longer regarded by the Federal Food and Drug Administration as suitable only for short-term, nonregular use, the

respondent may seek from the Commission amendment of this portion of this Order.

IV.

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

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

It is further ordered, That respondent shall, within sixty (60) days after this Order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

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

Docket 9072. Final Order, Feb. 18, 1981—Modifying Order, Feb. 17, 1982

This order reopens the proceedings and modifies the Commission's order issued on February 18, 1981, 97 F.T.C. 139; 45 FR 70883. The modification sets a single effective date for implementing both sets of retail installment contract revisions.

ORDER REOPENING AND MODIFYING CONSENT ORDER

On February 18, 1981 the Commission issued a Decision and Order against respondents Chrysler Corporation and Chrysler Credit Corporation[1] in connection with the extension and enforcement of motor vehicle retail credit obligations and the disposition of repossessed motor vehicles. There is now before the Commission a request by Chrysler Credit Corporation (filed December 4, 1981) for reopening and modification of that Order pursuant to Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51.

The Order (Paragraph VI.C) required Chrysler Credit to cease, by February 18, 1982, all use of retail installment contract forms which erroneously state debtors' liability for a deficiency upon repossession. Another provision required such Chrysler Credit contracts to include recitals of debtors' rights to any repossession surplus. Under Paragraph VI.B, contract forms reflecting the latter revision were to be distributed for dealer use within a year after Commission issuance of a final rule or adjudicated order relative to such rights.

Desirous of making the necessary changes at once rather than in successive steps, Chrysler Credit's request asks that April 1, 1982 be fixed as the date for effectuation of both sets of retail installment contract revisions required of it by our February 18, 1981 Order.[2] With respect to deficiency recitals this would involve a delay of approximately six weeks; with respect to the recitals of surplus rights it would advance the required implementation date by an indeterminable number of months.[3]

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[1] A separate consent order issued simultaneously as to a corespondent, Aurora Chrysler-Plymouth, Inc., is not involved in the modification request addressed herein.

[2] Because the timing of the actions specified in Paragraphs VI.A and D depends on Paragraphs VI.B and C, no modification of Paragraphs A and D is necessary to accomplish Chrysler Credit's desired result. Chrysler Credit has abandoned its request for change of Paragraphs VI.A and D.

[3] Our only adjudicated order concerning repossession surpluses is not yet final. *Francis Ford, Inc. v. FTC*, 654 F.2d 599 (9th Cir. 1980), petition for rehearing pending.

The Commission is of the opinion that the minor six week delay in implementation as to deficiency recitals is more than offset by the benefits of establishing a date certain for Chrysler Credit's effectuation as to surplus rights. The public interest will be served by modifying the Order as requested. *Therefore,*

It is ordered, That Docket 9072 be, and hereby is, reopened for the limited purpose of effecting the following changes in the Order as to Chrysler Credit Corporation.

It is further ordered, That Paragraph VI.B be modified to read as follows:

B. Shall distribute on or before April 1, 1982 the revised retail installment contract forms to all Dealers who use Chrysler Credit installment contract forms.

It is further ordered, That Paragraph VI.C be modified to read as follows:

C. Shall, no later than April 1, 1982, cease and desist the use of any Chrysler Credit retail installment contract form which represents that the debtor may be liable to pay a deficiency where Chrysler Credit knows or should know that it is not entitled under state or federal law to collect a deficiency.

IN THE MATTER OF

CHRYSLER CORPORATION

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

Docket C-3084. Complaint, Feb. 17, 1982—Decision, Feb. 17, 1982

This consent order requires a Highland Park, Mich. motor vehicle manufacturer and distributor, among other things, to cease misrepresenting or failing to disclose the limited applicability of material standards for its oil filters and other products; and failing to have competent and reliable substantiation for claims concerning such standards. The firm is required to notify aftermarket manufacturers, dealers and owners of certain vehicles of the inaccuracy of its oil filter material standard, and provide them with ways to avoid or remedy any resulting problems. Further, all future owner and service manuals must contain accurate oil filter use information. The order additionally requires the company to maintain a reasonably-priced subscription service to provide subscribers with up-to-date material standards; and advertise the existence of this service in *Automotive News*.

Appearances

For the Commission: *Jeffrey M. Karp* and *Arturo Gonzalez-Alfonso.*

For the respondent: *Robert T. Talbot-Stern, Dennis Goschka* and *Judith B. Shumaker,* in-house counsel, Highland Park, Mich.

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

PARAGRAPH 1. Respondent, Chrysler Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State.of Delaware, with its principal office and place of business located at 12000 Lynn Towsend Drive, Highland Park, Michigan.

PAR. 2. Respondent is now, and has been, engaged in the offering for sale, sale, and distribution of vehicles and vehicle parts to the public at retail.

PAR. 3. In the course and conduct of its aforesaid business,

respondent causes vehicles and vehicle parts to be shipped to purchasers in various states, and therefore maintains and, at all times mentioned in this complaint, has maintained a substantial course of business, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. For purposes of this complaint, the following definitions shall apply:

a. *Vehicle* shall mean any automobile, pick-up truck, van, or recreational vehicle;

b. *MMC vehicle* shall mean any vehicle manufactured or assembled by or for Mitsubishi Motor Corporation of Japan, or any subsidiary thereof, and sold by Chrysler Corportion in the United States, but shall not mean any vehicle model presently being manufactured by Chrysler Corporation in the United States or Canada or any successor to such model.

c. *Owner* shall mean any individual, partnership, corporation, or other entity in whose name a vehicle is currently or has been previously registered or titled with the appropriate state authority, including, but not limited to, vehicles held for resale;

d. *Material standard* shall mean any document, excluding drawings, which specifies, in whole or in part, performance or material requirements to be used in the design of a particular part for a vehicle.

PAR. 5. In the course and conduct of its said business, respondent knew or should have known that its various material standards for replacement vehicle parts may have been and may now be utilized by manufacturers of replacement vehicle parts in the design of such parts which are ultimately used or purchased by consumers for their vehicles.

PAR. 6. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of its material standard for oil filters, MS–2999, across the state lines through the United States mail and by other various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. Through MS–2999, referred to in Paragraph Six, respondent represented and now represents, directly or by implication, that:

a. MS–2999 specifies performance and materials requirements for oil filters made for use on each and every vehicle sold by respondent;

b. if an oil filter meets the performance and materials require-

ments specified in MS–2999, that oil filter will not substantially impair the reliability, durability, or performance of any vehicle sold by respondent on which the oil filter was made to be used;

c. if an oil filter meets the 200 p.s.i. hydrostatic burst strength requirement specified in Paragraph D–2 of MS–2999, that oil filter will not substantially impair the reliability, durability, or performance of any vehicle sold by respondent on which the oil filter was made to be used.

PAR. 8. In truth and in fact, contrary to respondent's representations alleged in Paragraph Seven:

a. MS–2999 does not specify performance and materials requirements for oil filters made for use on each and every vehicle sold by respondent;

b. if an oil filter meets the performance and materials requirements specified in MS–2999, that oil filter may nevertheless substantially impair the reliability, durability, or performance of certain vehicles sold by respondent on which the oil filter was made to be used;

c. if an oil filter meets the 200 p.s.i. hydrostatic burst strength requirement specified in Paragraph D–2 of MS–2999, that oil filter may substantially impair the reliability, durability, and performance of certain vehicles sold by respondent on which the oil filter was made to be used.

Therefore, each representation as alleged in Paragraph Seven is deceptive or unfair.

PAR. 9. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of owner's manuals and service manuals for 1971-1980 model year MMC vehicles across State lines through the United States mail and by other various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 10. By instructing owners of MMC vehicles to "use a high quality filter only" in its MMC owner's manuals and service manuals referred to in Paragraph Nine, respondent represented and now represents, directly or by implication, that any reputable brand of oil filter when used in certain MMC vehicles will not substantially impair the reliability, durability, or performance of such MMC vehicles.

PAR. 11. In truth and in fact, contrary to respondent's representation alleged in Paragraph Ten, certain reputable brands of oil filters when used in certain MMC vehicles may substantially impair the reliability, durability, or performance of such MMC vehicles.

Therefore, the representation as alleged in Paragraph Ten is deceptive or unfair.

PAR. 12. The use on certain MMC vehicles of an oil filter which is not of adequate hydrostatic burst strength may substantially impair the reliability, durability, or performance of such vehicles.

PAR. 13. Respondent knew or should have known of brands and part numbers of replacement oil filters which would not substantially impair the reliability, durability, or performance of certain MMC vehicles, and also knew or should have known of other replacement oil filters on the market which could substantially impair the reliability, durability, or performance of such vehicles.

PAR. 14. Product use and care information which recommends names and part numbers of specific oil filters which are of adequate hydrostatic burst strength to be used on MMC vehicles and which warns that failure to use such filters on MMC vehicles could substantially impair the reliability, durability, or performance of such vehicles, if known to owners, would allow them to avoid substantial economic loss and avoid substantial damage to the engines of their MMC vehicles. Therefore, such information is material product information.

PAR. 15. Respondent has at no time disclosed to owners of 1971-1980 model year MMC vehicles, through its owner's manuals or service manuals for MMC vehicles or otherwise, either brands and part numbers or replacement oil filters which would not substantially impair the reliability, durability, or performance of MMC vehicles or the fact that failure to use such filters on MMC vehicles could substantially impair the reliability, durability, or performance of such vehicles. Therefore, Chrysler's failure to disclose this material product information is deceptive or unfair.

PAR. 16. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 17. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Decision and Order

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft 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 has reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Chrysler 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 12000 Lynn Townsend Drive, in the City of Highland Park, State of Michigan.

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

Order

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

1. *Vehicle* shall mean any automobile, pickup truck, van, or recreational vehicle.

2. *MMC vehicle* shall mean any vehicle manufactured or assembled by or for Mitsubishi Motor Corporation of Japan, or any

subsidiary thereof, and sold by Chrysler Corporation in the United States, but shall not mean any vehicle model presently being manufactured by Chrysler in the United States or Canada or any successor to such model.

3. *Material Standard* shall mean any document, excluding drawings, which specifies, in whole or in part, performance or material requirements to be used in the design of a particular part for a vehicle.

4. *Dealer* shall mean any individual or other entity in the United States with which Chrysler Corporation has a Direct Dealer Agreement or an agreement of another name which is substantially similar to a Direct Dealer Agreement in nature.

5. *Owner* shall mean any individual or other entity in whose name a vehicle is currently or has been previously registered or titled with the appropriate state authority, including, but not limited to, vehicles held for resale.

6. *Current owner* shall mean any owner in whose name a vehicle is currently registered or titled with the appropriate state authority according to information provided respondent by a commercial locator service engaged by respondent pursuant to the provisions of Part IX of this order.

7. *Original owner* shall mean any individual or other entity to whom respondent's records show the original sale of the vehicle from a Chrysler Corporation dealer.

8. *Purchaser* shall mean any individual or other entity to whom a vehicle is sold on or after the first date any particular notice is disseminated by respondent pursuant to the provisions of this order to any current or original owner.

Part I

It is ordered, That respondent Chrysler Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing, directly or by implication, in any Chrysler material standard for oil filters, that an oil filter which meets a hydrostatic burst strength requirement of 200 pounds per square inch will or may be capable of withstanding any oil pressure generated in the lubricating system of any MMC or Omni/Horizon

vehicle under any operating condition, assuming no malfunction of the lubricating system unless, at the time of making such representation, respondent possesses and relies upon competent and reliable engineering evidence which substantiates the truthfulness of such representation.

Part II

It is further ordered, That respondent Chrysler Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. representing, directly or by implication, that any of respondent's material standards apply to every vehicle sold by respondent unless, at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable engineering evidence, which substantiates such representation.

B. failing to disclose clearly and conspicuously in any of respondent's material standards, in those cases where such standard does not apply in all respects to every vehicle sold by respondent, that such standard is limited in its applicability.

C. representing, directly or by implication in any of respondent's material standards, any performance or material requirement for any replacement part to which such standard applies unless, at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable engineering evidence, which substantiates such representation.

D. failing to disclose clearly and conspicuously in writing to each person to whom respondent provides any material standard(s), at the same time such standard is provided to such person, that (i) material standards are subject to constant revision, and (ii) respondent's Engineering Standards and Product Information Office, or the then current equivalent office by name, is in possession of the most current versions of all material standards, and (iii) respondent offers, at reasonable cost, a subscription service to its material standards through its Engineering Standards and Product Information Office, or the then equivalent office by name, which will automatically provide any subscriber with the most current version of any material

standard subscribed to, and (iv) non-subscribers should make sure they have the most current version of any particular material standard.

Part III

It is further ordered, That respondent Chrysler Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any vehicle or vehicle part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. 1. offer at reasonable cost a subscription service to its material standards to any individual or other entity that pays the required annual subscription fee.

2. allow subscription at reasonable cost to any particular subject category, or other grouping of related material standards, or to all of its material standards depending on the subscriber's choice.

3. supply promptly to each subscriber the most current version of any particular material standard to which that subscriber has subscribed at the time such version first becomes available.

B. no later than thirty (30) days after this order is served upon respondent, purchase to be placed in six (6) consecutive issues of *Automotive News* which contain the service management section of that publication, beginning as soon as space becomes available, a black and white display advertisement, no smaller than three (3) columns by six (6) inches in size which effectively communicates the following information: (i) respondent's material standards for parts are available to any individual or company at reasonable cost through a subscription service; and (ii) the subscription service allows the subscriber to choose whether to receive part or all of respondent's material standards; and (iii) the subscription service will automatically provide most current versions of all material standards subscribed to; and (iv) more information about the subscription service may be obtained by contacting respondent's Engineering Standards and Product Information Office, or the then equivalent office by name.

Part IV

It is further ordered, That respondent Chrysler 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 the manufacture, advertising, offering for sale, sale or distribution of any MMC vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from representing, directly or by implication, in any post-purchase written communication to any owner or purchaser of any MMC vehicle, including, but not limited to, any communication in owner's manuals or service manuals, that any replacement part recommended for use in such vehicles will not or may not substantially impair the reliability, durability, or performance of such vehicle unless, at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable engineering evidence, which substantiates such representation.

Part V

It is further ordered, That respondent Chrysler Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any MMC vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall:

A. once it ascertains, or should have ascertained, had it used due care, that use and care information supplied in writing to owners of any MMC vehicle or part thereof, if followed, could substantially impair the reliability, durability or performance of such vehicle, provide within sixty (60) days revised or additional information to:

a) each current owner, where the information pertains to any model year prior to the then current model year MMC vehicle; and

b) each original owner, where the information pertains to the then current model year MMC vehicle; and

c) each purchaser, where the information pertains to unsold MMC vehicles.

This revised or additional information shall clearly explain, in a conspicuous and easily readable format, the cause and nature of the problem and clearly state what steps, if known, can be taken to avoid it. This information shall be provided by letter or postcard where

current and/or original owners are to be notified. This information shall be provided at the time of sale by an insertion placed into the owner's manual which accompanies any affected unsold vehicle, where purchasers are to be notified.

B. accurately maintain the following records which may be inspected by Commission staff members upon fifteen (15) day's notice: all communications from any source concerning substantial impairment of vehicle reliability, durability or performance which (1) specifically refer to possibly erroneous use and care information or (2) respondent should reasonably understand from the content of the communication relate to possibly erroneous use and care information covered by Part V.A. of this order. Such records shall include, but not be limited to (a) all written communications; and (b) all oral communications which are reduced to writing and maintained in the ordinary course of business.

For purposes of this part of the order, *use and care information* shall mean any information disseminated by respondent regarding routine and periodic maintenance or servicing of a MMC vehicle, including, but not limited to, information disseminated in owner's manuals or service manuals.

Part VI

It is further ordered, That:

A. respondent shall send to each oil filter manufacturer whose name and address is listed on Exhibit A, a copy of the letter marked Exhibit B and a copy of Chrysler Specification MS 2999 within thirty (30) days after service of this order.

B. respondent shall send to each of its dealers, via respondent's normal service bulletin routing procedure, a copy of the Technical Service Bulletin marked Exhibit C and a copy of the Parts Marketing Bulletin marked Exhibit D within thirty (30) days after service of this order.

C. respondent shall send to each of its aftermarket parts wholesalers a copy of the Technical Service Bulletin marked Exhibit C and a copy of the Wholesaler Bulletin marked Exhibit E within thirty (30) days after service of this order.

D. respondent shall send to each of its warehouse distributors a copy of the Technical Service Bulletin marked Exhibit C and a copy of the Warehouse Distributor Bulletin marked Exhibit F within thirty (30) days after service of this order.

E. respondent shall send on a 4 ¼" x 5 ¼" postcard to each current owner of any 1971-1980 model year MMC vehicle with a

1600 cubic centimeter engine and to each current owner of any 1974-1980 MMC vehicle with a 2000 cubic centimeter engine a copy of Exhibit G within sixty (60) days after service of this order.

F. Respondent shall, beginning in the 1982 model year, effectively communicate the following information in a clear and conspicuous manner in its owner's manuals that accompany MMC vehicles with 1600 or 2000 cubic centimeter engines:

(1) that serious engine damage may occur because of oil filter failure, unless they use an oil filter that is strong enough to withstand engine oil pressures of at least 256 pounds per square inch; and

(2) the brand name and part number of at least one replacement oil filter which is adequate for use on such vehicle.

Provided, however, respondent shall no longer be required to make the disclosure set forth in Part VI.F. of this order if respondent can show, to the satisfaction of the staff of the Federal Trade Commission, that peak oil pressures typically generated by the engine of such MMC vehicle at start under cold ambient conditions do not significantly exceed peak oil pressures typically generated by the engines of respondent's domestic vehicles at start under cold ambient conditions.

For the purpose of Part VI.F. of this order, *domestic vehicle* shall mean any vehicle in which the engine is manufactured by Chrysler Corporation, as of the date this Agreement Containing Consent Order to Cease and Desist is signed by respondent.

Part VII

It is further ordered, That respondent shall accurately maintain the following records which may be inspected by Commission staff members upon fifteen (15) days' notice:

A. A list containing the name and address of:

1) each oil filter manufacturer to whom Exhibit B and a copy of Chrysler Specification MS 2999 was sent and the date such exhibit and Chrysler Specification MS 2999 were sent to each;

2) each dealer to whom Exhibit C and Exhibit D was sent and the date such bulletins were sent to each;

3) each aftermarket parts wholesaler to whom Exhibit C and Exhibit E was sent and the date such exhibits were sent to each;

4) each warehouse distributor to whom Exhibit C and Exhibit F was sent and the date such bulletins were sent to each;

5) each current owner of an MMC vehicle to whom Exhibit G was sent and a list with the date such exhibit was sent to each;

B. All communications received by respondent after the date this order is served on respondent from any source concerning a failed oil filter on any MMC vehicle. Such documents shall include, but not be limited to (a) all written communications; and (b) all oral communications which are reduced to writing and maintained in the ordinary course of business.

C. All records referred to in Part VIII shall be retained by respondent for a period of three (3) years from the last date appearing on any list referred to in this part of the order.

Part VIII

It is further ordered, That all correspondence required by the provisions of this order shall be sent, via first class mail. All correspondence to be sent in a letter shall be on respondent's corporate stationery. All envelopes, and where postcards are permitted to be used, the front side of the postcard, shall contain no marking other than respondent's name and return address, the name and address of the addressee, and the words "IMPORTANT NOTICE" conspicuously disclosed.

Part IX

It is further ordered, That respondent shall engage a commercial locator service, as required to be in compliance with the provisions of this order, to search, in the same manner that it conducts similar such search requests, all vehicle registration and title lists in the United States for the name and address of each individual or other entity in whose name any affected MMC vehicle is registered.

Part X

It is further ordered, That no provision of this order shall be construed to limit, in any way, any private right of action which any individual, partnership, corporation or other entity might have against respondent or against any other party.

Part XI

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions, to its successors and assigns, and to each of its officers, agents, representa-

tives, or employees who are supervisors of any department engaged in the engineering of any vehicle or vehicle part sold by respondent.

Part XII

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

Part XIII

It is further ordered, That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it intends to comply with this order. Respondent shall also within one hundred eighty (180) days after service upon it 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.

Separate Statement of Commissioner Pertschuk

The consumer comments received strongly criticized the Commission's decision not to seek redress for Chrysler owners who have suffered millions of dollars in damages due to balancer chain failures in certain Chrysler imports. These comments only strengthen my previously expressed feeling that this decision is not in the best interests of consumers. They vividly express my dismay with the fact that the Commission, despite getting a helping hand from Chrysler, did not walk the full mile to protect consumers in this instance.

Exhibit A

Oil Filter Manufacturers

AC Spark Plug Division
General Motors Corporation
1300 North Dort Highway
Flint, MI 48556

Aero-Mobile Systems, Inc.
200 Elm Street
Battle Creek, MI 49017

J.A. Baldwin Manufacturing Company
Kearney, NE 68847

Campbell Filter Company
P.O. Box 880
Tulsa, OK 74101

Champion Laboratories, Inc.
P.O. Box 307
West Salem, IL 62476

Deluxe Filter Company
Walker Manufacturing Co.
1201 Michigan Boulevard
Racine, WI 53402

FDI, Inc.
18451 Eudlid Avenue
Cleveland, OH 44112

Fleetguard, Inc.
A Cummins Company
1340 River Bend Drive
Dallas, TX 75247

Ford Motor Company
Ford Parts & Services Division
P.O. Box 1902
3000 Schaefer Road, Room 308
Dearborn, MI 48121

Fram Corporation
Fram Automotive Division
105 Pawtucket Avenue
Providence, RI 02916

Hastings Manufacturing Company
325 North Hanover Street
Hastings, MI 49058

Hutchens Industries, Inc.
2730 Melby Street
P.O. Box 184
Eau Claire, WI 54701

Ohio Filter Company
2658 Airport Road
Bethel, OH 45106

Purolator Products, Inc.
970 New Brunswick Avenue
Rahway, NJ 07065

STP Corporation
1400 West Commercial Boulevard
Fort Lauderdale, FL 33310

Wix Corporation
P.O. Box 1967
Gastonia, NC 28052

CHRYSLER CORPORATION

Exhibit B

Sirs:

Enclosed please find Chrysler Specification MS 2999 which pertains to oil filters manufactured for use on certain Chrysler rear wheel drive vehicles. Please also be advised that MS 2999 does not apply to oil filters made for application on the Dodge Omni and Plymouth Horizon as well as on all Mitsubishi vehicles sold by Chrysler (Plymouth Arrow, Plymouth Arrow Pickup Truck, Plymouth Sapporo, Plymouth Champ, Dodge Colt, Dodge Colt Hatchback, Dodge Challenger, Dodge D-50 Pickup Truck). One of the reasons it does not apply to such vehicles is because such vehicles develop significantly higher oil pressures than most of Chrysler's domestic vehicles.

The oil filters manufactured for application on Omni/Horizon vehicles with a 1.7 liter engine should be able to withstand an internal hydraulic pressure of at least 290 psi while those manufactured for application on Mitsubishi vehicles should be able to withstand an internal hydraulic pressure of at least 256 psi. Of course, just because an oil filter meets a pressure standard does not make it proper for use on a vehicle unless the filter meets all the construction and dimensional requirements for the vehicle.

You should also be advised that owners of certain Mitsubishi vehicles are being notified by Chrysler Corporation that they should purchase oil filters for their vehicles which will withstand internal hydraulic pressures of 256 psi and should look for labels on the oil filter package and tell them this. Since oil filter boxes do not ordinarily provide this information to consumers, we would suggest specifically labeling the box of any oil filter recommended for use on these vehicles which meets the above pressure standard with a statement that the filter can withstand 256 psi.

Chrysler Corporation
Engineering Standards
and Product Information
Office

Enclosure

P. O. BOX 1118, DETROIT, MICHIGAN 48288

CHRYSLER CORPORATION MATERIAL STANDARD CHANGE - G
ASL Req'd.

OIL FILTER - ENGINE LUBRICATING - FULL FLOW

A - GENERAL

1 - This standard covers full flow filter elements, replaceable filter element assemblies, and removable cartridge filter assemblies. The flow in all filter element designs shall be from outside in.

2 - The filter assemblies shall function in such a manner to provide clean lubricant at the required flow to maintain the proper operation of the engine and to insure adequate life. These filters are recommended for engine operation up to a maximum temperature of 275°F.

B - MATERIALS

1 - The filter media shall not consist of any abrasives of any type, and shall be so secured that it cannot be discharged into the engine lubrication system. This test is described in section E-4 of this standard.

2 - The filter elements and/or assemblies shall not contain any materials that disintegrate, dissolve in engine lubricating oils and their water mixtures, or are detrimental to engine wear or operation. These tests shall be conducted in accordance with Material Standard MS-CP60.

3 - The filter media shall be compatible with engine oil additives. All filter assemblies and elements shall be tested in accordance with paragraph 4.3.3 of Military Specification MIL-F-20707, except that the flow rate will be 2.5 gpm, the volume of test oil shall be 6000 ml, and the oil shall be Military Specification MIL-L-2104A Qualification No. M-54. The lubricating oil shall retain not less than 90% of its original additive content.

* 4 - A filter element or filter assembly shall not show a pressure drop increase greater than 2.0 psi when tested using clean Military Specification MIL-L-15016 oil, symbol 3065, at 100°F. Hourly water additions of 6 ml shall be made to a sump containing 6000 ml of oil. A flow rate of 2.5 gpm shall be maintained for a period of 24 hours.

5 - Coatings such as paint or grit on metal housings or shells shall adhere satisfactorily and shall not be brittle, chip, or flake off, when in transit or when being handled in production.

(Continued)

* Denotes area of change from previous issue.

DATE	EFF. CODE	P C R NO.	CHANGE	RELEASES - CHANGES AND CANCELLATIONS
6-18-67	3/MC	70901-021	G	Standard updated
1-27-69	3/SC	30107-021X	F	Par. D-2, D-6, E-3 and E-6-g revised
7-26-49				Date Issued (Dept. 7850)

VOLUME

PAGE

NOTE: The above standards and/or specifications are for use in supplying orders of Chrysler Corporation or its subsidiaries. Suppliers should determine the currency of their copies prior to use. The risk of compliance with the current standards and/or specifications is on the suppliers. Distribution hereof to others, whether paid or free, is for information only.

Copies are available from the Engineering Standards and Data Department, Engineering Office.

ENGINEERING OFFICE

CHRYSLER CORPORATION MATERIAL STANDARD

C - WORKMANSHIP

1 - The inside surfaces and passages of all filters and/or assemblies shall be free from foreign materials such as dirt, scale, core sand, metal chips, slivers, etc.

2 - The adhesive used to secure the filter paper to the end caps shall be so adhered that the adhesive cannot be peeled from the end caps.

3 - All of the filter paper ends shall be adhered securely to the end cap adhesive. Physical removal of the paper shall cause tearing of the paper.

4 - The paper shall have no breaks or tears and shall have the pleat ends securely sealed either by a full length metal strip or by a cementing operation.

5 - Sealing gaskets which are part of a spin-on filter shall be fastened securely by mechanical means.

6 - Housings which are part of cartridge assemblies shall be securely fastened to the base by an acceptable double lock-seam. An assembly which has been dropped once on a concrete surface from a height of 2 feet on the lock-seam shall not leak air up to 100 psi.

7 - All welds shall show metal fusion. Distortion of welded parts shall cause tearing of the metal at the weld.

D - MECHANICAL AND HYDRAULIC STRENGTH

* 1 - The elements and/or assemblies shall be of a suitable design to withstand 100 hours on a vibration test fixture without failure, distortion or leakage. The test assemblies shall be filled with SAE 30 oil and tested under a pressure of 70 psi. The test fixture shall meet the following or equivalent conditions:

a - The horizontal mounting platform of the vibration fixture shall be of sufficent rigidity to transfer the desired motion to the filter mounting without deflection.

b - The filter assembly shall be tested vertically with the filter base located 3.38 inches above the mounting platform.

c - Direction of motion shall correspond to the lateral vibration of the engine.

d - The static length of travel from one extreme to the other shall not exceed a range of 0.030 inches to 0.035 inches. In no case shall the total dynamic amplitude of the platform exceed 0.065 inches.

(Continued)

ENGINEERING OFFICE

CHRYSLER CORPORATION MATERIAL STANDARD

D - MECHANICAL AND HYDRAULIC STRENGTH (Continued)

1 - e - The frequency shall vary from 500 cpm to 4000 cpm, and the cycle shall be repeated every 55 seconds while operating for 25% of the time at 4000 cpm.

2 - The sealed and spin-on filter assemblies shall withstand an internal hydraulic pressure of 200 psi for one minute without leakage. All assemblies including replaceable element designs shall withstand an internal air pressure of 100 psi for one minute without leakage or permanent deformation.

* 3 - The filter assemblies shall withstand a minimum of 60,000 pulse cycles without leakage or failure at a rate of 30 cpm when operated hydraulically through a pressure range of 0 psi to 70 psi. The test fluid shall be SAE 10 or equivalent.

4 - The filter elements shall withstand a differential pressure of 50 psi without damage, channeling or collapse of the end caps or center tubes. These tests shall be conducted using a high viscosity fluid such as SAE-140 at a temperature range of 90°F to 100°F. The elements shall be tested using essentially the same supports as in actual usage.

5 - The filter elements shall withstand a differential pressure of 50 psi as noted in paragraph D-4, after operation with Military Specification MIL-L-2104-A oil, Qualification No. M-54, at 240°F with a rated flow of 2.5 gpm for a period of 40 hours.

6 - The shells, covers, housings, etc. in an assembly shall be made from materials having adequate strength for proper installation without distortion or malfunctioning in production and service.

Spin-on filter assemblies shall withstand a minimum tightening torque of 75 ft-lbs without stripping the attaching threads or loosening of any part of the attaching assembly. The filter base gasket shall be lubricated with SAE 30 oil and tested on a Chrysler filter base.

Spin-on filter assemblies incorporating removal features shall withstand a minimum tightening torque of 65 ft-lbs using the recommended removal tool designed for the specific purpose.

E - PERFORMANCE

1 - All pressure differential valves included in assemblies shall meet the requirements specified on the individual prints. The pressure rise above the valve opening pressure shall not exceed 3 psi when tested using a 38 SUS mineral oil at a flow of 6 gpm. The valve leakage using the same fluid at 3.5 psi shall not exceed a rate of 400 ml per hour.

(Continued)

CHRYSLER CORPORATION MATERIAL STANDARD

E - PERFORMANCE (Continued)

2 - The filters shall be checked for pressure drop using a 110 SUS mineral oil at 160°F. At a flow of 2.5 gpm, the pressure drop shall not exceed 3 psi on assemblies and 2 psi on elements.

3 - Filter assemblies incorporating anti-drainback valves shall show a leakage rate not exceeding 20 ml/hr. using a 45 SUS mineral oil at room temperature with a head of two feet. The test sample shall be initially flow flushed at a rate of 2.5 gpm for one minute using the test fluid. The leakage between the threads of the filter base and adapter shall be blocked during this test. The test assembly shall be installed finger tight plus 1/2 turn.

The anti-drainback valve shall conform to the above test conditions after being operated with Military Specification MIL-L-2104-A oil, Qualification No. M-54, at 240°F with a rated flow of 2.5 gpm for a period of 40 hours.

4 - The filter assembly shall show media migration not exceeding 5 milligrams per filter. The test shall be conducted in accordance with Military Specification MIL-F-0020627-A (Ships) paragraphs 4.5.3 and 4.5.4, except that the fluid used shall be Military Specification MIL-L-2104A, Qualification No. M-54, at 180°F with a flow of 2.5 gpm.

5 - The filter assemblies shall function properly without restricting the flow of oil to the engine at -20°F. A total of ten cold starts shall be a satisfactory test. This test will be conducted in the Chrysler Engineering Office Cold Test Laboratory.

6 - The filter life and average efficiency test shall be made using the SAE Lube Oil Filter Performance Test TR-160. The conditions of the test are:

* a - The test oil shall be heavy duty, SAE 30, as specified by the Coordinating Research Council Specification No. RFO-3. The source for this oil is

Southwest Research Institute
8500 Culebra Road,
San Antonio, Texas 78206

b - Volume of oil in sump: 6000 ml.

c - The test temperature at the filter shall be 160°F ±5°F.

d - The test shall be conducted using a flow of 2.5 gpm.

e - Oil samples shall be taken at the end of every 10 hour period and also at the end of the test.

(Continued)

ENGINEERING OFFICE MS-2999

CHRYSLER CORPORATION MATERIAL STANDARD

E - PERFORMANCE (Continued)

6 - f - The contaminant add rate shall be 2.5 grams of dry solids per hour. The contaminant SOFTC-2A (Standardized Oil Filter Test Contaminant-Synthetic) is obtainable from:

Baltimore Paint and Color Works
2325 Annapolis Avenue
Baltimore, Maryland

The laboratory number for this material is X-7682. It shall contain 22% solids and 78% Military Specification MIL-L-15016 Straight Mineral Oil, symbol 3065. The specified composition is:

(1) - Sixteen parts by weight of carbon black having an average size of 85 millimicrons.

(2) - Two parts by weight of ferric oxide, 95% by count of the particles in the range from 0 to 5 microns.

(3) - Four parts by weight of PV resin.
The particle sizes of this material are as follows:

100% to pass through a 30 mesh screen.
90% to pass through a 80 mesh screen.
60% to pass through a 200 mesh screen.

8 - The limiting differential pressure, life and efficiency for the test shall be as listed below:

PART NO. OR EQUIV.	PRESSURE DIFFERENTIAL, PSI	LIFE HOURS, MIN.	MIN. AVERAGE EFFICIENCY %
1851658	8	30	75

* F - CONTROL

1 - Chrysler Engineering Office Mechanical Development Laboratory approval must be obtained on original production samples and samples made after Material, Process, or design changes.

2 - The filters covered by this standard shall be purchased only from sources which appear on the Chrysler Engineering Approved Source List. This information can be obtained from the Chrysler Corporation Purchasing Department.

3 - This standard refers to the following standard.

Material Standard MS-CP60

# # # # #

Exhibit C

Technical Service Bulletin

Service & Parts Division

Technical Information + Professional Service = Customer Satisfaction

SERVICE

Of Interest ☐ General Manager ☐ Sales Manager ☐ Service Manager ☐ Parts Manager ☐ Service Technicians

Some reported oil filter leakages have resulted in serious engine damage to MMC vehicles of various model years, caused by using inadequate aftermarket oil filters.

To avoid leakage and engine damage due to the use of improper filters, owners of these vehicles should use an oil filter which will withstand 256 pounds per square inch of oil pressure, such as the filters indicated below:

Model	Part No.
All MMC except Champ and Colt Hatchback models	MD 001445
Champ and Colt Hatchback models only	MD 030795

Note:

Issuance of the above cancels MoPar Oil Filter (L-42) #4026486 previously specified. See Parts Marketing #XX-XX-XX

Models

MMC Passenger Cars and Trucks

Subject

Oil Filter Usage

Index

Engine

Date:

XX-XX-XX

No.

XX-XX-XX

CHRYSLER CORPORATION

(THIS BULLETIN IS SUPPLIED AS TECHNICAL INFORMATION ONLY AND IS NOT AN AUTHORIZATION FOR REPAIR(S) REPRINT OF THIS MATERIAL NOT AUTHORIZED UNLESS APPROVED.

CHRYSLER Dodge Plymouth Dodge Trucks

Mopar

Parts Marketing Bulletin

PARTS SALES AND SERVICE

Mopar

ATTENTION: ☒ DEALER ☒ SERVICE MANAGER ☐ INSERT INTO MARKETING PROGRAMS BINDER UNDER TAB _____

☒ SALES MANAGER ☒ PARTS MANAGER

SUBJECT: OIL FILTERS - #4026486 (L-42) NUMBER

All Dealers are requested to examine their stock of oil filters.

Any (L-42) #4026486 Oil Filters that are in stock should be returned for credit via normal M.R.A. (Material Return Authorization) procedures.

The subject filters should not be used.

This bulletin will act as your authorization to return subject oil filters to your facing depot.

M. G. KELLY
Marketing Manager

THE NEW CHRYSLER CORPORATION

Wholesaler Bulletin

mopar

No. xxxxxxxx
Date xxxxxx

SUBJECT: Oil Filters - #4026486 (L-42)

All Warehouse and Jobber Distributors are requested to examine their stock of oil filters.

Any (L-42) #4026486 Oil Filters that are in stock should be returned for credit via normal M.R.A. (Material Return Authorization) procedures.

The subject filters should not be used.

This bulletin will act as your authorization to return subject oil filters to the Indianapolis Depot.

M. G. KELLY
Marketing Manager

Warehouse Distributor Bulletin

mopa

General Information

No.xxxxxxxx
Date xxxxxx

SUBJECT: Oil Filters - #4026486 (L-42)

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M. G. KELLY
Marketing Manager

EXHIBIT G

IMPORTANT MAINTENANCE INFORMATION

Dear Owner:
Our records show that you are the owner of a Dodge Colt, Dodge Challenger, Plymouth Arrow, Plymouth Sapporo, Plymouth Arrow Pickup, Dodge D-50 Pickup, Plymouth Champ or Dodge Colt Hatchback which has either a 1600 cc engine with a 1971-1980 model year designation or a 2000 cc engine with a 1974-1980 model year designation.

THE PROBLEM: WEAK FILTERS Certain kinds of replacement oil filters may not be strong enough to withstand the pressure in your car's lubricating system, particularly in cold weather. Weak oil filters can cause serious engine damage. What happens to cause the damage is this: If an oil filter is too weak, it may suddenly spring a leak. If the filter leaks, the engine loses oil and does not get enough lubrication and *the engine may be very seriously damaged.*

WARNING: PROTECT YOUR ENGINE *It is strongly recommended that you buy a new replacement oil filter now.* A replacement filter costs only a few dollars. You must use a brand of filter strong enough to withstand 256 pounds per square inch of oil pressure. (Look on the oil filter box for a label with this information.) Chrysler's Mopar Filters (Part Number MD001445 for all vehicles except Champ and Colt Hatchback, and Part Number MD030795 for Champ and Colt Hatchback vehicles) meet the needs of your vehicle. These filters can be bought at any Chrysler Corporation dealer or auto parts store carrying this brand.

REPLACE THE FILTER SOON If your car has the wrong kind of replacement filter, you should not postpone buying a new filter.

If you are leasing your car to another person, please make sure the person leasing it from you sees this notice.

CHRYSLER CORPORATION

Please staple or tape this notice to your Owner's Manual.

CHRYSLER
CORPORATION

416-15-19
P. O. BOX 1919
DETROIT, MICHIGAN 48288 U.S.A.

IMPORTANT NOTICE

IN THE MATTER OF

GIFFORD-HILL-AMERICAN, INC.

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-3085. Complaint, Feb. 23, 1982—Decision, Feb. 23, 1982

This consent order requires a Grand Prairie, Texas producer and seller of concrete pressure pipe and fittings, among other things, to timely divest the entire "Kansas City Plant" to a Commission-approved buyer, capable of maintaining the plant as a competitive entity. Additionally, for a five year period, the company is required to offer the acquirer of the divested plant the opportunity to purchase essential products and services which are not generally available. The order also prohibits the company from acquiring any concern engaged in the production of concrete pressure pipe without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Jerry A. Philpott, Claudia R. Higgins, Martha H. Oppenheim* and *Franklin M. Lee.*

For the respondent: *Bertram Kantor, Wachtell, Lipton, Rosen & Katz,* New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gifford-Hill-American, Inc. ("GHA"), a corporation subject to the jurisdiction of the Commission, has acquired the assets of the Lock Joint Products Division ("Lock Joint") of Interpace Corporation ("Interpace"), a corporation subject to the jurisdiction of the 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, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. Definitions

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

a. *Pressure pipe* means pipe designed to carry water under pressure.

b. *Large diameter pressure pipe* means pressure pipe of over 54 inches in diameter.

c. *Concrete pressure pipe* means pressure pipe that comports with American Water Works Association standards C300–74, C301–79, C302–74 and/or C303–78.

c. *South central region* means the states of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana.

II. GHA

2. GHA is a corporation organized and existing under the laws of the State of Texas with its principal office at 1003 Meyers Road, Grand Prairie, Texas.

3. GHA is one of the leading manufacturers in the production and sale of concrete pressure pipe and fittings in the United States.

4. In 1980, GHA had total sales of $61,700,000 and total assets of $34,100,000.

5. GHA has four production facilities, all located in the State of Texas. These plants serve a marketing area including much of the south central region.

III. Interpace

6. Interpace is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 260 Cherry Hill Road, Parsippany, New Jersey.

7. Interpace's concrete pipe manufacturing division, Lock Joint, produces and sells concrete pressure pipe and fittings.

8. In 1980, Lock Joint had net sales of approximately $96,800,000 and total assets of $53,400,000.

9. Lock Joint has plants located in Florida, Illinois, Kansas, Maryland, Ohio, New Jersey, South Carolina, and Puerto Rico.

IV. Jurisdiction

10. At all times relevant herein GHA and Interpace have been engaged in the production and sale of concrete pressure pipe in interstate commerce and GHA and Interpace are engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.,* and each is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*

V. The Acquisition

11. On or about February 27, 1981, GHA and Interpace entered into an agreement in principle which provides, *inter alia,* for the acquisition by GHA of the non-Puerto Rican assets of Lock Joint. The acquisition was consummated on or about July 2, 1981.

VI. Trade and Commerce

12. The relevant lines of commerce are the manufacture and sale of pressure pipe, large diameter pressure pipe and concrete pressure pipe.

13. The relevant section of the country is the south central region.

VII. Actual Competition

14. Prior to the acquisition, GHA and Lock Joint were and had been for many years actual competitors in the manufacture and sale of pressure pipe, including large diameter pressure pipe and concrete pressure pipe, within the relevant section of the country.

VIII. Effects

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

(a) actual competition between GHA and Lock Joint in the relevant markets may be eliminated;

(b) actual competition among competitors generally in the relevant markets may be lessened;

(c) concentration in the relevant markets may be increased and the possibilities for eventual deconcentration may be diminished;

(d) mergers or acquisitions between other pressure pipe producers in the relevant markets may be fostered, thus causing a further substantial lessening of competition or tendency toward monopoly in such markets; and

(e) barriers to entry into the relevant markets may be increased.

IX. Violations Charged

16. By reason of the foregoing, the acquisition by GHA of the assets of Lock Joint constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Decision and Order

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the Lock Joint Products Division of Interpace Corporation (hereinafter referred to as "Lock Joint") by Gifford-Hill-American (hereinafter referred to as "GHA"), and GHA 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 GHA with violations of the Federal Trade Commission Act and the Clayton Act; and

GHA, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by GHA 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 GHA 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 GHA has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 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. GHA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its offices and principal place of business located at 1003 Myers Road, in the city of Grand Prairie, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

For purposes of this order,

(a) *respondent* means Gifford-Hill-American, Inc., its subsidiaries, affiliates other than Ameron, Inc., and Gifford-Hill & Co., Inc., divisions, successors, and assigns;

(b) *Kansas City Plant* means the concrete pressure pipe facility located in Kansas City, Kansas, acquired by respondent from Interpace Corporation; and

(c) *Lock Joint Division* means the concrete pressure pipe production assets acquired by respondent from Interpace Corporation

I

It is ordered, That, within fifteen (15) months from the date on which this order becomes final and subject to the prior approval of the Federal Trade Commission, respondent shall divest absolutely and in good faith the entire Kansas City Plant as a viable business concern to a third party that represents that it intends to use the assets in the manufacture, distribution or sale of concrete pressure pipe in the United States. Pending divestiture, respondent shall neither make nor permit any deterioration of the Kansas City plant, except for normal wear and tear, that may impair its operating abilities, competitive viability or market value.

II

It is further ordered, That, at the option of the acquirer of the assets of the Kansas City Plant, respondent (including its newly acquired Lock Joint Division) shall for a period of five years from the date of the divestiture required by Paragraph I offer to sell to the acquirer at a commercially reasonable price all joint rings, prestressing wire, molds, and engineering and technical services that are not generally available and are essential to the manufacture of the concrete pressure pipe and related products to be produced by the Kansas City Plant. The price respondent shall charge the acquirer for any such joint ring, prestressing wire, mold or service shall be no less favorable than the price at which respondent makes comparable sales of that variety of product or service to any other concrete pressure pipe manufacturer. If respondent has no such sales to any

other concrete pressure pipe manufacturer, then the price shall be the prevailing market price for comparable sales of that variety of product or service.

III

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondent shall not acquire, without the prior approval of the Federal Trade Commission, directly or indirectly, any stock interest in or assets of any concrete pressure pipe manufacturer in the United States.

IV

It is further ordered, That, within (60) days after the date this order becomes final, and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraph I of this order, respondent shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. All compliance reports shall include, among other things that are required from time to time, a full description of contacts or negotiations with any party for the sale of properties specified in Paragraph I of this order, and the identity of all such parties. Respondent shall furnish to the Commission copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning divestiture.

On the date of divestiture and on every anniversary date of the divestiture thereafter for the following five (5) years, respondent shall submit to the Commission a verified written report setting forth the manner and form in which it is complying or has complied with Paragraph II of this order.

On the first anniversary of the date this order becomes final and on every anniversary date thereafter for the following nine (9) years, respondent shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with Paragraph III of this order.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change

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

IN THE MATTER OF

GROLIER, INCORPORATED, ET AL.

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

Docket 8879. Complaint, March 9, 1972 —Final Order, March 9, 1982*

The FTC is reissuing its Final Order in Docket No. 8879, In the Matter of Grolier, Inc. On March 13, 1978, the Commission issued its Order to Cease and Desist (91 F.T.C. 315); modified December 10, 1981 (98 F.T.C. 882). The reissued order, effective March 9, 1982, among other things, requires a New York City publisher and seller of encyclopedias and other educational materials and services, and its subsidiaries, to cease misrepresenting, failing to make relevant disclosures, or using any other unfair or deceptive methods to recruit door-to-door sales personnel, sell merchandise and services, and collect debts.

FINAL ORDER

This matter having been heard by the Commission upon remand by the United States Court of Appeals for the Ninth Circuit, and the Commission having denied a motion to disqualify Judge von Brand after allowing Grolier discovery on the matter in an Order issued August 13, 1981, and the Commission, having made certain modifications to the original cease and desist order issued on March 13, 1978, in an Order issued December 10, 1981, now reissues its Final Order, with said modifications, as follows:

It is ordered, That the following Order to Cease and Desist be, and it hereby is, entered:

ORDER

I

It is ordered, That respondents Grolier, Incorporated, Americana Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc. and The Richards Company, Inc., corporations and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the recruitment, training, or orientation of any person to sell, rent, lease, or distribute any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other

* Complaint, Initial Decision, Opinion of the Commission and Final Order previously published at 91 F.T.C. 315.

publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any respondent is offering positions in such fields as advertising, education, public relations, marketing, interviewing, or in any field other than door-to-door sales, if door-to-door sales is included, to any extent, in the position for which persons are being recruited; or misrepresenting, in any manner, the job for which any person is being solicited;

(2) persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions, unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

(3) any person who may be employed will contact prospects in their homes or places of business for the purposes of conducting surveys, advertising promotions, educational instruction or other nonselling functions; or misrepresenting, in any manner, the purposes for which any person is engaged.

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person, or the degree of ease or difficulty in performing any said condition imposed.

C. Failing to disclose, clearly and conspicuously, in all advertising offering employment in any way involving door-to-door sales:

(1) that the respondent concerned is recruiting persons for the sole purpose of soliciting or selling;

(2) that such soliciting or selling will be on an "in home" basis;

(3) that the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(4) the basis for compensating persons so engaged.

D. Failing to clearly and conspicuously advise, both orally and in writing, any prospective salesperson at the initial face-to-face

interview, and prior to executing any employment agreement with any such person, the following information:

(1) all those disclosures set forth in Paragraph I C above;
(2) a complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;
(3) where applicable, notification that such person will not be paid for time spent during orientation and training;
(4) a complete and detailed description of any expense or expenses any such person may incur performing the required duties; and
(5) the percentage of persons holding similar positions engaged by the office offering the position during the twelve (12) months immediately preceding the offer, who have actually received an equivalent, or greater, income than that promised under the terms of any such agreement.

E. Failing to furnish to each applicant at the initial face-to-face interview and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II and V of this Order together with a cover letter as set forth in Appendix A attached hereto.

F. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the Order.

II

It is ordered, That respondents Grolier, Incorporated, American Corporation, Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R. H. Hinkley Company, The Grolier Society, Inc., Spencer International Press, Inc., and The Richards Company, Inc., corporations and their successors, assigns, officers, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement or promotional material which solicits participation in any

contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information, unless any such solicitation clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, using one of the following disclosures:

1. IMPORTANT: This card will let you know of my interest and enable your [location designation, if appropriate] sales representative to

(contact me at home)		(information)
(call or visit me)	with	(details)
(contact me in person)		(facts)

on how I may (purchase) [applicable product].
(buy)

2. IMPORTANT: Returning this card allows me to have your [location designation, if appropriate] sales representative

(contact me at home)		(information)
(call or visit me)	with	(details)
(contact me in person)		(facts)

on how I may (purchase) [applicable product].
(buy)

3. IMPORTANT: Returning this card will enable your [location designation, if appropriate] sales representative to

(contact me at home)		(information)
(call or visit me)	with	(details)
(contact me in person)		(facts)

on how I may (purchase) [applicable product].
(buy)

Upon prior approval in writing of the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection, or his designee, respondents may use any other disclosure that clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products. A request for approval shall be in writing and shall be deemed granted if not disapproved within 30 days after receipt by the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection.

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II(A) above, unless one of the disclosures set forth in such Paragraph, or a disclosure approved by the Assistant Director of the Division of compliance or his designee as satisfying

the requirements of Paragraph II(A), clearly and conspicuously appears in immediate proximity to the space provided for a signature or other identification of the responding party. During the one (1) year period from the date this Order becomes final, respondents may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that any proposed modifications of Paragraphs II(A) and II(B) will clearly and conspicuously disclose to potential purchasers of respondents' products that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products. The foregoing sentence shall not be construed as a limitation of respondents' submission of additional information regarding the request to reopen, including information relating to the financial impact of Paragraphs II(A) and II(B) on respondents. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

C. Failing to disclose clearly and conspicuously, at the beginning of any telephone call to any prospective customer, the fact that the individual making the call is either soliciting the sale, rental or lease of publications, merchandise or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, the respondent concerned will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental or lease of said publications, merchandise or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a card 3 inches by 5 inches in dimension, with all words in 10-point bold-face type, with the following information, and none other, in the indicated order, is presented to such person:

(1) the name of the corporation;

(2) the name of the salesperson;

(3) the term "Encyclopedia Sales Representative" [or other applicable product];

(4) the terminology: "The purpose of this representative's call is to solicit the sale of encyclopedias" [or other applicable product].

Provided, however, That for one (1) year from the date this order becomes final, respondents may, in lieu of the card required by this Paragraph of the Order, substitute a business card of at least 2 inches by 3–½ inches containing only the following information:

1. the name of the corporation
2. the name of the salesperson
3. the term "sales representative"
4. An address and telephone number at which the corporation or salesperson may be contacted
5. the product or the corporation logo or identifying mark.

During this one (1) year period, respondents shall comply in all other respects with the requirements of Paragraph II(D) above. Prior to the expiration of the aforesaid time period, respondents may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that the business card required in Paragraph II(D), as modified above, is effective in communicating to potential purchasers, prior to the entry into their homes or places of business by any of respondents' sales representatives, that the purpose of the sales representatives' call is to solicit the sale of respondents' products. The foregoing sentence shall not be construed as a limitation on respondents' submission of additional information regarding the request to reopen, including information on the financial impact of Paragraph II(D) on respondents. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. Respondents may continue to use the business card, as described by this proviso, during the time that a request to reopen these proceedings pursuant to this Paragraph is pending, and, if such proceedings are reopened, until the Commission determination of the matter has become final. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

E. Failing to give the card, required by Paragraph II(D), above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

F. Using the words "Mothers Club" or words of similar import and meaning to represent, directly or by implication, the existence of a *bona fide* educational program, club, or business entity which provides educational services or benefits to consumers or using any

trade name misrepresenting in any manner the nature or purpose of their business.

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

(1) Any person calling on any prospective purchaser is:

(a) engaged in or connected with "advertising", "marketing", "promotion", "education", or anything other than the sale of encyclopedias or other educational or reference materials;

(b) conducting, taking or participating in a survey, opinion poll, interview or any other information gathering activity; or

(c) calling on said prospect for the primary purpose of delivering or disseminating any vacation gift certificate, prize, gift, gift certificate, chance in any contest, or any other merchandise or item of chance;

(2) only a few minutes will be required to complete the visit inside the prospective purchaser's home or place of business; or misrepresenting, in any manner, the period of time required to complete the sales or other presentation;

(3) any person contacted has been specially selected to receive any offer; or misrepresenting, in any manner, the persons or class of persons to whom said offer is available;

(4) any encyclopedia or other reference material is a new publication, or a publication which has not been previously available to the public unless such is the fact, or misrepresenting, in any manner, the extent of editorial revisions, in any encyclopedia or other reference material;

(5) any offer is limited, must be accepted immediately or within a specified time period, or is a special offer, unless such is a fact; or misrepresenting, in any manner, the nature, scope or duration of any sales offer;

(6) any publication, merchandise or service is being offered free, without cost, as a bonus, reduced in price or otherwise to any prospective purchaser of any of respondents' publications, merchandise or services agreeing to perform any advertising promotional or selling function, including but not limited to, any of the following acts or similar acts:

(a) permitting their names to be listed as local owners of the product or services;

(b) providing the name of any person who may be interested in purchasing any publication, merchandise or service;

(c) writing a letter evaluating the merits of any publication or other item which may be used in advertising;

(d) displaying any publication or other item in a conspicuous location in his home;

(e) keeping any publication or other item current by purchasing an annual yearbook or by purchasing any research service;

(f) completing installment payments for any item in a period of time less than the period of time initially represented; or

(g) paying a membership fee in order to participate in the Consumer Buying Educational Service, or any other program, club, service or entity which provides an opportunity for participants to purchase merchandise at a savings from the the retail prices for such merchandise, or paying a fee to participate in any similar program, club, service or entity; or

(h) misrepresenting, in any manner, that any publication, merchandise or service is being offered free, without cost, as a bonus, or reduced in price to any person;

(7) any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such respondent, unless:

(a) the contract price for the purchase, rental or lease of any such other publication, merchandise, service, or combination thereof, has remained at the said price or above for at least six (6) months within the last twelve (12) months immediately preceding the time at which the representation is made;

(b) no publication, merchandise or service has been offered free, without cost or given as a bonus or otherwise with the sale, rental or lease of any such other publication, merchandise, service or combination thereof, to any person for a period of at least six (6) months within the last twelve (12) months immediately proceding the time at which the representation is made;

(c) no publication, merchandise, service, or combination thereof, of equivalent or greater value, has been eliminated by such respondent from any such other publication, merchandise, service, or combination thereof, with which the free, without cost or bonus publication, merchandise or service is being offered;

Provided however, any such prices as are restricted by Paragraph II

G (7)(a) of this Order may be altered at any time by the respondent concerned to reflect *bona fide* changes in market conditions.

H. Misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to any person.

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

(a) any person using any research service will receive answers to questions on any subject; or misrepresenting, in any manner, the scope of, or restrictions imposed upon the use of, any such research service;

(b) any answer provided by a research service is the product of detailed, exhaustive or original research generated by the specific question asked by any person utilizing said service unless such is the fact; or misrepresenting, in any manner, the extent of individual attention, research, preparation or quality of any answer furnished by any such research service;

(c) any answer provided by any research service is a suitable or acceptable substitute for any term paper, theme or other report; or misrepresenting, in any manner, the benefit or use of any answer provided by any research service;

(d) any research service is being offered at any price or that the research service has a retail value unless such is the fact;

(e) the cost to any respondent of any research service represents a retail value.

J. (1) Failing to disclose, clearly and conspicuously, in writing on all promotional materials describing any research service, and orally during the course of any sales or other presentation relating to said service, each condition or limitation placed upon the use of such research service.

(2) Failing to disclose applicable limitations on the time within which answers will be supplied by any research service in writing on all promotional materials and orally during the course of any sales presentations relating thereto.

K. (1) Representing, directly or by implication, through the use of any oral statement, written quotation, picture or any other means that any publication, merchandise or service has received an endorsement, recommendation, or sponsorship from any educational, religious, or other institution or other entity or from any person, unless the stated endorsement is genuine and authentic in all respects, and discloses the year or edition of the publication to which such endorsements pertain, if a publication is involved.

(2) Using, publishing, or referring to any testimonial or endorsement unless (1) such use, publication, or reference is expressly authorized in writing and unless (2) respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained.

(3) Representing, in any manner, that an endorsement or testimonial has been recently executed or is current unless this is the fact.

(4) Misrepresenting, in any manner, that any person is calling on a prospective customer with the endorsement, recommendation, or sponsorship of another person or organization.

L. Failing to disclose:

(1) clearly to the officials of any educational institution being visited, where a purpose of such visit is to obtain the institution's permission to disseminate through the institution promotional material which solicits the sale of any product to the parents of the children enrolled in the educational institution, and which is designed to secure leads for in-home sales presentations, prior to any such dissemination, that the purpose of disseminating such promotional materials is to secure leads for in-home sales presentations;

(2) conspicuously on the face of such promotional materials within the scope of L(1) that dissemination of such promotional materials through the educational institution does not constitute an endorsement or a recommendation by the institution or its officials that such materials being promoted should be purchased unless such is the fact.

M. Representing to any person, directly or by implication, either orally or in writing that:

(1) any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such publication in each such binding, merchandise or service, individually, at or above the represented price;

(2) any price is the retail, regular, usual, or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless the respondent concerned is making a substantial number of its unit sales for each such set of publications in each such binding individually or in combination at or above the represented price;

(3) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from any of respondents' former prices for its products unless:

(a) such savings claims are based upon retail, regular, or usual prices, or combination prices, arrived at in accordance with Paragraph II M(1) and (2) above;
(b) respondents clearly and conspicuously specify the publication, merchandise or service, or combination thereof, and the price from which the savings are to be realized; and
(c) the publication, merchandise or service is of comparable quality in all material respects with the publication, merchandise or service sold at the higher price;

(4) savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from comparable products of competitors unless:

(a) the respondent concerned clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, from which the savings are to be realized;
(b) the price utilized for comparison purposes is the price at which a substantial number of persons have purchased the item referred to in (a) immediately above;
(c) the item referred to in (a) above is of comparable quality in all material respects to the product being sold;
(d) respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in the trade area where the comparison is made which establishes the validity of said compared price.

N. Misrepresenting in any manner, either orally or in writing:

(1) the amount of savings to be realized by any person who enters into an agreement with any respondent for any publication, merchandise or service; or
(2) that any publication, merchandise or service is being offered free or without charge, or is given to any such person.

O. Failing to comply with any and all provisions of the Commission's Trade Regulation Rule, *Cooling-Off Period For Door-To-Door Sales* (16 C.F.R. 429.1), which are in effect on the date this Order becomes effective, and with any modifications or changes in the aforesaid Rule which may be made. A copy of the said Rule shall be

made a part of this Order for purposes of complying with other provisions hereof.

P. Initiating contact with any purchaser through any means for any reason from the time said purchaser enters into any agreement containing a NOTICE OF CANCELLATION, as required by Paragraph II O of this Order, until said buyer's cancellation period has expired.

Q. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II O of this Order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any respondent receiving such NOTICE shall maintain it for a period of three (3) years from date of receipt.

R. Failing to create adequate records, which shall be maintained for a period of three (3) years and made available to the Commission's staff for inspection and copying upon reasonable notice, from which the validity of any savings claims, retail price claims, comparative value claims, or other representations of the type described in Paragraphs II G(7), II M and II N of this Order can be determined, and making any pricing claims within the scope of this provision unless there are in existence for at least the six (6) months preceding such claims records from which the validity of such claims can be determined.

S. Failing to attach to any contract for the sale, rental or lease of any publication, merchandise, service or combination thereof a written statement that clearly and conspicuously discloses, and only discloses, the following information in the indicated order and manner:

(1) in 12-point bold-face type size the terminology:

PRICE LIST

THE FOLLOWING PRICES ARE THE *ONLY* AUTHORIZED PRICES AT WHICH THE LISTED ITEMS MAY BE OFFERED.
ANY PRICE NOT LISTED BELOW IS UNAUTHORIZED AND FALSE.

(2) a list of all publications, merchandise, services or combination thereof currently offered for sale, rental or lease, and in immediate conjunction thereto each price at which any respondent is authorized to offer said product or service pursuant to Paragraph II M of this Order.

(3) in 12-point bold-face type the terminology, when applicable:

FREE ITEMS

ONLY THE FOLLOWING PRODUCTS AND SERVICES MAY BE OFFERED FREE. YOU ARE PAYING FOR ANY ITEMS RECEIVED AND NOT LISTED BELOW.

(4) a list of all publications, merchandise or services currently offered as free, without cost, or as a bonus pursuant to Paragraph II G(7) of this Order.

T. Failing to orally instruct any person at the time said person signs any contract for sale, rental or lease, of any publication, merchandise, service or combination thereof, pursuant to an oral sales presentation, that a "Price List" is attached to said person's contract.

III

It is further ordered, That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Interstate Corp., Career Institute, Inc., Grolier Enterprises, Inc., and Grolier Reading Programs, Inc., corporations, and their successors or assigns, their officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary or division, or other device, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service through the use of any program, plan, method or device, that provides or purports to provide for the sale or distribution of any of said items to any person on an approval basis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any person has the option to receive each publication, merchandise or service, separately and individually, and to accept or reject same, unless such person is allowed in all instances to receive and to purchase or reject each such publication, merchandise or service separately and individually;

(2) any person will not receive any further publication, merchandise or service after the respondent concerned has received a timely notification of the person's cancellation of any such program, plan or method of sale or distribution, unless such is the fact; or misrepresenting, in any manner, any consequence resulting from any

person's cancellation of his participation in any such program, plan, or method of sale or distribution; and

(3) any person incurs no risk or obligation by joining or participating in any such program, plan, or method of sale or distribution; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on any person.

B. Disseminating, or causing the dissemination of, any advertisement which fails to disclose in a clear and conspicuous manner:

(1) a description of the conditions and terms of any such program, plan, or method of sale or distribution, and the duties, risks and obligations of any subscriber thereto; and

(2) a description of each publication, merchandise or service to be offered for sale, the billing charge to be made therefor, the anticipated total number of publications, merchandise or services included in any such program, plan or method of sale or distribution, the number of publications, merchandise or services that will be included in each shipment of such items, and the number of and the intervals between each such shipment.

C. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such program, plan, or method of sale or distribution, the following information:

(1) the anticipated total number of publications, merchandise or services included in any such program, plan, or method of sale or distribution;

(2) the number of publications, merchandise or services that will be included in each shipment of such items; and

(3) the number of and the intervals between each such shipment.

D. Failing to disclose, clearly and conspicuously, in immediate conjunction with any publication, merchandise, service or notice thereof sent to any subscriber the anticipated date on which the respondent from whom the subscriber obtained any of such items will initiate processing of the next shipment of any such item.

E. Failing to provide to any person in conjunction with each notice of any shipment of any publication, merchandise or service, a clear and conspicuous means by which said person may exercise his option or right to cancel said shipment, if such is his right.

IV

It is further ordered, That respondents Grolier, Incorporated, American Peoples Press, Inc., Americana Corporation, Americana Interstate Corp., Federated Credit Corp., Career Institute, Inc., Grolier Interstate, Inc., Grolier New Era Corp., Madison Enterprises, Inc., R.H. Hinkley Company, Spencer International Press, Inc., The Grolier Society, Inc., and The Richards Company, corporations, and their successors, assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any debt allegedly due and owing pursuant to any contract or other agreement relating to the purchase or other receipt of any textbook, encyclopedia, reference or educational material, training course or teaching machine, or any other publication, merchandise or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

(1) any company, corporation, or entity engaged in collection of monies allegedly due or owing to such concerns or any other company, corporation or entity has separate *bona fide* departments or divisions for legal matters, unless such are the facts; or misrepresenting, in any manner, the existence, or functions of any division or department of any company, corporation or entity;

(2) the Code of Federal Regulations, or any other federal regulation or statute, provides that any employee of the Federal Government who has any outstanding debt due or owing may be subject to dismissal from the federal service for failure to pay said debt unless the respondent concerned can demonstrate that sufficient facts exist with regard to the employee to whom the representation was made which establish the propriety of such claim;

(3) any person who utilizes the United States mail to obtain any publication, merchandise or service and who fails to pay or becomes delinquent in paying for any such item will be subject to prosecution for mail fraud under federal law unless the respondent concerned can demonstrate that sufficient facts exist, with regard to person to whom the representation was made, which establish the propriety of such claim; or misrepresenting, in any manner, the rights, duties or obligations of any person arising from any federal, state, or local statute, ordinance, or regulation;

(4) any respondent utilizes the services of credit reporting companies or other entities for persons who disseminate credit information in a manner which will adversely affect the public or general credit rating of any person who has become delinquent in paying any debt unless the respondent concerned can demonstrate that sufficient facts exist, with regard to the person to whom the representation was made, which establish the propriety of such claim, or misrepresenting, in any manner, that any person's public or general credit rating will be adversely affected;

(5) any letter, notice or other communication which has been prepared, originated or composed by any respondent has been prepared, originated or composed by any other person, firm or corporation;

(6) suit will be instituted to recover any delinquent debt, or that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to collect any outstanding debt will be taken, unless a definite date is set forth for such action and such are the facts; or misrepresenting, in any manner, respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any attorney or misrepresenting in any manner that any account has been transferred to any person or entity for collection unless those are the facts.

B. using any correspondence forms or any written materials which appear to depict official legal process.

V

For the purpose of the following provisions of this order, the terms "respondents" shall apply to each of the respondents named in Paragraph I and II of the Order.

It is further ordered, That respondents:

A. Deliver by registered mail, a copy of this Decision and Order to each of their salesmen, agents, solicitors, or other persons engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this Order, and to any person engaged by respondents to perform such duties in the future at the time such person is so engaged;

B. Obtain from each person described in Paragraph V A, a signed statement setting forth their intention to conform their business practices to the requirements of this Order; retain said statement during the period of three (3) years thereafter; and make said

statement available to the Commission's staff for inspection and copying upon reasonable notice;

C. Advise each such present and future saleman, agent, solicitor, or other person engaged by respondents for the promotion, sale or distribution of any of the publications, merchandise or services included in this Order that respondents will terminate the engagement or services of any such person, unless such person agrees to and does furnish to respondents a statement required by Paragraph V B, above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph V B above, and be bound by the provisions of this Order, the respondents shall immediately terminate the services of such person.

E. Furnish the Commission on a quarterly basis with a list, including business addresses, of those independent or outside distributors who have purchased or otherwise obtained for resale any of the publications, merchandise or services included in this Order.

VI

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

VII

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

VIII

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

APPENDIX A
NOTICE

Attached hereto are the *pertinent provisions* of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this Order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be *required* to observe the provisions of this Order. Violation of any provision of this Order by an employee constitutes a violation of a federal law.

You should carefully read this Order before agreeing to any employment arranged with Grolier, Incorporated or any of its subsidiary companies.

_____

(President)

Grolier, Incorporated

IN THE MATTER OF

CHAMPION HOME BUILDERS CO.

Docket 9151. Interlocutory Order, March 9, 1982

ORDER DENYING COMPLAINT COUNSEL'S MOTION FOR REMAND, OR, IN THE ALTERNATIVE, MOTION TO AMEND COMPLAINT

This matter is before the Commission on the certification by the Administrative Law Judge (the "ALJ") of complaint counsel's Motion to Amend Complaint, filed December 29, 1981. Complaint Counsel has filed a "Motion to Remand Complaint Counsel's Motion to Amend the Complaint or, in the Alternative, To Amend the Complaint" and respondent has filed a "Response to Complaint Counsel's Motion to Amend Complaint."

The original complaint in this matter charges that respondent violated section 5 by failing to disclose material facts about its Solar Furnace to prospective purchasers. Complaint counsel now move the Commission to amend the complaint to state that respondent failed to disclose safety hazards inherent in the Solar Furnace. Specifically, complaint counsel would add the following underscored language to Paragraph Eleven of the original complaint:

> PAR. 11. A significant number of Solar Furnaces are subject to or potentially subject to one or more conditions which are costly to correct or may significantly affect the quality, durability, or performance of the Solar Furnaces. Such conditions include but are not limited to controller malfunctions, foam insulation expansion and air leakage, wood frame outgassing and safety hazards. Respondent knew or should have known and failed to disclose to purchasers of Solar Furnaces facts which relate to the existence, nature, and extent of these conditions. Respondent's failure to disclose these material facts which, if known to prospective purchasers, would have been likely to affect their purchasing decisions, was and is deceptive and unfair.

Under Rule 3.15(a), the ALJ is authorized to permit amendments of complaints when "determination of a controversy on the merits will be facilitated thereby," and under "conditions as are necessary to avoid prejudicing the public interest and the rights of the parties." However, the ALJ may enter such an order only if the amendment "is reasonably within the scope of the original complaint." *Capital Records Distributing Corp.*, 58 F.T.C. 1170 (1961). Thus, the ALJ has authority to order amendments which clarify the allegations of a complaint or which merely add examples of practices already challenged. *Century 21 Commodore Plaza Inc.*, 89 F.T.C. 237 (1977); *Cavanagh Communities,* 87 F.T.C. 143 (1976). Where a proposed amendment alters the "underlying theory" of the original complaint, however, the Commission must make the determination whether to

amend the complaint because only the Commission is authorized to determine whether there is reason to believe that the law has been violated and whether a proceeding on those amended charges would be in the public interest. *Standard Camera Corp.,* 63 F.T.C. 1238 (1963).

Complaint counsel argue that the proposed amendment does not change the underlying theory of the original complaint and that the ALJ is therefore authorized under Rule 3.15(a) to decide the motion to amend the complaint. In support of this argument, they note that the specific conditions enumerated in the complaint were expressly cited only as examples, not an exhaustive list, and that the existence of a safety hazard is just "another condition" like the ones enumerated.

The ALJ, however, disagreed. In certifying the motion to amend the complaint to the Commission, he noted that the complaint failed explicitly to mention safety hazards and that "an unsafe product may be treated differently under Section 5 than one that is just misrepresented." He concluded that the decision whether to amend the complaint was properly the Commission's.

Complaint counsel's argument is not persuasive. For a variety of reasons, an allegation of the existence of an undisclosed safety hazard is significantly different than an allegation of an undisclosed product "defect." One obvious difference is the type of harm likely to follow from each: a safety hazard poses a risk of physical as well as economic injury. In cases involving safety risks, the Commission may impose higher standards of conduct or consider different remedies than in a case involving pure economic harm. *Cf., e.g., Firestone Tire and Rubber Co.,* 81 F.T.C. 398 (1972), *affirmcd,* 481 F.2d 246 (6th Cir. 1973), *cert. denied,* 414 U.S. 1112 (1973); *Pfizer, Inc.,* 81 F.T.C. 28 (1972). In addition, in considering whether an action under section 5 would be in the public interest, the Commission must also weigh the fact that other federal agencies have the primary duty to ensure the safety of certain products. For these reasons, we cannot agree with complaint counsel that a failure to disclose "safety hazards" was reasonably within the scope of a complaint alleging the failure to disclose product defects causing solely economic harm. Accordingly, the ALJ properly certified the Motion to Amend Complaint to the Commission. *Century 21 Commodore Plaza, Inc.,* 89 F.T.C. 237 (1977).

Complaint counsel urge the Commission to amend the complaint, contending that the amendment is in the public interest and would not prejudice the respondent. Respondent, on the other hand, argues that granting the amendment would unduly complicate an already complex trial, and prejudice its rights and the public interest.

Respondent further argues that there is no "reason to believe" that the Solar Furnace is a safety hazard or that respondent knew or should have known of the existence of the safety hazard.

At the outset, it is clear that amending the complaint at this relatively early stage of the proceeding, where discovery is still ongoing and trial some months distant, would not prejudice respondent. Respondent would have adequate time to respond fully to the charges in the amended complaint. *Exquisite Form Brassiere, Inc. v. FTC,* 301 F.2d 499 (D.C. Cir. 1961), *cert. denied,* 369 U.S. 888 (1962); *James Carpets, Inc.,* 81 F.T.C. 1043, 1046 (1972). In addition, it is well established that the Commission may freely grant leave to amend complaints when the public interest so requires. *Forster Mfg. Co. v. FTC,* 335 F.2d 47, 50 (1st Cir. 1964), *cert. denied,* 380 U.S. 906 (1965).

Nevertheless, the Commission is not persuaded that the public interest would be served, or the trial of this case facilitated, by amending the complaint as moved by complaint counsel. In the first instance, the Commission is not persuaded by the evidence proffered by complaint counsel that there is a reason to believe that respondent violated section 5 by failing to disclose an inherent safety risk about which it knew or should have known. Complaint counsel cite the opinion of one mechanical engineering expert that some of respondent's products could, under some circumstances, create a fire hazard and that some of respondent's products did not conform with national fire and electrical safety codes. However, complaint counsel have not presented information creating a reason to believe that any of respondent's products did, in fact, cause fires or injuries, or that respondent reasonably should have known of the fire hazard potential at the relevant times. The Commission cannot say, on the basis of the evidence before it, that it would be in the public interest to bring an action on the proposed amendment. Accordingly,

It is ordered That Complaint Counsel's Motion to Remand, or, in the alternative, to Amend the Complaint, be, and it hereby is, denied.

IN THE MATTER OF

JIM WALTER CORPORATION

Docket 8986. Interlocutory Order, March 15, 1982

ORDER DEFINING THE SCOPE OF THE PROCEEDINGS ON REMAND AND DIRECTING COMPLAINT COUNSEL TO SUBMIT A PROPOSED AMENDED COMPLAINT

On March 13, 1981, the Commission directed complaint counsel and respondent to file briefs presenting their views as to further disposition of this matter.

Complaint counsel argue that under the standards enunciated by the reviewing court, *Jim Walter Corp. v. FTC,* 625 F.2d 679 (5th Cir. 1980), staff could prove in further hearings the existence of two relevant geographic markets: (a) the 26-state area extending from Texas to and including New York and Massachusetts; and (b) the 41 states east of the Rocky Mountains. Complaint counsel also argue that the Commission's prior product market determinations were correct and continue to be correct in both of the proposed geographic markets and that the acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18, in either or both geographic markets. Complaint counsel also assert that their case would not be affected even if elastomeric roofing materials were included in the product market,[1] and conclude by asserting that a new hearing would be in the public interest both because the acquisition assertedly violates Section 7 and because complaint counsel think there is a strong likelihood of effective relief.

Respondent, Jim Walter Corporation ("JWC"), on the other hand, argues that principles of fairness and finality, as well as the Commission's rules, require a dismissal of the complaint. Even if a dismissal is not required, JWC argues that new evidentiary hearings are not appropriate inasmuch as they would necessarily entail extended discovery and the consideration of current evidence relating to market definition (product and geographic), market share data and the structure of the market, thereby, in JWC's view, causing considerable waste of resources. JWC further argues that the 26-state area and 41-state area asserted by complaint counsel are not relevant markets within which to assess the effects of the acquisition and that, in any event, complaint counsel have shown neither an ability to prove either actual or potential anticompetitive effects nor the appropriateness of divestiture as a remedy.

[1] "Elastomeric roofing materials" consist of solid-preformed sheets and liquids. The term includes the synthetic rubbers neoprene and Hypalon as well as acrylic, butyl, rubberized asphalt, urethane and silicone.

The Commission rejects JWC's assertion that dismissal of the complaint is required. The court of appeals "vacate[d] the FTC decision and remand[ed] the case for reconsideration in light of [the court's] opinion" and "for such proceedings * * * as may be appropriate." 625 F.2d at 684, 678. In so doing, the court suggested several areas of further inquiry. Indeed, any fair reading of the court's opinion shows that the court fully expected that the remand might involve a new trial of some, or several, issues. 625 F.2d at 681, 683–684. Settled principles of administrative law establish that this disposition of the case was well within the court's discretion. *E.g., Ford Motor Co. v. NLRB,* 305 U.S. 364, 372–375 (1939).[2] While JWC's argument for dismissal is not a frivolous one, the decision whether to dismiss or proceed must, given the court's mandate allowing the Commission to proceed, depend upon whether the Commission has reason to believe both that the challenged conduct violates the law and that further proceedings are in the public interest.

In the present case, the Commission has considered the court's decision, as well as the arguments and factual statements set out in the briefs of the parties submitted in response to the Commission's Order of March 13, 1981. We have determined that the present record, and the factual assertions made in the parties' briefs, give the Commission reason to believe that both (1) asphalt and tar roofing products and (2) asphalt and tar proof products as well as elastomeric roofing materials are appropriate markets within which to assess the effects of the acquisition in both (1) the 26-state area and (2) the 41-state area advanced by complaint counsel. The Commission also has reason to believe that the acquisition may have had, or may cause, anticompetitive effects in all of these markets.

The Commission also believes that the public interest would be best served by holding further hearings to determine both the legality of the acquisition and, should the transaction be found illegal, the appropriate remedy. Given the time elapsed since the acquisition was consummated, the Commission has determined that it is appropriate on remand for the Administrative Law Judge to focus upon the industry as it has developed in the intervening years and, should the acquisition be found unlawful, to consider what, if any, remedy is most appropriate, given the present structure of the market(s).[3] *See e.g., United States v. E.I. du Pont de Nemours & Co.,* 353 U.S. 586, 597–598 (1957).

[2] The Commission similarly rejects JWC's argument that Commission Rule 3.55, 16 C.F.R. 3.55, requires dismissal. As JWC points out, Rule 3.55 governs petitions for reconsideration of Commission decisions. The Rule has nothing to do with the disposition of this matter on remand.

[3] Post-acquisition evidence is solicited on remand here because of our decision that evidence of a new product line—elastomeric roofing materials—in addition to the tar and asphalt roofing materials should be included in the

(Continued)

In view of the comments by the court of appeals regarding the possible interest of *Celotex Corporation,* 625 F.2d at 681, the Commission believes Celotex should be joined as a respondent on remand. Also, while the original complaint in this matter alleged only a violation of Section 7 of the Clayton Act, 15 U.S.C. 18, the Commission believes that on remand the Administrative Law Judge should consider the legality of the acquisition under Section 5 of the FTC Act, 15 U.S.C. 45, as well as under Section 7.

In light of the Commission's determination to (1) order retrial of the case; (2) join Celotex Corporation as a party; (3) allege a possible violation of Section 5 of the FTC Act; (4) allege two relevant product markets and adverse competitive effects in two geographic markets; and (5) evaluate the post-acquisition effects of the acquisition, the administrative complaint must be amended. However, Commission Rule 3.15(a), 16 C.F.R. 3.15(a), plainly provides that the scope of the required amendments is beyond the authority of an Administrative Law Judge to order and amendments such as those required by this Order may be issued only by order of the Commission, upon certification by an Administrative Law Judge. In the present case the matter is pending before the Commission on remand from the court of appeals and the parties have already submitted briefs discussing the disposition of the case on remand. Although the present posture of the case would thus allow the Commission to prepare and direct the issuance of an amended administrative complaint, nonetheless the Commission believes it would be better practice for complaint counsel to prepare a proposed amended complaint that is consistent with the terms of this Order. Because this matter is already before the Commission, it makes no sense for the amended complaint to be certified to the Commission by an Administrative Law Judge. Accordingly, to avoid unnecessary duplication, this Order instructs complaint counsel to submit, within 14 days, directly to the Commission, a proposed amended complaint which the Commission might then direct the Secretary to issue and serve. It also provides respondent an opportunity to address the proposed amendments in writing. Accordingly,

It is hereby ordered That within 14 days after the issuance of the Order complaint counsel submit to the Commission, and serve upon

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assessment of the anticompetitive effects of this acquisition. Although post-acquisition evidence should not be given "too much weight," *Federal Trade Commission v. Consolidated Foods Corp.,* 380 U.S. 592, 598 (1965), principally because it is within the power of the acquiring company to manipulate the acquired assets in a manner favorable to its case, *United States v. Continental Can Co.,* 378 U.S. 441, 463 (1964), it is nevertheless appropriate to consider post-acquisition evidence in particular Section 7 cases. There is authority for relying on "the best information available" in assessing a merger as old as this one (ten years). *Consolidated Foods Corp.,* 380 U.S. at 605–06 (Stewart, J. concurring in the judgment).

counsel for Jim Walter Corporation, a proposed amended complaint that is consistent with this order;

It is further ordered That if Jim Walter Corporation wishes to address the proposed amended complaint, it shall file its comments within 14 days of service upon it of the proposed amended complaint; and

It is further ordered That upon issuance of the amended complaint this matter is remanded to the Administrative Law Judge to conduct further proceedings consistent with the opinion of the court of appeals and this Order.

Commissioner Pertschuk did not participate.

IN THE MATTER OF

HERCULES INCORPORATED, ET AL.

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

Docket C-1794. Final Order, Sept. 23, 1970—Modified Order, Apr. 8, 1982.

This order reopens the proceeding and modifies the Commission's order issued on September 23, 1970, 77 F.T.C. 1242, 35 F.R. 16366, by deleting Paragraphs IV and VIII from the order, so as to allow the company to acquire domestic rope producers without prior Commission approval and to relieve respondent of the obligation of notifying the Commission of any change in the corporate organization.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

By petition filed December 1, 1981, respondent Columbian Rope Company ("Columbian") requests, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that Paragraph IV and VIII of the Comission's Order issued in this matter on September 23, 1970, be modified so that Columbian no longer requires the Commission's prior approval to acquire, directly or indirectly, the whole or any part of the stock, share capital or assets of any company involved in the manufacture and sale of rope in the United States. Columbian also sought to delete the only other order provision binding Columbian, Paragraph VIII, which requires notice of changes in corporate organization.

Pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, the petition was placed on the public record for thirty days. No comments were received.

Upon consideration of the petition and its supporting materials the Commission finds that elimination of Paragraphs IV and VIII is in the public interest.

Accordingly, *it is ordered,* that the proceeding be, and it hereby is, reopened for the purpose of modifying the Order entered therein;

It is further ordered, That the Paragraph IV and Paragraph VIII shall terminate upon service of this order.