

IN THE MATTER OF

CC POLLEN COMPANY, ET AL.

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

Docket C-3419. Complaint, March 16, 1993--Decision, March 16, 1993

This consent order prohibits, among other things, a Phoenix-based firm, and its owners, from making false claims about the effect consumption of their bee pollen products has in regard to allergies, aging, impotence, sexual dysfunction, weight loss and antibiotic treatment, and requires that they have scientific evidence to support any other health-benefit claims they make about any food or other product for human consumption, in the future. In addition, the respondents are prohibited from producing or distributing any advertisement that is represented to be something other than a paid ad, and are required to prominently disclose in all future infomercials they create that the programs are paid ads. Finally, the respondents are required to pay \$200,000 as disgorgement of profits.

Appearances

For the Commission: *Brinley H. Williams, Michael Milgrom and Melissa R. Sternlicht.*

For the respondents: *Daniel C. Smith, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that CC Pollen Company, a corporation, and Bruce R. Brown, Carol M. Brown, and Royden Brown, individually and as officers and/or directors of said corporation (“respondents”) have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent CC Pollen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office or principal place of business located at 3627 East Indian School Road, Suite 209, Phoenix, Arizona.

Respondents Bruce R. Brown, Carol M. Brown, and Royden Brown are officers and/or directors of the corporate respondent named herein. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their addresses are the same as that of the corporation.

PAR. 2. Respondents have advertised, offered for sale, sold and/or distributed food products, including bee pollen products (various products containing bee pollen, and/or bee propolis, and/or royal jelly) intended for human consumption. Bee pollen products are “foods” or “drugs” within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. The acts and practices of respondents alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondents have disseminated or caused to be disseminated advertisements for bee pollen products. These advertisements have been disseminated by various means in or affecting commerce, including, but not limited to, television signals transmitted across state lines, for the purpose of inducing the purchase of bee pollen products by members of the public. These advertisements include, but are not necessarily limited to, two television productions, “The Search for the Fountain of Youth” (transcript attached hereto as Exhibit A, copy of program attached as Exhibit D) and “TV Insiders” (transcript attached hereto as Exhibit B, copy of program attached as Exhibit C), and the print advertisements attached hereto as Exhibits E and F.

PAR. 5. The aforesaid television productions contain the following statements and depictions:

(A) MR. MURPHY: Ladies and gentlemen, the show you're about to see was first broadcast a few months ago. Since that time, we have received literally thousands of letters, some of which I'd like to share with you. But let us first watch the show that changed the lives of so many people. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(B) Norman Errington Productions Presents "The Search for the Fountain of Youth." (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(C) MR. MURPHY: Welcome to our program to explore new ways to improve your life. I'm your host, Paul Murphy. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(D) MR. MURPHY: Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(E) MR. MURPHY: "The Search for the Fountain of Youth" is not offering any medical miracles, nor are we making any medical claims at all in this report. We're simply going to present the facts as we have found them, so you can explore this phenomenon with us. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(F) MR. MURPHY: We'll be back in a minute with more information on our search for the Fountain of Youth. First, we'll meet Noel Johnson, who is turning back the pages of time. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(G) Title of 30-minute television program: "TV Insiders." (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(H) MR. INNEO: Hello, I'm Vince Inneo, your inside information investigator. Welcome to this very special edition of "TV Insiders." No matter what walk of life or what the subject, it's no secret that having inside information keeps you steps ahead of the others. That's why we're here. This installment is critically important. Many of you have written possibly the most valuable inside information we have yet uncovered. Here are some of the hundreds of letters asking us or telling us about a 73-year-old Phoenix, Arizona man who many of you have claimed has rediscovered nature's formula for youth. Listen to some of these amazing stories. (Exhibit B, transcript; Exhibit C, video tape of TV Insiders.)

(I) MR. INNEO: Let me restate something. It's your cards and your letters alerting "TV Insiders" to new discoveries, interesting people and inside information. We need inside information. You tell me the stories and what you've heard, we will research it, investigate it, and we will share our findings with everyone. If we use your information, we will send you a "TV Insiders"

investigator's card. This you can count on. So until next mission, this is your inside investigator, Vince Inneo, wishing you good health and God's blessings. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(J) Statements and depictions of apparent unpaid, spontaneous, and unscripted interviews between Vince Inneo and Dr. Gary Null, Ms. Carol Brown, and Mr. Royden Brown. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(K) Statements and depictions that portray individuals as users of bee pollen products who have submitted unsolicited testimonials to "TV Insiders." (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(L) All materials, whether real or recreated, represent factual events. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

PAR. 6. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph five, including, but not necessarily limited to, the advertisements attached as Exhibits A, B, C and D, respondents have represented, directly or by implication, that "The Search for the Fountain of Youth" and "TV Insiders" are not paid-for advertisements, but rather are independent and objective documentary or news programs.

PAR. 7. In truth and in fact, "The Search for the Fountain of Youth" and "TV Insiders" are paid-for advertisements and not independent and objective documentary or news programs.

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

PAR. 8. The aforesaid advertisement also contains the following statements:

(A) MR. MURPHY: Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(B) DR. JENSEN: There's no doubt in my mind that bee pollen is the one thing I have found in all of my travels and in all of my experience that brings on long life and good health. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(C) UNIDENTIFIED SPEAKER: Now, for the first time, the magic of High Desert Bee Pollen is available with this television offer. If you want to feel a

renewed vitality and increased energy, then you may wish to order today. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(D) UNIDENTIFIED SPEAKER: If you order today, we will also include a thirty-day supply of chewable royal jelly tablets for longevity. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(E) MR. MURPHY: Bee pollen is the answer to mankind's quest for the Fountain of Youth. Bee pollen is the activating substance which rejuvenates and slows the aging process. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(F) MR. MURPHY: Leading British medical authority, Dr. G. J. Binding, provides a scientific viewpoint: "Pollen is the finest, most perfect food. A giant germ killer in which bacteria simply cannot exist." (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(G) DR. JENSEN: There's no doubt in my mind that the High Desert Bee Pollen is one thing that I have felt will bring more health, more longevity, a greater power in that body, for the rest of your life. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(H) MR. MURPHY: Dr. Jensen speaks as an expert. He has spent a lifetime looking for ways to increase longevity. He's traveled to hundreds of places on earth where longer lives share a common thread with each of these cultures. And that thread is bee pollen. (Exhibit A, transcript; Exhibit D, video tape of "The Search for the Fountain of Youth.")

(I) MR. ROYDEN BROWN: . . . Royal Jelly is the greatest rejuvenating and sex stamina food known to man, and you certainly want to have, be active sexually all the rest of your life. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(J) MR. INNEO: For those people who are allergic to pollen, will they be able to use Mountain-High Bee Pollen?

MR. BROWN: Bee pollen according to Leo N. Conroy, M.D. in Denver, Colorado, an allergist, says that bee pollen is the best reliever of allergies that he's ever found. He's had, he had over 60 thousand patients documented and 94 percent of them were completely relieved of the symptoms by ingesting the bee pollen.

MR. INNEO: Never have pollen-related allergies again?

MR. BROWN: Never have pollen allergy symptoms again, rest of their lives. (Exhibit B, transcript; Exhibit C, video tape of "TV Insiders.")

(K) MR. INNEO: I've heard from people that Mountain-High Bee Pollen helps them lose weight. Can you tell me how?

MR. BROWN: Well, Mountain-High Bee Pollen has all the nutrients you need for perfect health. So when you eat the Mountain-High Bee Pollen before each meal, it satisfies your appetite. As a result, you eat a little less food with each meal you eat and you lose weight constantly as long as you're eating the

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Mountain-High Bee Pollen. (Exhibit B, transcript; Exhibit C, video tape of “TV Insiders.”)

(L) Propolis is considered the strongest of the natural antibiotics. . . . Propolis is widely recommended by natural health-care practitioners in preference to chemical antibiotics in many conditions where an antibiotic is useful. . . . [Propolis] is being enthusiastically welcomed as the strongest of the natural “preventative” medicines. (Exhibit E, portion of CC Pollen Company printed advertisement.)

(M) Extra High Potency High Desert Honeybee Pollens:

- 6. Weight Control . . .
- 10. Increased Sexual Stamina & Endurance . . .
- 11. Long Lives are attained by bee pollen users . . .

(Exhibit F, topic headings, portion of CC Pollen Company printed advertisement.)

PAR. 9. Through the use of the statements contained in paragraph eight, above, including, but not necessarily limited to, the advertisements attached as Exhibits A, B, C, D, E and F, respondents have represented, directly or by implication, that:

(A) Consumption of any bee pollen product cannot result in an allergic reaction;

(B) Consumption of CC Pollen Company’s bee pollen products will permanently alleviate all of the consumer’s pollen allergy symptoms;

(C) Consumption of bee pollen products slows or prevents or reverses the aging process;

(D) Consumption of bee pollen products can cure, or prevent, or alleviate impotence and/or sexual dysfunction;

(E) Consumption of bee pollen products causes weight loss;

(F) Bee pollen products, such as those advertised by CC Pollen Company, are an effective antibiotic for human use.

PAR. 10. In fact and in truth:

(A) Consumption of a bee pollen product can result in an allergic reaction;

(B) Consumption of CC Pollen Company's bee pollen products will not permanently alleviate all of the consumer's pollen allergy symptoms;

(C) Consumption of bee pollen products does not slow or prevent or reverse the aging process;

(D) Consumption of bee pollen products cannot cure, or prevent, or alleviate impotence and/or sexual dysfunction;

(E) Consumption of bee pollen products does not cause weight loss;

(F) Bee pollen products, such as those advertised by CC Pollen Company, are not an effective antibiotic for human use.

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

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

PAR. 12. In truth and in fact, at the time respondents made the representations set forth in paragraph nine, they did not possess and rely upon a reasonable basis for making each such representation. Therefore, respondents' representation as set forth in paragraph eleven was and is false and misleading.

PAR. 13. The acts and practices of respondents as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair and deceptive acts or practices in or affecting commerce, and the dissemination of false advertisements, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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EXHIBIT A

AUDIO TEXT

VIDEO STATEMENTS

Norman Errington Productions Presents The Search for the Fountain of Youth

MURPHY: Ladies and gentlemen, the show you're about to see was first broadcast a few months ago. Since that time, we have received literally thousands of letters, some of which I'd like to share with you. But let us first watch the show that changed the lives of so many people.

MURPHY: Welcome to our program to explore new ways to improve your life. I'm your host, Paul Murphy. For centuries, mankind has searched for that elusive Fountain of Youth. Ponce de Leon spent his entire life searching. Others have traveled and visited ancient cultures, hoping to find clues and answers. For centuries, people have looked for ways to renew that youthful vitality, and for ways to live longer and more productive lives.

What we're about to present to you may change your life. Across the world's cultures, we found similarities in their style of living that seem to unlock some of the mysteries of longevity. Many of these cultures have groups who have extended their years, and we found that each of these cultures has a common link. And we'll be exploring these similarities.

The locations of these cultures range from the mountains of Tibet to the rich heritage of Aztec and Mayan civilizations, in Europe and to the Orient. One thing we've found is that America is behind in reaching for those lessons to provide longer and healthier lives.

The man who has obviously bathed in the Fountain of Youth is this nearly 90-year-old man they call "Superman." Twenty-five years ago he was not able to walk and his son wanted him to go to a nursing home because of poor health. We're going to meet Noel Johnson. Not only did he stay out of the nursing home and prove his doctors wrong, this Superman is the oldest person to ever complete the New York Marathon. He's treated like a king in Thailand; he's appeared on hundreds of television programs, and he's a national treasure for his ability to overcome aging. He improves his condition with every marathon he runs.

We'll meet Bob Kite. He's an athlete who doesn't fit the mold. Due to his heavy business schedule, he's unable to work out on a regular basis, so he relies on an energy source to carry him to victory in some of the toughest endurance races in the world.

In the next few minutes, we'll also meet the father of the health food movement today, Dr. Bernard Jensen. Dr. Jensen has traveled the world searching for the answers to provide information on how all of us can live more vital lives. He's studied cultures across the world, and you'll be surprised at his findings.

And we'll meet a man who has devoted the past 30 years to a mission, to find the Fountain of Youth. His travels led him down many roads. He's developed a company devoted to providing the Fountain of Youth.

The Search for the Fountain of Youth

"The Search for the Fountain of Youth" is not offering any medical miracles, nor are we making any medical claims at all in this report. We're simply going to present the facts as we have found them, so you can explore this phenomenon with us. It's not surprising today that people are turning away from medicines to treat the sick and turning to wellness efforts to ensure the well-being of people before they become sick.

This is a story that begins almost a half-century ago in war-torn England. An American from Eaton, Colorado, volunteered to assist the Royal Canadian Air Force in England. His story will have a remarkable effect on the American quest for vitality. Royden Brown was first introduced to the opportunity for improvements in health through nutrition in 1943 at an officers' dining table. He was introduced to a food that changed his life and changed others'.

MURPHY: Royden, are the benefits of bee pollen a recent discovery?

BROWN: Bee pollen was on earth before man. It's as old as antiquity. Bee pollen and the products of the beehive are ... were ... found in the tombs of the pharaohs of Egypt, five and six thousand years ago. The products of the beehive have been revered in all major religions. The Torah, the code of Islam, the scrolls of the middle east, the writings of China, everywhere, the products of the beehive have been held in reverence.

For example, in the St. James version of the Bible, they're mentioned 68 times. And, of more recent vintage, the risen Jesus Christ, when He came back to earth, the first food He ate was bee pollen. God had Him eat bee pollen, symbolically, for the reason that Man was supposed to make bee pollen an integral part of his life.

MURPHY: Why haven't we heard more about the positive aspects of bee pollen?

BROWN: Mainly because the pharmaceutical companies cannot patent bee pollen and make their 40- and 50-times markup of their cost. Bee pollen is a low-profit food.

MURPHY: Let's find out a little more about the magic of bee pollen. In every corner of the earth, we're blessed with flowers. Ever wonder about the purpose of flowers? They provide beauty to the eye and a lift to the spirit. Scientists have found a far greater purpose. Wildflowers provide a source for honeybees who must visit 1,500 individual flowers to collect just one granule of bee pollen. Just one tablet of bee pollen can contain pollen from as many as 100,000 flowers. Bee pollen has been called "Nature's perfect food" because it has

everything the body requires - all the protein, all the minerals, and a great source of energy. It's the essence of life itself.

Bee pollen is brought back to the hive and is collected in special traps. In addition to pollen, another element of the hive is royal jelly. Now, just as the name implies, royal jelly is given to a selected bee and that alone makes an ordinary bee the queen. Not only does the royal jelly create the queen, it also extends her life from an average of 35 days to five or six years.

Depiction of Print Article Containing Royal Family Photos and Headline:
Secret Love Potion Made Fergie Pregnant

It's been reported in newspapers and magazines for years that the Royal Family has used royal jelly. Although the Royal Family is obviously protective of all information, the British press regularly features the Royal Family's use of royal jelly. The press also has highlighted reports that the Queen Mother attributes royal jelly for her remarkable stamina and that Princess Anne uses it when she competes in equestrian events. It's even been reported that the Queen herself takes extra royal jelly when she has particularly arduous engagements to undertake.

We'll be back in a minute with more information on our search for the Fountain of Youth. First, we'll meet Noel Johnson, who is turning back the pages of time.

JOHNSON: I'm Noel Johnson from San Diego, California. I'll soon be 90 years old. I'm running marathons, I'm boxing - a World Senior Boxing Champion. I'm a bee pollen lover. I use bee pollen every day of my life. Without the bee pollen, you cannot have the energy to continue to live.

"High Desert Bee Pollen" Candy Bars and Pills

VOICE-OVER: Now, for the first time, a special selection of High Desert Bee Pollen products are available through this television offer. You will receive a selection of the delicious bee pollen bars, the President's and First Lady's lunch bars, plus your kit will include a 30-day supply of Pollenergy and one box of bee pollen honey chewable tablets.

Call Toll-Free Number or Send Check or Money Order

If you order today, we will also include a supply of chewable royal jelly tablets. To order your Presidential energy assortment with Visa or Mastercard, call toll-free 1-800-321-5100 or send check or money order for \$39.95 plus \$3.50 for postage and special handling to Tele-Mart, Box B, Elfers, Florida 34680.

The Search for the Fountain of Youth

MURPHY: Welcome back to "The Search for the Fountain of Youth."

We found one man who actually seems to be growing younger. Now you may not believe the growing success of Noel Johnson, but his unique story has been the focus of national magazine articles, with Dan Rather special profiles on national television, and in national magazines. And he's now treated like a prince in many countries for his ability to battle the ravages of time. David Letterman called him "Superman" and he's now astounding medical doctors as he approaches his ninetieth birthday - Let's meet Noel Johnson. He's a world-class marathon runner - that's a 26-mile run. He's a world-class boxer. He's defeated boxers half his age. His name is synonymous with longevity throughout the world. Simply, he's reversed the aging process. Recently, Reader's Digest summarized the success story of Noel Johnson. At 70, Noel K. Johnson of San Diego had heart trouble, arthritis and gout. He drank too much. He was 50 pounds overweight. He was in such bad shape that his son suggested he enter a nursing home. Today, at nearly 90, he's a trim 138 pounds and claims his afflictions have disappeared. We had a chance to meet the remarkable Noel Johnson.

JOHNSON: My son one day came over and said that, "Dad," he says, "Why don't you go to a retirement home or someplace?" He says, "You can't take care of your place any more." And he was right. I didn't argue with him. So I decided, well, there must be something wrong in this world when a person has to be put away when you're seventy, seventy-five years old. Everybody seems to be that way. All my neighbors and things were that way, so why shouldn't I be that way, and I questioned it. I thought, "Well, why does this have to happen?" Nobody ever found out anything about the Fountain of Youth, and I thought, "Well, I'm gonna do it." There's something that you can do to keep from gettin' sick. Our bodies are supposed to live forever. And so I went into bee pollen, and I thought at that time, "Well, maybe I can continue until I'm 80." So I took bee pollen for about two years, and when I was 80 years old, I was in much better condition than I had ever been since I was 70. I was improvin', and I said, "Well, I'm gonna continue." So I continued to take the bee pollen and doin' my light exercise and things like that, and by the time it got to be 85, I was much better than I was at 80. And now I'm getting near 90, I'm better'n I was at 85. I'm improving right along. I've found . . . I'm finding out new things all the time. Bee pollen is one of the things that has done it.

I was running in the New York Marathon one time, running down Brooklyn, a lady came out and put her arms around me and says, "How'd you like to run home with me?" I said, "Listen. You ... you just stay here and wait and I'll be back." When I run a marathon, I ... the only thing I eat in the morning, I take my bee pollen, and then I have bee tablets with me. About every mile, I take a tablet of bee pollen. It goes into your bloodstream just a few minutes after you swallow it, and I think that bee pollen gives me, every mile, it gives me energy. Yes, bee

pollen would help you. It'll help you. I don't care if you're an athlete or a secretary, whichever you are.

MURPHY: Noel Johnson's book, *A Dud at Seventy ... Stud at 80*, has received world-wide recognition. It's been printed in dozens of languages. Johnson's new book is about to be published: *Be Healthy to 100*. It's sure to be another international hit. Johnson is certainly a unique individual. In just a few minutes, we'll let you know how to order the same High Desert Bee Pollen that Johnson uses daily.

Certainly, a lot of world-class athletes are using this food, bee pollen. It offers energy that can't be achieved any other way, no matter what kind of condition you may be in. It also offers the non-athlete the ability to achieve. A great example is Bob Kite of Phoenix, Arizona. Kite began taking bee pollen seven years ago, and now he's the envy of the running group in Arizona and California. But what makes him unique is that he does not train like the competition. He freely admits to being a junk food fan, but feels bee pollen lets him mix irregular workouts with running competition and still be a winner. We caught up with Bob Kite and asked him how long has he been taking bee pollen.

KITE: I've been takin' it for about seven years now, off and on. I'm not a devout athlete, nor a nutritionist by any means. I eat a lot of garbage food. I've been known to get comfortable at a Burger King every now and then and, in fact, I'm a soft drink junkie, but at the same time I supplement it with the bee pollen and I think that's more or less my ace in the hole as far as mixing athletics with decadence in life. If you eat enough of the right stuff, it makes up for the bad stuff that you typically put into your diet.

A lot of the success of that was the fact that I took quite a bit of bee pollen before the race, and then during the race I'd be eatin' the bee pollen bars, mainly because your body can only last about two, two-and-a-half hours on what it can store, what ... the carbo loading theory. After that, you're ... you're turning cannibal on yourself, and it's just whatever the body can consume. If you can put something else new in there, it won't eat yourself up. I think that the bee pollen really kicked into effect in those third, fourth and fifth hours of running. Whereas everybody else was bonking and trying to survive on bananas and chocolate, I was doing just fine on the pollen. If you can take it long enough, you will be healthier. It ... it just is nothing more than a food. It's a pure food; it's a complete food. So, if your diet is bad, or if you're inconsistent with your diet, this bee pollen is kinda like mortar. You can build a nice wall with rocks, but if you don't have that mortar in there it'll fall apart sooner or later. Bee pollen kinda fills it all in and makes it solid because you can live on it. You can ... bee pollen and water, you can live on it.

MURPHY. In just a minute, we'll be meeting a world-renowned individual who is credited with being the father of today's growing wellness orientation. Dr. Bernard Jensen has traveled the world in search of answers on the Fountain of Youth, and he's found some answers. We'll be right back.

JENSEN. There's no doubt in my mind that bee pollen is the one thing I have found in all of my travels and in all of my experience that brings on long life and good health.

VOICE-OVER: Now, for the first time, the magic of High Desert Bee Pollen is available with this television offer. If you want to feel a renewed vitality and increased energy, then you may wish to order today. This Presidential kit includes a generous selection of delicious bars; the President's lunch bar and the First Lady's lunch bar. In addition, you will also receive a thirty-day supply of Pollenergy and one box of bee pollen honey chewable tablets. If you order today, we will also include a thirty-day supply of chewable royal jelly tablets for longevity. To order your Presidential energy kit with Visa or Mastercard, call toll-free 1-800-321-5100. Or, send a check or money order for \$39.95 to Tele-Mart, Box B, Elfers, Florida 34680. Please add \$3.50 for shipping and special handling. Once again, to order your Presidential bee pollen kit, call toll-free 1-800-321-5100, or send a check or money order for \$39.95 to Tele-Mart, Box B, Elfers, Florida 34680. Please add \$3.50 for shipping and special handling. Credit card and money orders are processed for shipment within forty-eight hours.

The Search for the Fountain of Youth

MURPHY: There is no doubt that the bee pollen story is a fascinating one. In the next few years, you'll see the growth in bee pollen sales to levels like in Scandinavian and oriental cultures. Remember, bee pollen is not a drug; it's a food. High Desert Bee Pollen is America's number one pollen distributor to other nations.

One country uses more High Desert Bee Pollen than any other. Nearly one in four people in Iceland use High Desert Bee Pollen regularly. This is due to the remarkable story of Gissur Gugmondsson. Gissur was nearly bedridden for years and was in pain all the time. Here is his story, translated from the Reykjavik daily newspapers on November 10, 1987:

TRANSLATOR: Around the age of sixty, I began to suffer from a marked lack of breath, especially when I had to carry or lift heavy objects. I mentioned this to my doctor who, after careful examination, diagnosed hardening of the arteries and other ailments afflicting my muscles and joints. He advised me to give up all heavy manual labor immediately to avoid making my condition worse, hinting I could even drop down dead any minute. In the following years, I was plagued with various ailments, in particular with rheumatism, which caused me unbearable suffering in most of my joints.

I was provided with a specially constructed table and chair for reading and writing, and had supports strapped around my knees for walking and had begun using a walking stick. I underwent tests during this period. Everything was tried. I underwent therapy and massage and all of this was positive as far as it went. I read about the body's nutritional needs, and when I read about bee pollen I felt it

was something worth looking into. I began taking it in tablet form and then bought a box of grains and increased my intake. Then my body really started to return to form. A miracle happened. The effect snowballed. The pain disappeared from joints, and other improvements followed, such as a vast increase in my stamina and general zest for life. My heartbeat is perfectly normal, my vision no longer impaired, and I have stopped using the reading glasses which I needed for thirty-seven years. I have also quit using the leg straps and walking stick. My doctor for the past five years confirmed the truth of everything I have said about the time I have been her patient. I am now nearing the age of 81, and I am absolutely satisfied with the life I lead and enjoy doing so. Pollen has done so much for me and I shall never stop taking it.

MURPHY: Since bee pollen's history parallels the history of civilization, let's highlight what the authorities have said about bee pollen.

Dr. Carlton Fredericks, noted health author, feels "Honeybee pollen is the only super-perfect food on this earth. It is not a subject to debate or challenge." Many, many years ago, Hippocrates said, "Let your medicine be your food, and your food be your medicine."

According to Dr. William Hedgepeth, leading holistic medicine doctor, "Bee pollen is the answer to mankind's quest for the Fountain of Youth. Bee pollen is the activating substance which rejuvenates and slows the aging process."

Dr. John R. Christopher, considered by many to be the greatest herbalist, adds, "I consider honeybee pollen the most natural food in the world. Pollen is life itself."

Leading British medical authority, Dr. G. J. Binding, provides a scientific viewpoint "Pollen is the finest, most perfect food. A giant germ killer in which bacteria simply cannot exist."

Another noted nutritional authority, Ernest Cantreras, states, "To my knowledge, there is no better and more complete natural nutrient than honeybee pollen."

Our next guest is the world-renowned Dr. Bernard Jensen. Dr. Jensen's credits read like a "Who's Who in the Nutritional World." He has written over 50 books in his life-long quest for knowledge about nutrition. His search for long life and to discover the secrets of health has led him to over 55 countries. He received the Dag Hammerskjold Award for his efforts in nutritional research, and also was presented a special award from Queen Juliana of the Netherlands. Dr. Jensen is an outspoken advocate of bee pollen.

JENSEN: There are very few foods I consider whole foods. Bee pollen is one of those foods. It feeds every part of the body, and especially the glandular side of our body. And when it feeds those glands, this gives us the energy and the pep for repair and rebuilding. And we find that bee pollen is part of the food that the bee lives on. That is what feeds the queen bee. We find out that this is ... gives us the best part of that bee colony to build a whole bee: the eye, the nerves, the spine, the responsiveness, the nervous system, the digestive system. It feeds

and makes a whole body, and it does that for the human as well as it does for the bee. There's no doubt in my mind that the High Desert Bee Pollen is one thing that I have felt will bring more health, more longevity, a greater power in that body, for the rest of your life.

MURPHY: Dr. Jensen speaks as an expert. He has spent a lifetime looking for ways to increase longevity. He's traveled to hundreds of places on earth where longer lives share a common thread with each of these cultures. And that thread is bee pollen. Jensen has spent thousands of hours with people over 100 years of age and all of these cultures, no matter the location, are bee keepers.

The Search for the Fountain of Youth

VOICE-OVER: Now, for the first time, the magic of High Desert Bee Pollen is available with this television offer. If you want to feel a renewed vitality and increased energy, then you may wish to order today. This Presidential kit includes a generous selection of delicious bars: the President's Lunch Bar and the First Lady's Lunch Bar. In addition, you will also receive a 30-day supply of Pollenergy and one box of bee pollen honey chewable tablets. If you order today, we will also include a 30-day supply of chewable royal jelly tablets for longevity. To order your Presidential energy kit with Visa or Mastercard, call toll-free 1-800-321-5100. Or send a check or money order for \$39.95 to Tele-Mart, Box B, Elfers, Florida 34680. Please add \$3.50 for shipping and special handling. Once again, to order your Presidential bee pollen kit, call toll-free 1-800-321-5100, or send a check or money order for \$39.95 to Tele-Mart, Box B, Elfers, Florida 34680. Please add \$3.50 for shipping and special handling. Credit card and money orders are processed for shipment within forty-eight hours.

MURPHY: As I promised earlier, we'd like to share with you just a few of the many letters we've received. From Wisconsin, this viewer writes, "I have used the honeybee pollen only a short time and it's helping so much I want to be sure I won't run out. It's really wonderful." A lady from Michigan writes, "Please send me another order of bee pollen. My husband absolutely cannot be without it." According to Mr. Mack of Florida, who states, "Your pollen is the best we've ever had. We're recommending it to all our nutritional counseling clients." "I have been relieved of severe depression episodes. I have high energy levels. Pollen helped in my weight reduction program, also," said Mrs. G. H. of Texas.

A 71-year-old writes to say, "At 71, I'm more capable than I was 15 years ago. I feel good!" For those interested in weight reduction, this person from New Jersey writes, "At age 73, I feel like about 50 years of age, and have lost about 50 pounds." A professional dietitian at Florida wrote, "As a dietitian, I have taken pollen in its many forms from various sources, but I had never had the benefits and results contained in your bee pollen." From Georgia, this viewer says, "Your bee pollen is all you claim it to be. I thought all bee pollen was the same, but there's no comparison. I have never experienced such energy in my body." Another

gentleman wrote, "My wife and I (72 years) just started taking bee pollen on the advice of a nutrition-minded M.D. We were informed you have the best, and we want to order." A letter from Dr. T. T. states, "Health improvements have been phenomenal! Thank you." An 81-year-old California viewer says, "After eating honeybee pollen and honey at 81 years old, I gave up my glasses that I've used for 44 years and regained my sexual potency which had been missing for 16 years." W. H. from Utah writes to say, "I love your honeybee pollen. I've not tried a more delicious bee pollen yet. Yours is soft, clean and fresh. Am I impressed." And that's a good point, ladies and gentlemen. All our products go directly to you from harvesting, right here in the good old U.S.A. While many of the imported pollens lose up to 70% of their potency in shipment from other countries or while sitting on shelves for many months. And I'd like to add that we have supplied the White House, Camp David, Air Force One and Executive One for many years. Now these bars even went to the Moscow Summit and we're very proud of that. Our pollen bars were named in honor of President and Mrs. Reagan.

This is Paul Murphy saying, "Be healthy, be happy, and God bless you."

Norman Errington Productions

1988

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Ordering
Information
Repeated

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EXHIBIT B

AUDIO TEXT

VIDEO STATEMENTS

UNIDENTIFIED VOICE: Insider One Safety Tower. Runway three five right cleared for takeoff.

PILOT: Insider One, Roger

UNIDENTIFIED VOICE: TV Insiders with Investigator Vince Inneo.

VIDEO: TV Insiders, with Investigator Vince Inneo

MR. INNEO: Hello. I'm Vince Inneo, your inside information investigator. Welcome to this very special edition of TV Insiders. No matter what walk of life or what the subject, it's no secret that having inside information keeps you steps ahead of the others. That's why we're here. This installment is critically important. Many of you have written possibly the most valuable inside information we have yet uncovered. Here are some of the hundreds of letters asking us or telling us about a 73-year-old Phoenix, Arizona man who many of you have claimed has rediscovered nature's formula for youth. Listen to some of these amazing stories.

VIDEO: From D.A.L.'s Letter

MALE SPEAKER: I had arthritis in a very painful state in my left foot to the extent that I was limping quite noticeably. Now the arthritic pain has vanished completely, I am now able to walk normally.

VIDEO: Pat Patten, Homemaker

FEMALE VOICE: I've been using it about a year now. I had dry patches on my face. They are gone. My energy level has increased. I feel great all over. Even my fingernails have grown. It's been a godsend.

VIDEO: From Dr. F.M.'s Letter

MALE SPEAKER: It helped me a lot. I'm telling the patients that are interested in their health. Keep up the good work.

MR. INNEO: These are only a sampling of the letters from people around the world who want to share this information.

Here is one from Mr. Magnus Bjornsen in Iceland. He writes that his health had deteriorated to being confined 24 hours a day to a wheelchair. However,

today he has regained his health, has left the wheelchair behind, exercises and works a ten-hour day and he is 70 years old.

Mrs. Ragner Breeford of Norway writes of how she suffered ten to twelve days every month with PMS. She would be bedridden for several days at a time. Now she is free of pain for the first time in her adult life. Some have written books. Noel Johnson's autobiography tells us that at the age of 70 he was about to be committed to a nursing home because he could no longer care for himself. But something happened. Eighteen years later at the age of 88 he is now participating in the 26-mile New York Marathon and leads a healthy, happy and more vital life.

Look at these letters from advocates the world over who are sharing this discovery, hundreds of them, all of them documented and some quoted in this book "The World's Only Perfect Food."

But this is the most exciting, a copy of December's Parade Magazine. President Ronald Reagan was asked how he keeps so youthful and why he doesn't have gray hair. The President said his secret comes from something he obtains in Phoenix, Arizona.

President Reagan is the only president I can remember who looks as good, if not better, after eight years as President of the United States in what many claim to be the world's toughest job.

Think about this for a second. Presidents Johnson, Nixon, Ford and Carter all seem to have aged after only four years in the White House.

Stay with me as we fly to Phoenix to meet this mysterious man and uncover the Reagan secret.

But first, let me share with you this interview I had earlier with Miss Carol Brown. Miss Brown was the liaison in the Reagan White House.

MR. INNEO: Hi, Carol. I'm Vince Inneo from TV Insiders.

MS. BROWN: Hi, Vince. It's nice to meet you. Have a seat.

VIDEO: Carol Brown Liaison

MR. INNEO: Thank you. We have letters from people all over the world telling us that former President Reagan and Mrs. Reagan know about something that reportedly makes people live longer and healthier lives. As liaison to the White House in this area, do you know about this and are you able to talk about it?

MS. BROWN: Yes. I'll be happy to tell you anything you need to know.

MR. INNEO: Is it true then? Is there really something to all this?

MS. BROWN: It's absolutely true.

MR. INNEO: And former President Ronald Reagan and Mrs. Reagan are ardent advocates?

MS. BROWN: That's also true. I have a letter here from Mrs. Reagan and her picture. She's a wonderful lady.

MR. INNEO: Okay. Carol, what is it? What is the Reagan secret?

MS. BROWN: It's bee pollen much of which comes from mountainous areas.

MR. INNEO: Bee pollen will really do all this for you?

MS. BROWN: That and more.

MR. INNEO: Now, you say mountainous areas of the world. Does this really make a difference?

MS. BROWN: Oh yes. Bee pollen from high altitudes is much richer there and more potent. Just ask Dr. Gary Null. He knows everything bee pollen can do for you.

MR. INNEO: Who else knows about this secret?

MS. BROWN: The Queen of England and the Royal Family have been consuming bee pollen products for generations. In a recent January article they reported about Lady Di's consumption of royal jelly.

MR. INNEO: Can I walk into any health food store and purchase Mountain-High Bee Pollen?

MS. BROWN: Mountain-High Bee Pollen is rather an exclusive item and you must contact the maker directly.

MR. INNEO: Well, thank you, Carol. This inside information has really been of tremendous help to us. I appreciate the time that you spent with us.

MS. BROWN: Thank you. It's been my pleasure.

MR. INNEO: Now you know why we're going to Phoenix. Mountain-High Bee Pollen. Listen to what health and nutritional expert Dr. Gary Null has to say about it.

In the last 20 years Gary Null has written not less than 51 books, three of which are presently on the best seller's list. He is a research scientist in the field of nutrition and publishes the Natural Living Newsletter. He's a world class lecturer at colleges and universities. He has appeared on such shows as the Phil Donahue Show, the Tonight and Today shows and has his own radio and TV shows. He is also a health food columnist for national publications. Materials from his investigations have been used by 20/20 and 60 Minutes.

Gary Null knows his stuff. He practices what he preaches. Via satellite this is my Insider interview with Dr. Gary Null.

Gary, this is Vince Inneo with TV Insiders. Thank you for giving us the opportunity to talk to you.

Dr. Gary Null, Nutritionist, Scientist, Author

MR. GARY NULL: Thank you very much for inviting me. I'm happy to share any information on bee pollen that might help the people in the audience.

What questions do you have?

MR. INNEO: To be very honest with you, Gary until the Insider team received so many letters about Mountain-High Bee Pollen's Company, I'd never heard of it. My question is why? If Mountain-High Bee Pollen is supposed to be so good for you, why haven't we heard more about it?

MR. NULL: The reason that we haven't heard more about bee pollen is that we have taken a pharmaceutical look at disease, we haven't emphasized wellness, and it's only now that we're beginning to examine the role of vitamins and minerals, Vitamin C and Vitamin E and B-6 and even some of the exotic nutrients like Co-enzyme Q-10, Germanium and Carnitine for our good health.

Well, if there is not a way of profiting by exclusively being able to patent a product and market it under your own brand name, then why promote it? You don't want something that everyone can find that's inexpensive - bee pollen's inexpensive, royal jelly's inexpensive - that's readily available, but also there's not a supply enough for everyone. That's why the pharmaceutical industry has not jumped on the bandwagon. With a drug you can take even an herb, and you can make a chemical extract. And ah! Here's something you should know. This substantiates bee pollen's importance. Time and again they've tried to chemically in a laboratory duplicate bee pollen and royal jelly, and they have failed every time. They can't get the same results, which is telling us that nature provided the bee pollen and royal jelly with some intrinsic factor, some mysterious factor, that science cannot duplicate. And that's why it's so perfect.

But again you don't have enough bee pollen and you don't have enough royal jelly to feed everyone who can benefit from it. So it's kind of an Insider's health secret.

MR. INNEO: What exactly is bee pollen?

MR. NULL: Bee pollen is one of the most perfect foods ever found in nature. In fact, it's probably the most concentrated in enzymes. You see, our body functions because of enzymes. You age because you don't produce enough enzymes. So one way to slow down the aging process is to have more enzyme-rich foods. That's why fresh juices and raw foods are better than over-processed and cooked foods.

Well, you can't get any better food than bee pollen because it's not cooked, it's not processed. It is loaded with vitamins, minerals, enzymes. In fact, there's one nutrient that it has that can help the inside of your body prevent the capillaries from aging.

Did you ever notice when you hit at yourself, you'll bruise? Well it could be a deficiency of bioflavinoids, and one way of getting bioflavinoids is through bee pollen because you're getting rutin.

Rutin has been shown to help the fragilities capillaries. Therefore, you don't get those little splotches on the legs and wherever you might bruise. So it's anti-aging.

Now, the bees go out, they collect from these beautiful flowers, they collect the pollen. They bring the pollen back, and 60 percent to 70 percent is kept for the person collecting it and 30 percent is allowed to remain with the bees because that's what they eat. Because after all, as good as it is for humans. It's the life thread for the bees, and that's what we benefit from.

MR. INNEO: TV Insiders' investigation team has seen letters from people throughout the world claiming they not only look and feel younger, but their friends and family have noticed changes. Is it reasonable for people to really expect to live longer and healthier lives by adding Mountain-High Bee Pollen to their daily regimen?

MR. NULL: I think it's entirely reasonable. Gloria Swanson, the famous actress who's a very good friend of mine, she looked magnificent with no facelifts. Her skin, if you saw her up close, her hands and her face were very very smooth, almost like a baby's. She had bee pollen and royal jelly twice a day, and she would rely and say,

Gary, this is part of my secret. It wasn't the only thing, but it was a primary part.

And throughout centuries people who have lived around bee hives or who have been the aviary keepers. People who have farmed bees, these are the people who have had really long, vital lives and have looked better.

And Loni Anderson commented in an article that one of the reasons she keeps her health, along with a good diet and the exercise, is she includes bee pollen.

MR. INNEO: Okay. Let me put it to you directly. I start using Mountain-High Bee Pollen today, what can I look forward to? What can I honestly expect?

MR. NULL: I think reasonably we could expect to enhance our overall well-being. It's not always easy to measure because some of the changes are subtle.

For instance, when you're ten years older and you've been eating right and you've been exercising and you've been taking in bee pollen or royal jelly and you don't look the same age as your contemporaries, when you don't feel the same way, when you have boundless energy, when you don't go through those up-and-downs, as peaks and valleys that you normally would, when instead of needing a cup of coffee, you have sustained energy, when your sex life is improved, do you ascribe that just to bee pollen?

Well, you can ascribe some of it possibly to bee pollen. It certainly will do two things. It will certainly enhance our overall well-being because we are what we eat, we're what we breathe, we're what we drink and we're what we think. Positive living, positive diet and a positive amount of bee pollen, I feel, enhances the total quality of life.

MR. INNEO: The Insiders' message is becoming clear. If you do nothing else, if you can't or won't exercise, if you're interested in your well-being but you're not willing to jump on the health food mega-vitamin bandwagon, if you're concerned about the side effects of adding unnatural, manufactured or artificial vitamins or chemical supplements to your diet, if you, like the other people we've heard from and spoken to, want to live longer, healthier and happier lives, if you want that second chance at life, there is something you can do.

I'll be right back after this message.

(VIDEO: 1-800-553-5500 Mountain High Bee Pollen is available exclusively from the maker. It is not sold in stores. Call now to receive your full 30 day supply of...)

UNIDENTIFIED SPEAKER: Mountain-High Bee Pollen is available exclusively from the maker. It is not sold in stores. Call now to receive your full 30-day supply of Mountain-High Bee-Young Wafers. Stay young and alert throughout your life. Pollenergy 520 capsules restore that missing energy and 24-hour Royal Jelly tablets to keep sexually active at any age.

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Also receive as our gift a President's and a First Lady's lunch bar. To start feeling young, energetic and vital again, simply take one Bee-Young Wafer and one Pollenergy 520 capsule with each meal. Take one Royal Jelly capsule before bedtime. Unlock nutrient shortages in your body and reawaken parts of your system long neglected.

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MR. INNEO: Welcome back to TV Insiders and our conversation with Dr. Gary Null.

Gary, is Mountain-High Bee Pollen a drug, and are there any side effects to worry about?

MR. NULL: Oh, absolutely not. Bee pollen is not a drug. It's 100 percent natural. It's organic. It's loaded with good nutrition. The only side effect of eating bee pollen is improved well-being.

MR. INNEO: Can you cite specific medical or scientific studies which are proof positive that Mountain-High Bee Pollen leads to a longer, healthier life?

MR. NULL: There have been a lot of medical studies and scientific studies on the benefit of bee pollen and especially when it comes to the aging.

DR. GARY NULL Nutritionist, Scientist, Author: One of the men who first studied bee pollen was a man named Dr. Price. And Dr. Price studied a group of people called the Hunzacotts. The Hunzacotts lived in an area called Hunza.

Now, if you remember Hilton's movie, Lost Horizons, the movie with Ronald Colbin [sic], well, that Shangri-la was actually a real place. It was called Hunza.

Now, that doesn't mean everything that was in the movie actually happened, but it was based upon a real people and that people still exist today. There's some 70,000 who live at an altitude of 10,000 feet in that area of the world, and they have as a part of their diet, and I know because I've interviewed the Mir, the ruler's family Said Khan, and he told me about what they eat, and they eat almost everyday bee pollen and royal jelly.

So there you had a whole culture that benefitted over the centuries, the last 2,000 years, from eating this.

MR. INNEO: With all due respect, isn't there an age level where sexual dysfunction is automatic no matter what you do?

MR. NULL: There is no age to where the sexual apparatus diminishes or dies.

MR. INNEO: Our inside information shows that some bee pollen to be better than others. Can Mountain-High Bee Pollen make this claim? Is it really the best?

MR. NULL: Not all bee pollen is the same; please keep that in mind. Much of the pollen in the United States is from the Florida and Texas area, and California where a lot of pesticides can be used and pesticides can get on the bee pollen.

The best bee pollen comes from your mountainous areas, the mountains of Arizona, the mountains of Wisconsin, of the high area of Indiana, where you have very little pesticides or none at all. In fact, in some of the states they've forbidden pesticides because of the dairy lobby, which is good, and so you want that. Also the bees are heartier at a higher altitude.

MR. INNEO: So you were saying that bee pollen from mountains is the best?

MR. NULL: The mountainous area is the best

MR. INNEO: Why would you recommend that people use Mountain-High Bee Pollen over other nutritional supplements?

MR. NULL: Because you're starting off with the best. You're starting off with the most potent, the most balanced, the most whole food that we could take in as a nutritional supplement, and then all the other changes you make in addition to that are only going to enhance your total well-being.

MR. INNEO: Gary, sum up the Insider Information for us.

MR. NULL: There is something to this that the American public is not aware of that the rest of the world seems to be taking and has been for a long time. We should be allowed in on this very important nutrient.

MR. INNEO: Thank you for being our guest today, Dr. Null. Your inside information has been invaluable.

MR. NULL: Thank you.

MR. INNEO: As I said, Dr. Gary Null is the authority on health and nutrition. He really does know his stuff.

UNIDENTIFIED SPEAKER: Please buckle your seat belt. We are now arriving in Phoenix.

MR. INNEO: Now we're going to meet who developed Mountain-High Bee Pollen. His name is Mr. Royden Brown.

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Mr. Brown.

MR. ROYDEN BROWN: Yes, sir.

MR. INNEO: Hi, Mr. Brown. My name is Vince Inneo with TV Insiders. How are you, sir?

MR. BROWN: I'm perfect, thank you, sir. Would you have a chair?

MR. INNEO: Thank you. According to what we found out about you, you've really come up with something. Can you tell us when you learned about the effects of Mountain-High Bee Pollen?

VIDEO: Royden Brown, Chairman of the Board, C C Pollen Co.

MR. BROWN: It was in 1943 in the officers' mess in London, England. I was a pilot at the RAF at the time. Another pilot gave me an article in some newspaper, and I think it was the London Sunday Times, about bee pollen. It described this miraculous food that it had all the nutrients you needed for perfect health, and it would do everything for you. Well, frankly, I must admit I didn't think any food was that good.

MR. INNEO: Mountain-High Bee Pollen does all that?

MR. BROWN: Yes, sir. It's uh. It's a marvelous food. If it has all the nutrients, and I know it does, for perfect health, it will do everything for you. It will move you toward perfect health. It's mentioned 68 times in the Bible. It was given to the risen Jesus Christ after the resurrection and that was symbolically, in my opinion, that every person on earth should make bee pollen a staple part of their diet every day of their lives.

MR. INNEO: I understand former President Ronald Reagan is one of your best customers?

MR. BROWN: He certainly is. He's been eating bee pollen since 1961, and we've been furnishing the bee pollen since he was governor. He's the best specimen I know of, of what bee pollen does for you. President Reagan has had the toughest job in the world. He's had the most responsibility of anybody in the world. He was shot and near death, and look where he is; he's in perfect health, sharp as a tack. Bee pollen, perfect example of ingesting bee pollen.

MR. INNEO: Why haven't we heard more about, Mountain-High Bee Pollen?

MR. BROWN: Because Mountain-High Bee Pollen is a food and not a drug. It can't be patented. There's not 50 or 100 times markup in the price of it, so the pharmaceutical companies can't make money on selling bee pollen. That's why we haven't heard about it.

MR. INNEO: For those people who are allergic to pollen, will they be able to use Mountain-High Bee Pollen?

MR. BROWN: Bee pollen according to Leo N. Conroy, M.D. in Denver, Colorado, an allergist, says that bee pollen is the best reliever of allergies that he's ever found. He's had, he had over 60 thousand patients documented and 94

percent of them were completely relieved of the symptoms by ingesting the bee pollen.

MR. INNEO: Never have pollen-related allergies again?

MR. BROWN: Never have pollen allergy symptoms again, rest of their lives.

MR. INNEO: Mr. Brown, what if someone were taking vitamins, would they have to continue them or will Mountain-High Bee Pollen alone be enough?

MR. BROWN: Well, the only problem with the individual taking vitamins, he doesn't know how much Vitamin C to take or how much Vitamin E. If you take bee pollen, it's all in the bee pollen. God made bee pollen the perfect balance of perfect nutrients of all the nutrients, so you don't need to take vitamins when you take bee pollen.

MR. INNEO: I've heard from people that Mountain-High Bee Pollen helps them lose weight. Can you tell me how?

MR. BROWN: Well, Mountain-High Bee Pollen has all the nutrients you need for perfect health. So when you eat Mountain-High Bee Pollen before each meal, it satisfies your appetite. As a result, you eat a little less food with each meal you eat and you lose weight constantly as long as you're eating the Mountain-High Bee Pollen.

MR. INNEO: I have never taken Mountain-High Bee Pollen. Start me off, I mean, what do I get?

MR. BROWN: Well, if I were you, I would get three things. First, I would get the Bee-Young tablets. Bee-Young tablets will prevent you from losing your memory. You certainly want to have your memory all the rest of your life. Loss of memory is the first step into the nursing home, and you certainly don't want to do that.

The second thing I would get would be the Mountain-High Royal Jelly. Royal Jelly is the greatest rejuvenating and sex stamina food known to man, and you certainly want to have, be active sexually all the rest of your life.

The third thing you want to get is the Pollenergy 520 capsules. The Mountain-High Bee Pollen is the greatest energy source, greatest energy food known to man.

With these three things, I guarantee you that you will have a higher quality of life the last half of your life than you had the first half.

MR. INNEO: Thank you, Mr. Brown, I really thank you for giving TV Insiders this inside information not only has it been inspirational to me, but I'm sure motivational not only to myself but to our viewers.

Thank you again for all of us.

MR. BROWN: Any time. My pleasure.

MR. INNEO: That was simply amazing. I told you in the beginning that this edition of TV Insiders would be critically important. The message is clear. If you do nothing else, if you can't or won't exercise, if you're interested in your well-being but you're not willing to jump on the health food mega-vitamin bandwagon, if you're concerned about adding unnatural, manufactured or artificial vitamins or

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VIDEO: From Mrs. V.M.O.'s Letter

(VIDEO: 1-800-553-5500)

FEMALE SPEAKER: I'm a senior citizen and I thought I felt good, but now I feel wonderful. I'm never tired and Mountain-High Bee Pollen is the best money I ever spent.

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VIDEO: Frits Forrer, Health Insurance Salesman

MALE SPEAKER: Every year I used to suffer from ragweed allergies, I tried everything! Nothing worked. I used to hate the fall season.

(VIDEO: 1-800-553-5500)

Since I'm in health insurance, it really looks bad when I'm sick. Now my allergies disappeared. It's been wonderful and I owe my recovery to bee pollen.

VIDEO: Myrna Haag, Tri-Athlete

FEMALE SPEAKER: I compete in tri-athlons. I just finished the Hawaiian Iron Man, which is a two-and-a-half-mile ocean swim, 112-mile bike ride and a 26-mile run. I don't believe in any kind of diets.

Diets really don't work for me. What worked for me was Mountain-High Bee Pollen. It worked great during Iron Man.

VIDEO: From Rev. D.A.L.'s letter

MALE SPEAKER: I had arthritis in a very painful state in my left foot to the extent that I was limping quite noticeably. After eating Mountain High-Bee Pollen, the arthritic pain vanished completely. Now I'm able to walk normally.

VIDEO: From Dr. F.M.'s letter

MALE SPEAKER: Mountain-High Bee Pollen helped me a lot. I'm telling most of the patients that are interested in good health, keep up the good work.

(VIDEO: 1-800-553-5500)

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(VIDEO: 1-800-553-5500 with depictions of three bottles labeled inter alia Bee Young, Pollenergy 520, Royal Jelly.)

Also receive as our gift a President's and a First Lady's lunch bar. To start feeling young, energetic and vital again, simply take one Bee-Young Wafer and one Pollenergy 520 capsule with each meal. Take one Royal Jelly capsule before bedtime. Unlock nutrient shortages in your body and reawaken parts of your system long neglected.

(VIDEO: Depicting Presidents and first Lady lunch bars and "1-800-553-5500" followed by depiction of three product bottles with ordering information.)

By special arrangements with the producers of TV Insiders, you will receive this 62.35 value for only 39.95, plus 3.50 postage and special handling.

Have your credit card handy and call now 1-800-553-5500. 1-800-553-5500. That's 1-800-553-5500. Call now.

MR. INNEO: Let me restate something. It's your cards and your letters alerting TV Insiders to new discoveries, interesting people and inside information. We need inside information. You tell me the stories and what you've heard, we will research it, investigate it, and we will share our findings with everyone. If we use your information, we will send you a TV Insider investigator's card. This you can count on. So until next mission, this is your inside investigator, Vince Inneo, wishing you good health and God's blessings.

VIDEO- CREDITS on screen- Statement on screen -

VIDEO: All materials, whether real or recreated, represent factual events.

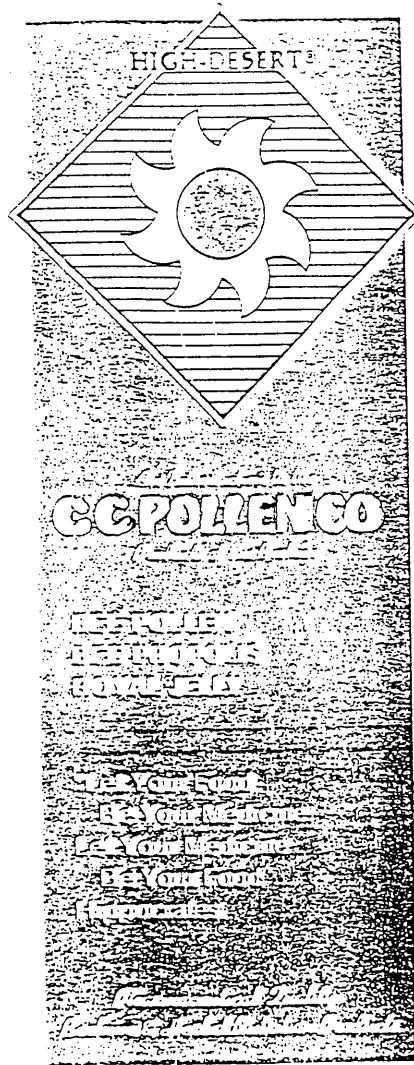
EXHIBIT C

The video tape described in Exhibit B has been placed in the permanent records of the Commission, and is incorporated herein by reference.

EXHIBIT D

The video tape described in Exhibit A has been placed in the permanent records of the Commission, and is incorporated herein by reference.

EXHIBIT E



HIGH-DESERT®-BEE PROPOLIS
 Propolis is considered the strongest of the natural antibiotics. Used from time immemorial by the bee to maintain and disinfect the hive, propolis consists of saps and resins from leaf buds and the bark of trees and is a complex composite of essential oils, balsamic substances, cinnamic acid, vitamins and other substances identified as enzymatic in action.

Long used in natural medicinal compounds, bee propolis has been widely and routinely prescribed by most medical doctors throughout the USSR, Rumania, Czechoslovakia, Bulgaria, and Yugoslavia for over 50 years.

Propolis is in such wide use in the USSR, it is often called "Russian Penicillin." Factories produce a variety of propolis, bee pollen and royal jelly products in all Iron Curtain countries, where much of the world's research on the benefits of natural beehive products is being conducted.

Propolis is widely recommended by natural health-care practitioners in preference to chemical antibiotics in many conditions where an antibiotic is useful.

Without the possible harmful side-effects of chemical drugs, propolis, nature's antibiotic, has now been rediscovered in the U.S. and is being enthusiastically welcomed as the strongest of the natural "preventive" medicines.

HIGH-DESERT®-BEE PROPOLIS
 Highest quality propolis in a unique formula containing Vitamin A, Bioflavonoids, Rutin, Rose Hips and Golden Seal potentiated with High-Desert® Bee PollenS.™

Note: the quality of propolis depends on its source. Bees collect the resinous exudation wherever available when needed by the hive, but the most biologically active sources are the poplars, spruces and other conifers of the northern states. This tablet contains the highest grade propolis collected by the bees.

HEALTH AUTHORITIES SAY...

Journal of the National Cancer Society published a report in 1945 "based on the postulation bee pollen contains an anticarcinogenic (cancer-fighting) principle that can be added to food."

Betty Lee Morales, noted nutritionist, says "Bee Pollen is the only known food which contains every essential nutrient needed by mankind for perfect health. This fact cannot be disputed as it has been proved by analysis in the laboratories of the world many times."

M.M. Georgescu, Rumanian scientist, investigated the effect of royal jelly and bee pollen and closes his study with these words: "We obtained particularly favorable results treating systemic atherosclerosis with royal jelly and pollen in comparison with the placebo. The bee products exerted a favorable action on lipoproteins and the general condition of the patient while reducing cholesterol."

Leo Conway, M.D., of Denver, by 1972 had treated over 60,000 verified cases of allergies with bee pollen and says: "I believe pollen immunization can be achieved by incorporating pollen in food. Resistance is built by continuing ingestion of bee-gathered pollens from many locations."

"Propolisotherapy in Bronchial Asthma," a Rumanian study, reports treating 30 patients suffering bronchial asthma successfully with a propolis compound which proved even more effective than conventional treatment!

"Royal Jelly in Diet, Prophylaxis & Therapy," H.W. Schmidt, German Medical Association, says: "Royal Jelly is a powerful agent which revitalizes the function of cells, the secretion of glands, the metabolism, the blood circulation, and the interplay of all factors preserving life and strength in the organism. It delays the aging process and retains for as long as possible the youthful freshness of body, elasticity of the mind and psychic buoyancy."

We wrote the book on pollen...
AND WE DO IT RIGHT!

As the oldest and largest harvester, marketer, distributor and developer of bee hive products in the United States, C C Pollen Company is the ultimate and final authority on honeybee pollen, propolis and royal jelly in any form.

We maintain
THE STANDARD OF EXCELLENCE
By which all others must be judged

Our Bee Pollen products contain only High-Desert® Bee PollenS™ harvested in the United States.

High-Desert® is a blend of many pollens and is preserved with cold-hot damaging heat that destroys enzyme-activity.

Our Royal Jelly is 24-Hour Royal Jelly, freeze-dried on site to preserve all properties fresh and potent.

Our Propolis is the highest grade available harvested by the bees.

If you don't know why these statements make us proud - read on - and learn why High-Desert® quality is so important to you.

This pamphlet is provided for education only and is not to be given nor sold with any bee hive product.

© 1983 C C Pollen Company
Phoenix, Arizona 85018

EXHIBIT F

WANT TO KNOW MORE?

Ask your retailer for your free copy of the Scientific Study on pollen, "The World's Only Perfect Food", or write C C Pollen Co., 7000 E. Camelback, Scottsdale, AZ 85251

EXTRA-HIGH POTENCY™

High Desert® Honeybee PollenS™ Products

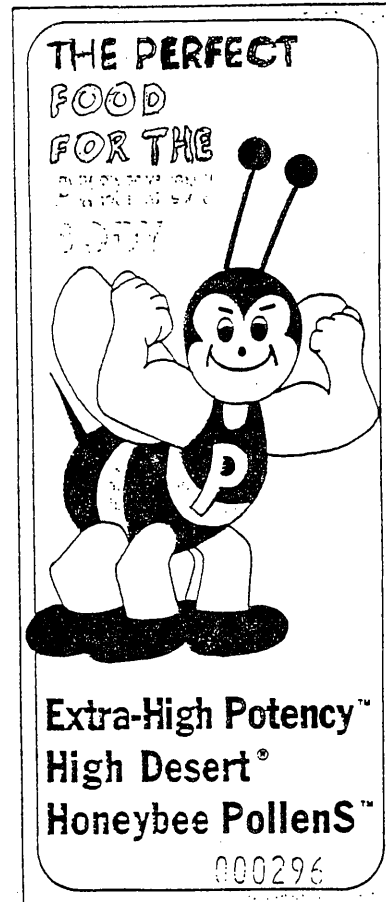
AVAILABLE FROM:**HONEYBEE PollenS™ CANDY**

A delicious and nutritious confection can be made from fresh PollenS™. Try this on the kids after school!

1. Put 4 oz. Fresh PollenS™ in a mixing bowl.
2. Stir in 2 Tablespoons powdered carob (natural chocolate) dissolved in:
2 Tablespoons water
3. Mix in 3 Tablespoons raw honey
4. Add 4 oz. crunchy natural peanut butter

Mix thoroughly by hand and enjoy your first taste of Mother Nature's Perfect Candy!

©1981 C C Pollen Company
Scottsdale, Arizona



1. Complete Nutrition — Honeybee pollen gives you all the essential nutrients — all vitamins, minerals, enzymes and trace elements to feed every hungry cell all over your body.
2. Quick Energy — Honeybee pollen gives you the quick extra energy of sugar and caffeine, naturally — without undesirable elements.
3. Increased Strength — The British Sports Council has recorded increases in strength up to 25% with pollen power. Unbelievably, the British Royal Society has reported height increases in adults who take pollen!
4. Better Performance — Harry McCarthy in his latest book states, "Pollen contains ingredients which boost an athlete's performance further — and much more safely — than any "pep pill" in existence. Sport superstars in particular are using bee pollen."
5. Increased Recovery Power — A two-year research program conducted at Pratt Institute in NY shows that pollen improves the crucial recovery power of athletes after stressed performance. Just think what it can do for you daily!
6. Weight Control — "Honeybee pollen is the greatest body-builder on earth, contributing not one ounce to obesity or excess fat on the body. Honeybee pollen should be the cornerstone for every weight-loss diet," in the words of Francis Huber, German naturalist.
7. Lower Pulse Rate — Honeybee pollen lowers the pulse rate naturally while permitting an increase in strength and endurance. Reported by Alex Woodly, Head Coach, Education Athletic Club, Philadelphia.
8. Increases Red Blood Cells — Studies show that honeybee pollen increases the vital oxygen-carrying red blood cells up to 25%! You feel better when your circulation is better!
9. The Power of Steroids — Honeybee pollen power out performs harmful steroids, without chemical side effects. *Except for the one side-effect that no one complains about...*
10. Increased Sexual Stamina & Endurance — Soma Health magazine, July/August 1980 issue, reports that honeybee pollen contains natural hormonal substances which stimulate & nourish the reproductive systems of both men and women with a direct impact on sexual ability.
11. "Long lives are attained by bee pollen users; it is one of the original treasure houses of nutrition and medicine. Each grain contains every important substance that is necessary to life," says Dr. N.P. Joirich, Chief U.S.S.R. Scientist at the Soviet Academy.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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 CC Pollen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office or principal place of business located at 3627 East Indian School Road, Suite 209, Phoenix, Arizona.

Respondents Bruce R. Brown, Carol M. Brown, and Royden Brown are officers and/or directors of the corporate respondent named herein. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and

practices hereinafter set forth. Their addresses are the same as that of the corporation.

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

ORDER

The following definition shall apply throughout this order:

Bee pollen product means any product(s) intended for human consumption or use consisting in whole or in part of bee pollen, bee propolis, and/or royal jelly in any form.

I.

It is ordered, That respondents CC Pollen Company, a corporation, and Bruce R. Brown, Carol M. Brown, and Royden Brown, individually and as officers of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

(A) Any advertisement that misrepresents, directly or by implication, it is not a paid advertisement; and

(B) Any commercial or other video advertisement fifteen (15) minutes length or longer, or intended to fill a broadcasting or cable casting time slot of fifteen (15) minutes in length or longer, that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before

each presentation of ordering instructions for product or service, the following disclosure:

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

Provided that, for the purposes of this provision, the oral or visual presentation of a telephone number or address for to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

Provided further that should the Federal Trade Commission adopt a trade regulation rule requiring different disclosures or a different frequency of making such disclosures than that required by subpart 1(B), above, compliance with such trade regulation rule shall be deemed compliance with subpart 1(B).

II.

It is further ordered, That respondents CC Pollen Company, a corporation, and Bruce R. Brown, Carol M. Brown, and Royden Brown, individually and as officers of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any bee pollen product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(A) Consumption of any bee pollen product cannot or will not result in an allergic reaction;

(B) Consumption of any bee pollen product will permanently alleviate all pollen allergy symptoms;

(C) Consumption of any bee pollen product slows or prevents or the aging process;

(D) Consumption of any bee pollen product can cure, or prevent, or alleviate impotence and/or sexual dysfunction;

(E) Consumption of any bee pollen product can cause weight loss;

(F) Any bee pollen product is an effective antibiotic for human use.

Provided, however, that use of any statement approved by the United States Food and Drug Administration ("FDA") for inclusion on the label of the product will be deemed not to violate this part when its use is consistent with the FDA approval.

III.

It is further ordered, That respondents CC Pollen Company, a corporation, and Bruce R. Brown, Carol M. Brown, and Royden Brown, individually and as officers of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service for human consumption or use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product or service will have any effect on the user's health or physical condition unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

IV.

It is further ordered, That respondents, their successors and assigns, shall pay two hundred thousand dollars (\$200,000) to the United States Treasury as disgorgement. Such payment shall be by two cashier's checks or certified checks made payable to the Treasurer of the United States, the first such check, in the amount of one hundred thousand dollars (\$100,000), to be tendered within five (5) days of the date of service of this order, and the second, also in the amount of one hundred thousand dollars (\$100,000), to be tendered no later than one year to the day after this agreement becomes final. Respondents shall provide security for the second payment in a manner agreed to by the parties before provisional acceptance of this order by the Federal Trade Commission. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall also pay interest as computed under 28 U.S.C. 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

V.

It is further ordered, That for a period of three (3) years from the date that a representation last covered by this order is last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

(A) All materials that were relied upon by respondents in disseminating any representation covered by this order; and

(B) All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

VI.

It is further ordered, That respondent CC Pollen Company shall:

(A) Within thirty (30) days after service of this order, provide a copy of this order to each of the respondent's current principals, officers, directors and managers, and provide a complete copy of parts I through III of this order to all personnel, agents and representatives having advertising or policy responsibility with respect to the subject matter of this order, and to each employee of CC Pollen Company who is engaged in the sale of CC Pollen products; and

(B) For a period of seven (7) years from the date of entry of this order, provide a copy of this order to each of the respondent's principals, officers, directors and managers, and provide a complete copy of parts I through III of this order to all personnel, agents and representatives having advertising or policy responsibility with respect to the subject matter of this order, and to each employee of CC Pollen Company who is engaged in the sale of CC Pollen products, within three (3) days after the person assumes his or her position.

VII.

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

VIII.

It is further ordered, That respondents Bruce R. Brown, Carol M. Brown, and Royden Brown shall, for a period of seven (7) years from the date of entry of this order, notify the Federal Trade

Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities.

IX.

It is further ordered, That respondents shall, for at least three (3) years after service of this order, maintain and make available to the Federal Trade Commission upon request, for inspection and copying, complete records regarding respondents' compliance with this order.

X.

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

IN THE MATTER OF

VALUE RENT-A-CAR, INC.

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

Docket C-3420. Complaint, March 29, 1993--Decision, March 29, 1993

This consent order requires, among other things, a Florida car-rental firm to disclose, in different communications media, applicable airport surcharges, charges based on a driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

Appearances

For the Commission: *Ronald L. Waldman and Michael J. Bloom.*

For the respondent: *Deborah Hausman*, in-house counsel, Boca Raton, FL.

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 Value Rent-A-Car, 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 Value Rent-A-Car, Inc. ("Value"), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its headquarters located at 2500 N. Military Trail, #300, Boca Raton, Florida.

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

PAR. 3. Respondent advertises, offers for rental, and rents to consumers in Georgia, Arizona, Louisiana, Nevada, and Colorado, rental vehicles that are made available to consumers at its rental offices. Some of respondent's rental offices are located at off-airport sites; an airport surcharge or fee may be imposed at these locations when consumers use an airport shuttle van for transportation to these sites.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the rental of its rental vehicles, respondent has disseminated and caused the dissemination of promotional information including print and television advertisements. Respondent's advertisements make statements and representations as to the price of contemplated rentals of respondent's vehicles.

PAR. 5. In advertisements respondent has, in numerous instances, stated prices for respondent's rental vehicles without disclosing:

(A) The existence and amount of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of respondent's rental stations in one of respondent's shuttle vehicles; and

(B) The existence and the amount of an under 25 years of age driver charge.

The existence and amounts of these charges and fees would be material to consumers. The failure to disclose these facts, or in the alternative that there are "additional" or "other" charges, in connection with respondent's representation of prices for rental vehicles, is an unfair or deceptive act or practice.

PAR. 6. In advertisements respondent has, in numerous instances, stated rental vehicles come with unlimited mileage without disclosing that geographic driving restrictions apply.

The existence of geographic driving restrictions would be material to consumers. The failure to disclose geographic driving restrictions, or in the alternative that there are restrictions regarding unlimited mileage, in connection with respondent's representation of unlimited mileage for rental vehicles, is an unfair or deceptive act or practice.

PAR. 7. In the course and conduct of its business, and for the purpose of inducing the rental of its rental vehicles respondent has disseminated and caused the dissemination of promotional information through an 800 telephone number. Respondent's advertisements often invite consumers to reserve through their travel agents or to call respondent's toll-free 800 telephone number to receive further information from respondent's agents and to make reservations. Information imparted to consumers by respondent's 800 telephone number agents in answer to consumer inquiries contains, among other things statements and representations as to the prices of contemplated rentals of respondent's vehicles.

PAR. 8. In oral presentations by respondent's agents in response to consumers' telephone inquiries to respondent's 800 telephone number, respondent's agents have, in numerous instances, stated prices for respondent's rental vehicles without disclosing:

(A) The existence and amount of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of respondent's rental stations in one of respondent's shuttle vehicles; and

(B) The existence and the amount of an under 25 years of age driver charge.

The existence and amounts of these charges and fees would be material to consumers. The failure to disclose these facts, in light of respondent's representation of prices for rental vehicles in connec-

tion with a representation, discussion, or inquiry, is an unfair or deceptive act or practice.

PAR. 9. In oral presentations in response to consumers' telephone inquiries to respondent's 800 telephone number, respondent's agents have, in numerous instances, stated rental vehicles come with unlimited mileage without disclosing that geographic driving restrictions apply.

The existence of geographic driving restrictions would be material to consumers. The failure to disclose geographic driving restrictions, in light of respondent's representation of unlimited mileage for rental vehicles in connection with a discussion or inquiry, is an unfair or deceptive act or practice.

PAR. 10. In the course and conduct of its business, and for the purpose of inducing the rental of its rental vehicles, respondent has disseminated and caused the dissemination of promotional information by inputting information into computer-accessed data bases ("CRS"), such as "System One," "Apollo," and "PARS." The information imparted in this way is intended primarily for the reference of travel agents who assist consumers in their travel plane and in their selection of a rental car company. The information is contained in both company specific "location" screens and comparative rate screens. This information includes, among other things, statements and representations as to the price of the contemplated rental which travel agents impart to consumers.

PAR. 11. The format of the System One, PARS, or Apollo comparative rate screens does not currently permit disclosure of charges which are mandatory or not reasonably avoidable in proximity to price representations for rental vehicles. However, a "remarks" or "details" section (hereinafter referred to as a "booking segment") from Value's company-specific screens automatically is displayed for the travel agent upon booking a rental from these CRS systems.

PAR. 12. In connection with information disseminated through CRS systems' comparative rate screens representing the price of contemplated rentals, respondent has in some instances, failed to disclose in booking segments:

(A) The existence and amount of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of respondent's rental stations in one of respondent's shuttle vehicles; and

(B) The existence and the amount of an under 25 years of age driver charge.

The existence and amount of these charges would be material to consumers. The failure to disclose these facts in the booking segments, in proximity with respondent's representation of prices for rental vehicles in comparative rate screens, is an unfair or deceptive act or practice.

PAR. 13. In connection with information disseminated through CRS systems' comparative rate screens representing that contemplated rentals come with unlimited mileage, respondent has in some instances, failed to disclose in booking segments that geographic driving restrictions often apply.

The existence of geographic driving restrictions would be material to consumers. The failure to disclose geographic driving restrictions in the booking segments, in proximity with respondent's representation of unlimited mileage for rental vehicles in comparative rate screens, is an unfair or deceptive act or practice.

PAR. 14. The acts and practices of respondent, as herein alleged, constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, may continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

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 complaint which the New York Regional Office proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondent with violation of 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 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 respondents have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.24 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Value Rent-A-Car, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 2500 N. Military Trail, #300, Boca Raton, Florida.

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.

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

A. “*Representation*” means any communication made by respondent to consumers other than a “discussion or inquiry” under paragraph B of this section or a communication made through a CRS System.

B. “*Discussion*” or “*Inquiry*” means any oral communication between respondent and consumers either via telephone or at any of respondent’s rental locations;

C. “Charges that are mandatory” and “charges that are not reasonably avoidable” shall not include charges that are: (1) levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a “mandatory charge” nor a “charge that is reasonably avoidable” because: it is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosure shall be made in a clear and conspicuous manner.

It is ordered, That respondent Value Rent-A-Car, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are “additional” or “other” charges.

B. Failing to disclose to consumers, in connection with any representation relating to price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental, or in the alternative that there are "additional" or "other" charges.

C. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are restrictions regarding unlimited mileage.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

E. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

F. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental.

G. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

H. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

I. Failing to disclose in proximity with any price representations of a contemplated rental made through inputs in the "details" (also

known as “booking segment”) section of the “comparative rate” screen of computer-accessed data bases (also known as “CRS” systems), such as “System One,” “Apollo,” and “PARS,” all airport surcharges or fees, charges resulting from a driver’s age, or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

J. Failing to disclose in proximity with unlimited mileage representations made through inputs in the “details” (also known as “booking segment”) section of the “comparative rate” screen of computer-accessed data bases (also known as “CRS” systems), such as “System One,” “Apollo,” and “PARS” geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

II.

It is further ordered, That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to any present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including, but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

III.

It is further ordered, That for three (3) years from the date of service of this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this order.

IV.

It is further ordered, That, for a period of ten years, respondent shall notify the Commission at least thirty (30) days prior to any

proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

V.

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 has complied with this order.

IN THE MATTER OF

DOLLAR RENT-A-CAR SYSTEMS, INC.

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

Docket C-3421. Complaint, March 29, 1993 -- Decision, March 29, 1993

This consent order requires, among other things, a California-based car-rental firm to disclose, in different communications media, applicable airport surcharges, fuel charges, charges based on a driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

Appearances

For the Commission: *Ronald L. Waldman* and *Michael J. Bloom*.

For the respondent: *Pete Smoot, Rintala, Smoot, Jaenicke & Brunswick*, Los Angeles, CA. *Randy Holder*, in-house counsel for Pentastar Services, Inc. (parent company), Tulsa, OK. *Lewis Goldfarb*, in-house counsel for Chrysler Corp. (parent company), Highland Park, MI.

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 Dollar Rent-A-Car, 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 Dollar Rent-A-Car Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its headquarters located at 6141 W. Century Boulevard, Los Angeles, California.

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

PAR. 3. Throughout the United States, respondent advertises, offers for rental, and rents to consumers, for itself and its franchisees, rental vehicles that are made available to consumers at numerous Dollar rental offices nationwide. (The term "Dollar" is here and subsequently used to refer to facilities, vehicles, and vehicle rental prices and conditions of respondent Dollar Rent-A-Car Systems, Inc. and/or any of its franchisees.) Some Dollar rental offices are located at off-airport sites; an airport surcharge or fee may be imposed at these locations when consumers use an airport shuttle van for transportation to these sites.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the rental of its rental vehicles and those of its franchisees, respondent has disseminated and caused the dissemination of promotional information including print and television advertisements. Respondent's advertisements make statements and representations as to the price of contemplated rentals of respondent's vehicles.

PAR. 5. In advertisements respondent has, in numerous instances, stated prices for Dollar rental vehicles without disclosing:

- (A) The existence and amount of a mandatory fuel charge;
- (B) The existence and amount of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to Dollar rental stations in a Dollar shuttle vehicle; and
- (C) The existence and the amount of an under 25 years of age driver charge.

The existence and amounts of these charges and fees would be material to consumers. The failure to disclose these facts, or in the alternative that there are "additional" or "other" charges, in connection with respondent's representation of prices for rental vehicles, is an unfair or deceptive act or practice.

PAR. 6. In the course and conduct of its business, and for the purpose of inducing the rental of its rental vehicles respondent has disseminated and caused the dissemination of promotional information through an 800 telephone number. Respondent's advertisements typically invite consumers to reserve through their travel agents or to call respondent's toll-free 800 telephone number to receive further information from respondent's agents and to make reservations. Information imparted to consumers by respondent's 800 telephone number agents in answer to consumer inquiries contains, among other things, statements and representations as to the prices of contemplated rentals of Dollar vehicles.

PAR. 7. In oral representations by respondent's 800 telephone number agents in response to consumers' telephone inquiries to respondent's 800 telephone number, respondent has, in numerous instances, stated prices for Dollar rental vehicles without disclosing:

- (A) The existence and amount of a mandatory fuel charge;
- (B) The existence and amount of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to Dollar rental stations in Dollar shuttle vehicles; and
- (C) The existence and the amount of an under 25 years of age driver charge.

The existence and amounts of these charges and fees would be material to consumers. The failure to disclose these facts, in light of respondent's representation of prices for rental vehicles in connection with a discussion or inquiry, is an unfair or deceptive act or practice.

PAR. 8. In oral presentations by respondent's agents in response to consumers' telephone inquiries to respondent's 800 telephone number, respondent's agents have, in numerous instances where

callers indicated that there would be an additional driver, stated prices for Dollar rental vehicles without disclosing the existence and amount of a charge for additional drivers.

The existence and amount of this charge would be material to consumers who indicate that there will be an additional driver. The failure to disclose the charge for an additional driver, in light of respondent's representation of prices for rental vehicles in connection with a discussion or inquiry in which a consumer has indicated that there would be an additional driver, is an unfair or deceptive act or practice.

PAR. 9. In oral presentations in response to consumers' telephone inquiries to respondent's 800 telephone number, respondent's agents have, in numerous instances, stated that vehicle rentals come with unlimited mileage without disclosing that geographic driving restrictions apply.

The existence of geographic driving restrictions would be material to consumers. The failure to disclose geographic driving restrictions, in light of respondent's representation of unlimited mileage for vehicle rentals in connection with a discussion or inquiry, is an unfair or deceptive act or practice.

PAR. 10. In the course and conduct of its business, and for the purpose of inducing the rental of Dollar rental vehicles, respondent has disseminated and caused the dissemination of promotional information by inputting information into computer-accessed data bases ("CRS"), such as "System One," "Apollo," and "PARS." The information imparted in this way is intended primarily for the reference of travel agents who assist consumers in their travel plans and in their selection of a rental car company. The information is contained in both company-specific "location" screens and "comparative" rate screens. This information includes, among other things, statements and representations as to the prices of contemplated rentals, which travel agents impart to consumers.

PAR. 11. In connection with information disseminated through CRS systems' company-specific location screens representing the prices of contemplated rentals, respondent has failed to disclose the existence and amount of a mandatory fuel charge.

The existence and amount of this charge would be material to consumers. The failure to disclose this charge, in connection with CRS systems' company-specific location screens' representations of prices for rental vehicles, is an unfair or deceptive act or practice.

PAR. 12. The acts and practices of respondent, as herein alleged, constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, may continue or recur 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 complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of 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 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 respondents have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.24 of its Rules, the Commission hereby issued its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Dollar Rent-A-Car, 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 6141 W. Century Boulevard, Los Angeles, California.

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

ORDER

I.

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

A. "*Representation*" means any communication made by respondent to consumers other than a "discussion or inquiry" under paragraph B of this section or a communication made through a CRS System.

B. “*Discussion*” or “*Inquiry*” means any oral communication between respondent and consumers either via telephone or at any of respondent’s rental locations.

C. “Charges that are mandatory” and “charges that are not reasonably avoidable” shall not include charges that are: (1) levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a “mandatory charge” nor a “charge that is reasonably avoidable” because: it is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered, That respondent Dollar Rent-A-Car, Systems Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers, or in the alternative that there are “additional” or “other” charges, or that fuel is “extra.”

B. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are “additional” or “other” charges.

C. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all charges resulting from a driver’s age that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are “additional” or “other” charges.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are “additional” or “other” charges.

E. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers.

F. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

G. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver’s age that are applicable to the contemplated rental.

H. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges that are applicable to additional drivers in the contemplated rental.

I. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

J. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

K. Failing to disclose in proximity with any representation as to the price of a contemplated rental through its inputs in the "company-specific location" part of computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," all fuel charges that are applicable to the contemplated rental or are not reasonably avoidable by consumers or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

II.

Notwithstanding anything contained in part I hereof, respondent shall not be held liable for any failure to disclose information required to be disclosed under part I provided that it establishes by a preponderance of evidence that:

A. Such failure to disclose resulted solely from franchisee failure to furnish respondent with timely, complete, and accurate information;

B. Respondent previously had adopted, maintained, monitored, and enforced procedures reasonably calculated to ensure timely,

complete, and accurate communication of disclosable information to respondent by its franchisees; and

C. Respondent shall have required its franchisees to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information, and shall have terminated all franchisees who continued, after notice, to fail to adopt, maintain, and comply with such procedures; *provided, however,* that if respondent's contract with any franchisee precludes termination, as described above, respondent shall have exercised all available disciplinary procedures, including termination, to induce and ensure franchisee adoption, maintenance, and compliance with procedures necessary to respondent's timely receipt of complete and accurate disclosable information. Further, respondent shall, as soon as it lawfully may, modify each franchisee's contract to provide that respondent may terminate each franchisee who continued, after notice, to fail to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information.

III.

It is further ordered, That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

IV.

It is further ordered, That for three (3) years from the date of service of this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this order.

V.

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

VI.

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 has complied with this order.

Complaint

116 F.T.C.

IN THE MATTER OF

I.R.S.C., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FAIR CREDIT REPORTING ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3422. Complaint, April 14, 1993--Decision, April 14, 1993*

This consent order requires, among other things, a California corporation and one of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by Section 604 of the Fair Credit Reporting Act. In addition, respondents are required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

Appearances

For the Commission: *David Medine, Ronald G. Isaac and David G. Grimes.*

For the respondents: *Michael K. Madden, Breed, Abbott & Morgan, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that I.R.S.C., Inc., a corporation doing business as Information Resource Service Company, and Jack H. Reed, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and *“employment purposes”* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“Permissible purpose” means any of the purposes listed in Section 604 of the Fair Credit Reporting Act, 15 U.S.C. 1681b, as amended, for which a consumer reporting agency may lawfully furnish a consumer report. These purposes are:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe:

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) Intends to use the information in connection with a determination of the consumer’s eligibility for a license or other

benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

PARAGRAPH 1. Respondent I.R.S.C., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3777 North Harbor Boulevard, Fullerton, California.

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

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and have been regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to third parties. Respondents furnish these consumer reports to third parties through the means or facilities of interstate commerce. Hence, respondents are consumer reporting agencies, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents regularly furnish consumer reports to subscribers under circumstances in which respondents cannot reasonably conclude that the reports will be used for a permissible purpose. Typical and illustrative, but not all inclusive, of these circumstances are the following:

A. Respondents regularly furnish consumer reports to insurance claims investigators and others for purposes related to insurance claims investigations even though Section 604 of the Fair Credit Reporting Act sets forth only underwriting as a permissible insurance-related purpose.

B. Respondents regularly furnish consumer reports to subscribers who typically have both permissible and impermissible purposes for using consumer reports. Among such subscribers are attorneys, insurance companies, and private investigators. In numerous instances, respondents provide consumer reports to these subscribers without having reason to believe that the reports have been requested for a permissible purpose.

C. Respondents regularly furnish consumer reports to new subscribers without first having made a reasonable effort to verify the purposes for which the subscribers will use the reports.

PAR. 4. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons whom respondents have no reason to believe intend to use the information for a permissible purpose under Section 604.

PAR. 5. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in Section 604.

PAR. 6. Respondents regularly furnish consumer reports for employment purposes that contain items of information on consumers which are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment.

PAR. 7. At the time respondents furnish the consumer reports described in paragraph six, respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they apprise these consumers of the names and addresses of the subscribers to whom the information is being reported.

PAR. 8. Respondents do not maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date.

PAR. 9. By and through the acts and practices alleged in paragraphs six, seven, and eight, respondents have violated Section 613 of the Fair Credit Reporting Act.

PAR. 10. The acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act, pursuant to Section 621(a) of the Fair Credit Reporting Act.

DECISION AND ORDER

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

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

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

executed 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 I.R.S.C., 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 principle place of business located at 3777 North Harbor Boulevard, in the City of Fullerton, State of California.

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

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

ORDER

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

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and *“employment purposes”* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“Mixed-use subscriber” means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

“*Permissible purpose*” means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered, That respondents, I.R.S.C., Inc., a corporation, its successors and assigns, and its officers, and Jack H. Reed, individually and as an officer of said corporation, and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with the evaluation of an insurance claim or in connection with any insurance purpose other than the underwriting of insurance involving the consumer, unless furnishing the consumer report is otherwise permitted under Sections 604(1) or 604(2) of the FCRA, or furnishing any consumer report under any other circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber’s business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans

to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under Section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to Section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to Section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under Section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits a request by computer for a consumer report: "The Federal Fair Credit Reporting Act imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(v)(B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage pre-paid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(vi) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(v)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgement, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention,

a copy of an official business record (for example, a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vii) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(viii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error -- *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in Section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the

consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in Section 613(2) of the FCRA.

II.

It is further ordered, That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to subscribers in connection with the terms of this order.

III.

It is further ordered, That respondents shall deliver a copy of this order, or a synopsis is thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV.

It is further ordered, That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution assignment,

or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V.

It is further ordered, That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

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

EXHIBIT A

IMPORTANT NOTICE FOR SUBSCRIBERS

The Federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance -- those purposes are permissible only if they meet the standards of (3)(A) - (C).

CONSUMER REPORTS WILL BE PROVIDED
ONLY FOR THESE PURPOSES

Complaint

116 F.T.C.

IN THE MATTER OF

CDB INFOTEK, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FAIR CREDIT REPORTING ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3423. Complaint, April 14, 1993--Decision, April 14, 1993*

This consent order requires, among other things, a California corporation and one of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by Section 604 of the Fair Credit Reporting Act. In addition, respondents are required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

Appearances

For the Commission: *David Medine, Ronald G. Isaac and David G. Grimes.*

For the respondents: *Bruce Ryan, Paul, Hastings, Janofsky & Walker, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that CDB Infotek, a corporation, and Rick L. Rozar, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and *“employment purposes”* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“Permissible purpose” means any of the purposes listed in Section 604 of the Fair Credit Reporting Act, 15 U.S.C. 1681b, as amended, for which a consumer reporting agency may lawfully furnish a consumer report. These purposes are:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe:

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) Intends to use the information in connection with a determination of the consumer’s eligibility for a license or other

benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

PARAGRAPH 1. Respondent CDB Infotek, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 701 South Parker Avenue, Suite 4500, Orange, California.

Respondent Rick L. Rozar is the President and sole stock holder of the corporate respondent. He formulates, directs, and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and have been regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to third parties. Respondents furnish these consumer reports to third parties through the means or facilities of interstate commerce. Hence, respondents are consumer reporting agencies, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents have regularly furnished consumer reports to subscribers under circumstances in which respondents could not have reasonably concluded that the reports would be used for a permissible purpose. Typical and illustrative, but not all inclusive, of these circumstances are the following:

A. Respondents have furnished consumer reports to insurance claims investigators and others for purposes related to insurance claims investigations even though Section 604 of the Fair Credit Reporting Act sets forth only underwriting as a permissible insurance-related purpose.

B. Respondents have furnished consumer reports to subscribers who typically have both permissible and impermissible purposes for using consumer reports (such as attorneys, insurance companies, and private investigators) without having reason to believe that the reports were requested for a permissible purpose.

C. In instances when a subscriber has requested a consumer report on a specified consumer and subsequently requested one or more additional reports on similarly named consumers, respondents have furnished additional reports on the additional consumers without first obtaining information providing reason to believe that the subscriber had a permissible purpose for receiving a consumer report of each of the individuals on whom the reports were furnished.

D. Respondents have furnished consumer reports to new subscribers without first having made a reasonable effort to verify the purposes for which the subscribers would use the reports.

PAR. 4. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons whom respondents have no reason to believe intend to use the information for a permissible purpose under Section 604.

PAR. 5. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in Section 604.

PAR. 6. Respondents regularly furnish consumer reports for employment purposes that contain items of information on consumers which are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment.

PAR. 7. At the time respondents have furnished the consumer reports described in paragraph six, respondents have not notified the subject consumers that respondents were reporting public record information about them, nor did they apprise these consumers of the names and addresses of the subscribers to whom the information was being reported.

PAR. 8. Respondents do not maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date.

PAR. 9. By and through the acts and practices alleged in paragraphs six, seven, and eight, respondents have violated Section 613 of the Fair Credit Reporting Act.

PAR. 10. The acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act, pursuant to Section 621(a) of the Fair Credit Reporting Act.

DECISION AND ORDER

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

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

waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed 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 CDB Infotek, 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 701 South Parker Avenue, Suite 4500, in the City of Orange, State of California.

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

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

ORDER

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

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and “employment purposes” are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“*Subscriber*” means any person who is approved for or obtains a consumer report from respondents;

“*Mixed-use subscriber*” means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

“*Permissible purpose*” means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered, That respondents, CDB Infotek, a corporation, its successors and assigns, and its officers, and Rick L. Rozar, individually and as an officer of said corporation, and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with the evaluation of an insurance claim or in connection with any insurance purpose other than the underwriting of insurance involving the consumer, unless furnishing the consumer report is otherwise permitted under Sections 604(1) or 604(2) of the FCRA, or furnishing any consumer report under any other circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under Section 604 of the FCRA that is substantially identical to the summary attached to this order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to Section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to Section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under Section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits a request by computer for a consumer report: "The federal Fair Credit Reporting Act imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v) (A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of

all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(v) (B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage prepaid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in person or telephone interview, and by recording such information in written form.

(vi) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(v)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vii) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(viii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error -- *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in Section 613(1) of the FCRA. Respondents are not required to provide this

notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in Section 613(2) of the FCRA.

II.

It is further ordered, That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to subscribers in connection with the terms of this order.

III.

It is further ordered, That respondents shall deliver a copy of this order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV.

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

V.

It is further ordered, That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

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

EXHIBIT A

IMPORTANT NOTICE FOR SUBSCRIBERS

The Federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance -- those purposes are permissible only if they meet the standards of (3)(A) - (C).

CONSUMER REPORTS WILL BE PROVIDED
ONLY FOR THESE PURPOSES

Complaint

116 F.T.C.

IN THE MATTER OF

INTER-FACT, INC., ET AL.

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

Docket C-3424. Complaint, April 14, 1993--Decision, April 14, 1993

This consent order requires, among other things, an Ohio corporation and two of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by Section 604 of the Fair Credit Reporting Act. In addition, respondents are required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

Appearances

For the Commission: *David Medine, Ronald G. Isaac and Barry Cutler.*

For the respondents: *Nancy Noall, Water, Haverfield, Buescher & Chockley, Cleveland, OH.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Inter-Fact Inc., a corporation, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding

by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and *“employment purposes”* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“Permissible purpose” means any of the purposes listed in Section 604 of the Fair Credit Reporting Act, 15 U.S.C. 1681b, as amended, for which a consumer reporting agency may lawfully furnish a consumer report. These purposes are:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe:

(A) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) Intends to use the information for employment purposes; or

(C) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other

benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

PARAGRAPH 1. Respondent Inter-Fact Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 20676 Southgate Park Boulevard, Maple Heights, Ohio.

Respondents James Polgar and Bruce R. Marks are officers of the corporate respondent. They formulate, direct, and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of said corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and have been regularly engaged in the practice of procuring and assembling information on consumers for the purpose of furnishing, for monetary fees, consumer reports to third parties. Respondents furnish these consumer reports to third parties through the means or facilities of interstate commerce. Hence, respondents are consumer reporting agencies, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondents regularly furnish consumer reports to subscribers under circumstances in which respondents cannot reasonably conclude that the reports will be used for a permissible purpose. Typical and illustrative, but not all inclusive, of these circumstances are the following:

A. In certain instances, respondents furnish consumer reports to new subscribers without first having made a reasonable effort to verify the identities of these subscribers and the purposes for which they will use the reports.

B. Respondents regularly furnish consumer reports to new subscribers without first having them certify the purpose for which they seek to obtain consumer reports and that the reports will be used for no other purpose.

C. Respondents regularly furnish consumer reports to subscribers who typically have both permissible and impermissible purposes for using consumer reports. Among such subscribers are attorneys and private investigators. Respondents provide consumer reports to these subscribers without having them certify, at the time of each request, the purpose for which the report is to be used and that the report will be used for no other purpose.

D. Respondents make no effort to verify that consumer reports are in fact used for the purposes stated by subscribers for obtaining the reports.

PAR. 4. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons whom respondents have no reason to believe intend to use the information for a permissible purpose under Section 604.

PAR. 5. By and through the acts and practices alleged in paragraph three, and others not specifically set forth herein, respondents have violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604.

PAR. 6. Respondents regularly furnish consumer reports for employment purposes that contain items of information on consumers which are matters of public record and are likely to have an adverse effect on a consumer's ability to obtain employment.

PAR. 7. At the time respondents furnish the consumer reports described in paragraph six, respondents, in many instances, do not notify the subject consumers that respondents are reporting public record information about them, nor do they apprise these consumers

of the names and addresses of the subscribers to whom the information is being reported.

PAR. 8. Respondents do not maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported, it is complete and up to date.

PAR. 9. By and through the acts and practices alleged in paragraphs six, seven, and eight, respondents have violated Section 613 of the Fair Credit Reporting Act.

PAR. 10. The acts and practices set forth in this complaint as violations of the Fair Credit Reporting Act constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act, pursuant to Section 621(a) of the Fair Credit Reporting Act.

DECISION AND ORDER

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

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

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

have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed 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 Inter-Fact Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 20676 Southgate Park Boulevard, in the City of Maple Heights, State of Ohio.

Respondents James Polgar and Bruce R. Marks are officers of said corporation. They formulate, direct, and control the policies, acts, and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

ORDER

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

“Person,” “consumer,” “consumer report,” “consumer reporting agency,” and *“employment purposes”* are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

“Subscriber” means any person who is approved for or obtains a consumer report from respondents;

“*Mixed-use subscriber*” means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

“*Permissible purpose*” means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered, That respondents, Inter-Fact Inc., a corporation, its successors and assigns, and its officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and respondents’ agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current-subscribers, within six months after the date of this order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber’s business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person

signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under Section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under Section 604 of the FCRA that is substantially identical to the summary attached to this order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to \$5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to Section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents, pursuant to subparagraph 2.a.(i) above, as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a "consumer report" for a "legitimate business need" pursuant to Section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under Section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv)(A) Conducting periodic checks; not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(iv)(B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage pre-paid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(v) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(iv)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vi) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents,

and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(vii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(iv)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error -- *i.e.*, a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in Section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in Section 613(2) of the FCRA.

II.

It is further ordered, That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to subscribers in connection with the terms of this order.

III.

It is further ordered, That respondents shall deliver a copy of this order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV.

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

V.

It is further ordered, That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI.

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

EXHIBIT A

IMPORTANT NOTICE FOR SUBSCRIBERS

The Federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason

is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance -- those purposes are permissible only if they meet the standards of (3)(A) - (C).

CONSUMER REPORTS WILL BE PROVIDED
ONLY FOR THESE PURPOSES

IN THE MATTER OF

B & J SCHOOL BUS SERVICE, INC., ET AL.

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

Docket C-3425. Complaint, April 22, 1993--Decision, April 22, 1993

This consent order prohibits, among other things, three school bus transportation companies (B & J, Ryder, and Mayflower) that provide bus service in the Kansas City Missouri School District from entering into agreements with each other or with any other school bus transportation provider or potential provider -- with respect to school bus transportation services in the Kansas City area -- to submit jointly determined bids; to refrain from bidding; to allocate or divide jobs, markets, customers, contacts, or territories; or to set prices or other terms and conditions. In addition, the order prohibits the companies, for three years, from communicating to each other or to past, present or likely future providers of bus service to the Kansas City School District their plans to bid, or not to bid, for those services.

Appearances

For the Commission: *Thomas J. Russell* and *Catherine R. Fuller*.

For the respondents: *Ken Joyce*, in-house counsel for B & J School Bus Service, Kansas City, MO. *E. Perry Johnson*, in-house counsel for Ryder Student Transportation Services, Inc., Miami, FL. *Larry Rouse, Rouse, Hendricks, German, May & Schni, PC*, Kansas City, MO.

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 B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc., corporations, hereinafter sometimes collectively referred to as "respondents," have violated

the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent B & J School Bus Service, Inc. ("B & J") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principal place of business located at 3707 Beacon, Kansas City, Missouri.

PAR. 2. Respondent Ryder Student Transportation Services, Inc. ("Ryder") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office located at 3600 N.W. 82nd Avenue, Miami, Florida. Ryder is a subsidiary of Ryder System, Inc.

PAR. 3. Respondent Mayflower Contract Services, Inc. ("Mayflower") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office located at 5360 College Boulevard, Overland Park, Kansas. Mayflower is a wholly-owned subsidiary of Mayflower Group, Inc.

PAR. 4. All of the respondents are, or have been, engaged in the business of providing school bus transportation in the Kansas City, Missouri area. Except to the extent that competition has been restrained as alleged herein, the respondents have been and are now in competition among themselves and with other providers of school bus transportation services.

PAR. 5. Respondents' general businesses or activities, and the acts and practices described below, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 6. In the years prior to the 1984/1985 school year, four school bus transportation companies supplied most of the school bus transportation to the Kansas City, Missouri School District ("KCMSD"). These four companies were B & J, two companies that were purchased in 1984 and 1985, respectively, by a predeces-

sor of Mayflower -- R. W. Harmon & Sons, Inc. ("Harmon") and Pace School Bus Service ("Pace") -- and a fourth company, KAL Leasing, Inc ("KAL"), the assets of which were purchased in 1986 by a predecessor of Ryder. These companies had provided school bus transportation services for many years to discrete areas within the KCMSD pursuant to privately and individually negotiated contracts with KCMSD.

PAR. 7. For the 1984/1985 school year, KCMSD decided to purchase school bus transportation services pursuant to a competitive bidding process. KCMSD expected that by increasing the ability of school bus transportation companies to compete with one another to provide service to portions of the KCMSD, the school district would be able to receive lower rates. The KCMSD sent out a request for bids for a single contract covering the 1984/1985, 1985/1986 and 1986/1987 school years. The request sought bids for six separate areas of the school district and for three special services. Bidders were requested to bid for any or all of the areas and services.

PAR. 8. In response to KCMSD's request for bids, Harmon and Pace (which were subsequently acquired by a predecessor of Mayflower), KAL (the assets of which were subsequently acquired by a predecessor of Ryder) and B & J agreed not to compete with each other with respect to whether, and on what terms, they would submit bids to KCMSD for providing school bus transportation services. In lieu of competing with one another, the four companies agreed to submit a joint bid for all of KCMSD's service areas and special services, and to then allocate among themselves the portions of the KCMSD to which each company would provide transportation services. The four companies would, thereby, be able to continue generally to serve schools located in areas of the KCMSD that they had served in the past.

PAR. 9. B & J, Harmon, Pace and KAL implemented their agreement by forming Kansas City School Transportation ("KCST") in 1984. Although they called KCST a joint venture, B & J, Harmon and Pace (both of which were purchased in 1984 and 1985 respectively by a predecessor of Mayflower) and KAL (the assets of

which were acquired by a predecessor of Ryder in 1986) did not integrate their operations in any substantial manner, and did not make any substantial contributions of capital to KCST. Any financial risk that they faced for losses that might occur from KCST's operation was not substantial. KCST and its members did not provide significantly new or more efficient services. The principal function of KCST was to provide a vehicle for reaching collective decisions on market areas to be served.

PAR. 10. Pursuant to their agreement, B & J, Harmon, Pace and KAL submitted a single, joint bid as KCST to the KCMSD covering all of the areas and services for which bids were sought. With these four firms submitting a joint bid, and with few bids received from outside firms, KCMSD had little choice but to accept the joint bid from the four companies. KCST was awarded the contract for five of the six areas for which KCMSD had solicited bids.

PAR. 11. Pursuant to privately negotiated contracts, KCST continued to supply school transportation services to KCMSD for the 1987/1988 and 1988/1989 school years. KCST was disbanded in May 1989.

PAR. 12. By engaging in the acts and practices described in paragraphs eight through ten, B & J, Harmon, Pace and KAL have combined or conspired with each other to allocate the KCMSD among themselves, and otherwise to restrain price competition among school bus transportation companies servicing the KCMSD.

PAR. 13. The actions described in paragraphs eight through ten have had the purpose or effect or the tendency and capacity to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By allocating the market for school bus transportation services in the KCMSD;

B. By restraining trade unreasonably and thereby hindering price competition among school bus transportation companies servicing the KCMSD;

C. By depriving the KCMSD of the benefits of competition among school bus transportation companies.

PAR. 14. The conspiracy, acts and practices described in paragraphs eight through ten constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such conspiracy, acts and practices, or the effects thereof, may recur 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 respondents named in the caption hereof and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, 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. Respondents are corporations organized, existing, and doing business under and by virtue of the laws of the States of Missouri, Florida, or Indiana, with their offices and principal places of business located at the addresses listed in the complaint.

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

ORDER

I.

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

(A) “*B & J*” means B & J School Bus Service, Inc., and its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective successors and assigns.

(B) “*Ryder*” means (1) Ryder Student Transportation Services, Inc.; (2) its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates and related companies engaged in school bus transportation services, now or in the future; (3) all companies or entities created in the future by any of the parent companies of Ryder Student Transportation Services, Inc., which companies or entities are engaged in school bus transportation services; and (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(C) “*Mayflower*” means Mayflower Contract Services, Inc., its parent, Mayflower Group, Inc., and their predecessors, including, but not limited to, R. W. Harmon and Sons, Inc., and PACE School Bus Service, Inc., successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates involved in

school bus transportation services now or in the future, and their respective directors, officers, employees, agents and representatives, successors and assigns.

(D) “*Respondents*” means B & J, Ryder and Mayflower.

(E) “*Kansas City Area*” means Clay, Platte and Jackson counties in the State of Missouri.

II.

It is ordered, That respondents cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, or soliciting any combination, agreement, or understanding, either express or implied, with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City Area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City Area;
2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City Area; or
3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City Area.

III.

It is further ordered, That for a period of three (3) years after the date this order becomes final respondents cease and desist from directly, indirectly, or through any corporate or other device, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, communicating to:

1. Any other respondent,

2. Any entity that has at any time since 1982 provided school bus transportation services in the Kansas City Area,
3. Any entity that is providing school bus transportation services in the Kansas City Area,
4. Any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City Area, or
5. Any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City Area,

any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City Missouri School District.

Provided, however, that paragraph III shall not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

IV.

It is further ordered, That nothing in this order shall prohibit any respondent from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or
2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

V.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint and order to each of its directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area;

B. For a period of three (3) years after the date on which this order becomes final, furnish a copy of the complaint and order to each of its new directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area at the time they are elected, hired, or promoted;

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order;

D. For a period of five (5) years after the date on which this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent affecting the provision of school bus transportation services in the Kansas City Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City Area;

E. For a period of five (5) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City Area.

Commissioner Azcuenaga concurring in part and dissenting in part.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission decision to issue a complaint against B & J School Bus Service, Inc. (“B & J”), Ryder Student Transportation Services, Inc. (“Ryder”), and Mayflower Contract Services, Inc. (“Mayflower”) for allegedly participating in a conspiracy to allocate the market for school bus services provided to the Kansas City, Missouri School District. Like price fixing conspiracies, agreements among competitors to rig bids and allocate markets are *per se* unlawful. *Addyston Pipe and Steel Co. v. United States*, 175 U.S. 211 (1899). The *per se* prohibition against market allocation and bid rigging is not a novel or exotic theory, but has been a central tenet of antitrust law for nearly a century.

I dissent from the decision to limit the effectiveness of the core prohibitions of the accompanying consent order (“Order”) to a small three-county area of Missouri, termed the “Kansas City Area” in the Order. Section II of the Order prohibits the respondents from conspiring to submit joint bids, to fix prices, or to allocate the market for school bus transportation services only in the Kansas City Area. The Order does nothing to prohibit price fixing, bid rigging, or market allocation outside this small geographic area.

Ryder Student Transportation Services, Inc. is an affiliate of Ryder Systems, Inc., and Mayflower Contract Services, Inc. is an affiliate of Mayflower Group, Inc. Complaint, paragraphs 2, 3. B & J is a local concern. *Id.* paragraph 1. The Order’s geographic limitation means that a repeat conspiracy violation by the two national companies outside the three Missouri counties would not violate the Order. In that event, the Commission could not seek civil penalties, and the only remedy would be to seek another prospective order. Indeed, if Mayflower or Ryder exits this tiny geographic market, the Order will impose no restriction on its conduct.

The conduct alleged in the complaint is plainly unlawful. To secure the benefits of competition, the Kansas City, Missouri School District solicited bids to provide school bus services in six designated areas for three school years, beginning with the 1984/1985 school year. Complaint paragraph 7. Instead of submitting competitive bids, the four local companies that had previously provided school bus service signed an agreement, styled as a joint venture, to submit a joint bid for all service areas and to divide the territory among themselves. Complaint paragraph 8. The so-called joint venture was named Kansas City School Transportation (KCST) and was awarded the contract to provide school bus service for five of the six designated areas. Complaint paragraph 10. As alleged in paragraph nine of the complaint, KCST did not involve any substantial integration of operations, nor any substantial pooling of capital, nor any substantial sharing of financial risk. It provided no new or more efficient services. In short, the joint venture can aptly be characterized as a sham or cover for an illegal conspiracy.

Mayflower and Ryder were not parties to the original agreement, but they acquired local bus companies that were participants in the conspiracy. As alleged in paragraph nine of the complaint, Mayflower or an affiliate acquired one of the local bus firms in 1984, the same year as the unlawful agreement, and acquired a second one in 1985. Ryder or an affiliate purchased a Kansas City bus company in 1986. Although the complaint makes no allegation concerning Mayflower's or Ryder's knowledge of or ratification of the original unlawful agreement, the timing of the acquisitions shortly after the formation of KCST raises a reasonable ground for suspicion that the acquiring firms would have acquainted themselves with the activities of KCST. Nonetheless, I need not base my concern about Ryder's and Mayflower's participation in KCST on mere suspicion because the complaint alleges that KCST continued to supply school bus services to the Kansas City Missouri School district until it was disbanded in May 1989, well after the acquisitions. Complaint paragraph 11. Ryder and Mayflower did

not disassociate themselves from the conspiracy, but instead continued to participate in KCST.

Regardless of whether Ryder and Mayflower expressly or implicitly ratified the original three-year agreement, extensions of the same arrangement for the school years 1987/1988 and 1988/1989 were negotiated after Ryder and Mayflower acquired the local bus companies, as alleged in paragraph eleven of the complaint. This allegation tends to confirm Ryder's and Mayflower's involvement in the conspiracy.

It is unusual for the Commission to uncover a flagrant violation of the antitrust laws, and acceptance of a narrowly circumscribed order sends the wrong signal to corporations that may be inclined to ignore these laws. The unlawfulness of conduct, such as market allocation, bid rigging and price fixing, does not depend on the structure and characteristics of a particular geographic market. Although orders in merger cases, for example, are drafted to provide relief in the particular product and geographic market in which competition is affected, the same approach to drafting a remedy does not apply in cases of *per se* illegality, because the conduct is unlawful whenever and wherever it occurs. When the Commission finds bid rigging, market allocation or price fixing, it should take strong action to prohibit the participants from repeating the violation. In a case such as this one, in which there are no special circumstances indicating that the Kansas City Area is uniquely susceptible to market allocation or bid rigging, I see no basis for limiting the Order to this area. This Order, limited to three counties in Missouri, hardly amounts to a slap on the wrist. I hope that it does not signal a new leniency to *per se* violations of the antitrust laws.