

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

ALBERTSON'S, INC.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE CLAYTON
AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-3064. Consent Order, April 21, 1981—Set Aside Order, July 1, 1987

The Federal Trade Commission has set aside a 1981 consent order with Albertson's, Inc., (97 F.T.C. 343), thus removing the Commission's prior approval requirement because there no longer appears to be a trend toward concentration in the relevant market.

ORDER REOPENING AND SETTING ASIDE ORDER ISSUED ON APRIL 21, 1981

On March 3, 1987, Albertson's, Inc. ("Albertson's") filed a "Petition To Reopen And Set Aside Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and section 2.51 of the Commission's Rules of Practice. The request asked the Commission to reopen and set aside the consent order issued on April 21, 1981 ("the order"). Albertson's request was placed on the public record for thirty days, pursuant to section 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act and alleged anticompetitive effects arising from Albertson's acquisition of Fazio's, the California Division of Fisher Foods, Inc., in July 1978. According to the complaint, the relevant product line in which to assess the acquisition was retail sales by retail grocery stores and the relevant geographic market was Los Angeles County and Orange County, California. The order prohibits Albertson's for a ten year period from acquiring, without prior Commission approval, five or more retail grocery stores in fifteen designated states and certain other geographic areas. *Albertson's, Inc.*, 97 FTC 343, 345, 347-348 (1981).

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed

conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. To obtain review on this ground, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing Albertson's request, the Commission has concluded that respondent has not made a satisfactory showing that changed circumstances require that the order be set aside. The only real change that respondent has shown is that there is no longer a trend toward concentration in the relevant market. That change by itself does not establish that there is no further need for the order.

The Commission has concluded, however, that it is in the public interest to reopen and set aside the order. Albertson's has shown that the prior approval requirements of the order impose costs on respondent and put it at a disadvantage with respect to its competitors who are not under similar restraints. This affirmative need to modify the order must be weighed against the need for continuing the order. The costs shown by Albertson's were foreseeable at the time respondent agreed to the order and would not ordinarily provide a sufficient basis to justify termination of the order. However, respondent has also demonstrated that there is no continuing competitive need for the order in the Los Angeles/Orange County market that was the focus of the Commission's complaint. The respondent has shown that the relevant market is relatively unconcentrated and that any trend toward concentration that may have existed at the time the order issued appears to have been arrested. Accordingly, the reasons for setting aside the order outweigh the reasons for retaining the order.

The Commission has likewise concluded that it is in the public interest to set aside the prior approval requirements of the order with respect to the fifteen states and other geographic areas which are designated therein. The allegations of the complaint related exclusively to the Los Angeles/Orange County market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, *It is ordered*, That this matter be, and it hereby is reopened and that the Commission's order issued on April 21, 1981, shall be set aside as of the effective date of this order.

Commissioner Bailey was recorded as voting in the negative.

IN THE MATTER OF
AMERICAN HOECHST CORPORATION, ET AL.

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

Docket C-3215. Complaint, July 2, 1987—Decision, July 2, 1987

This consent order permits, among other things, American Hoechst Corp. to divest certain polyester fiber businesses. The respondent must make the divestiture to a Commission-approved acquirer within one year and must obtain the Commission's prior approval for certain acquisitions for the next ten years.

Appearances

For the Commission: *Rhett Krulla, Ronald B. Rowe, and Jeffrey I. Zuckerman.*

For the respondents: *William R. Norfolk, Sullivan & Cromwell, Washington, D.C. and William Pelster, Skadden, Arps, Slate, Meagher, & Flom, New York City.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, American Hoechst Corporation, Hoechst Aktiengesellschaft, referred to herein collectively as "Hoechst," and Celanese Corporation, corporations subject to the jurisdiction of the Commission, have entered into an agreement, described in paragraph 15 herein, that, if consummated, would violate the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement and the actions of respondents to implement that agreement constitute violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, the Commission hereby issues its Complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows: [2]

I. DEFINITIONS

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

a. "*Hoechst*" means American Hoechst Corporation, its parent, Hoechst Aktiengesellschaft, its predecessors, subsidiaries (including, but not limited to, Hostachem Acquisition Incorporated), divisions, groups, affiliate entities (including, but not limited to, Wacker and related entities), and each of their past or present directors, officers, employees, agents, and representatives; and each partnership, joint venture, joint stock company, or concession in which Hoechst is a participant. The words "subsidiary," "affiliate," and "joint venture" refer to any partial (10 percent or more), as well as total, ownership or control.

b. "*Celanese*" means Celanese Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents, and representatives; and each partnership, joint venture, joint stock company, or concession in which Celanese is a participant. The words "subsidiary," "affiliate," and "joint venture" refer to any partial (10 percent or more), as well as total, ownership or control.

c. The "*acquisition*" means the transaction described, in whole or in part, in paragraph 15 of this complaint.

d. "*Polyester fibers*" or "*polyester*" means manufactured fibers in which the fiber-forming substance is any long-chain synthetic polymer composed of polyethylene terephthalate, a chemical polymer derived from the polycondensation of ethylene glycol with either dimethyl terephthalate or [3] terephthalic acid. "Polyester fibers" include polyester staple and polyester filament.

e. "*Textile polyester fibers*" means any polyester fibers used in the production of textiles, which includes fabrics and yarns used primarily in apparel, carpeting, home furnishings, and automotive applications.

f. "*Textile polyester filament*" means continuous threads, or "filaments," of polyester produced for textile applications. "Textile polyester filament" does not include polyester staple.

g. "*Polyester staple*" means any short fiber of polyester that is cut from spun polyester. "Polyester staple" includes fiberfill and tow.

II. AMERICAN HOECHST CORPORATION

2. Respondent American Hoechst Corporation ("American Hoechst") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1041 Route 202-206 North, Somerville, New Jersey. American Hoechst is a wholly-owned subsidiary of the West German corporation, Hoechst Aktiengesellschaft.

3. American Hoechst is one of the largest producers of textile polyester fibers, including both polyester staple and textile polyester

filament, in the United States. Overall operations of American Hoechst in the United States include the production and sale of various petrochemicals, plastics, and pharmaceuticals. [4]

4. Respondent American Hoechst had sales of approximately \$1.6 billion in 1985 on overall operations of the company in the United States.

5. American Hoechst's indirect wholly-owned subsidiary, Hostachem Acquisition Incorporated, a corporation organized and existing under the laws of the State of Delaware, is a holding company that has been formed to purchase the capital stock of Celanese.

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

III. HOECHST AKTIENGESELLSCHAFT

7. Respondent Hoechst Aktiengesellschaft ("Hoechst AG") is a foreign corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business located at D-6230 (Main) 80, Frankfurt, Federal Republic of Germany. Hoechst AG is the corporate parent of American Hoechst.

8. The Hoechst group of companies produces a diverse range of products, including polyester and polyester raw materials. Respondent Hoechst AG is one of the largest producers of polyester fibers in the world.

9. Net income for respondent Hoechst AG overall in 1985 was approximately \$499 million on sales of \$14.5 billion. The fibers and fiber raw materials business [5] segment of the company accounted for 10 percent of total corporate sales.

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

IV. CELANESE CORPORATION

11. Respondent Celanese Corporation ("Celanese") is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices and place of business located at 1211 Avenue of the Americas, New York, New York.

12. Celanese produces polyester fibers at manufacturing facilities

in the United States, Canada, and Mexico. Celanese is the second largest producer of textile polyester fibers, including both polyester staple and textile polyester filament, in the United States, and is the only producer of textile polyester fibers in Canada.

13. Respondent Celanese's overall net income was \$178 million in 1985 on sales of approximately \$3 billion.

14. Celanese is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44. [6]

V. THE ACQUISITION

15. On or about November 3, 1986, Hoechst commenced a cash tender offer for up to 100 percent of the issued and outstanding shares of Celanese common stock and preferred stock, with the intent of effecting a merger of Hostachem Acquisition Incorporated, a Delaware corporation wholly-owned by Hoechst, into Celanese, all as contemplated in the Agreement of Merger entered into among Hoechst, its subsidiary, and Celanese, on November 2, 1986. Pursuant to that Agreement, Celanese's Board of Directors has approved Hoechst's tender offer, has recommended its acceptance by Celanese stockholders, and has agreed to approve the merger of Hostachem Acquisition Incorporated into Celanese following the tender offer. If the acquisition is consummated as presently contemplated, the total value of the transaction will be approximately \$2.7 billion. Through this proposed stock acquisition, Hoechst will effectively acquire the polyester business of Celanese.

VI. TRADE AND COMMERCE

16. For purposes of this complaint, relevant lines of commerce in which to evaluate the effects of the acquisition are:

- a. the manufacture, distribution, and sale of polyester staple; and
- b. the manufacture, distribution, and sale of textile polyester filament. [7]

17. For purposes of this complaint, the relevant section of the country in which to evaluate the effects of the acquisition with respect to each of the relevant lines of commerce is the United States as a whole.

VII. MARKET STRUCTURE

18. In 1986, approximately 2.1 billion pounds of polyester staple was produced in the United States. The polyester staple market is highly

concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm and eight-firm concentration ratios.

19. In 1986, approximately 844 million pounds of textile polyester filament was produced in the United States. The textile polyester filament market is highly concentrated, whether measured by the HHI or by four-firm and eight-firm concentration ratios.

VIII. ENTRY CONDITIONS

20. It is difficult to enter into the manufacture, distribution, and sale of polyester staple or of textile polyester filament.

XI. ACTUAL COMPETITION

21. Hoechst and Celanese are actual competitors in the manufacture, distribution, and sale of polyester staple and of textile polyester filament. [8]

X. EFFECTS

22. The aforesaid acquisition, if consummated, will significantly increase the levels of concentration in the relevant markets.

23. The effect of the aforesaid acquisition, if consummated, may be substantially to lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. it will eliminate actual competition between Hoechst and Celanese and between Celanese and others in the relevant markets; and
- b. it will significantly enhance the possibility of collusion or interdependent coordination among the remaining firms in the relevant markets.

XI. VIOLATIONS CHARGED

24. The proposed acquisition of the capital stock of Celanese by Hoechst would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

25. The Agreement of Merger described in paragraph 15 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

26. The proposed acquisition of the capital stock of Celanese by Hoechst would, if consummated, violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. [9]

Chairman Oliver was recorded as voting in the negative.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition of all of the issued and outstanding common and other voting stock of Celanese Corporation ("Celanese") by Hostachem Acquisition Incorporated, an indirect wholly-owned subsidiary of American Hoechst Corporation ("American Hoechst") which is a subsidiary of Hoechst Aktiengesellschaft (collectively "Hoechst") and the subsequent mergers of Celanese with Hostachem Acquisition Incorporated and Hostachem with American Hoechst, and Hoechst and Celanese, having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration, and which, if issued by the Commission would charge Hoechst and Celanese with violations of the Clayton Act and Federal Trade Commission Act; and [2]

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

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

1. Hoechst Aktiengesellschaft is an alien corporation organized and existing under the laws of the Federal Republic of Germany, with its executive offices located at 6230 Frankfurt (Main) 80, Federal Republic of Germany. [3]

2. American Hoechst Corporation, a wholly-owned subsidiary of Hoechst Aktiengesellschaft, is a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at 1041 Route 202-206 North, Somerville, New Jersey.

3. Celanese Corporation is a corporation organized and existing

under the laws of the State of Delaware, with its executive offices located at 1211 Avenue of the Americas, New York, New York.

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

ORDER

I.

It is hereby ordered, That as used in this order, the following definitions shall apply:

(a) "*Acquisition*" means Hoechst's acquisition of shares of the common and other voting stock of Celanese, a merger of Celanese with Hostachem Acquisition Incorporated and a merger of Hostachem with American Hoechst. [4]

(b) "*Polyester staple and textile filament fibers*" means synthetic fiber composed of polyethylene terephthalate, including both cut fiber and continuous filaments, used in apparel, carpeting, upholstery, home furnishing, or other textile applications, but not including monofilament, spunbond, sewing thread, and high-tenacity industrial filament (which includes industrial filament produced or sold by Celanese's Industrial Fiber business unit).

(c) "*Polyester textile fiber assets and businesses*" means assets and operations in the United States relating to the manufacture, distribution, sale, research and development of polyester staple or textile filament fibers, including goodwill, customer files, patents, know how, and the "Fortrel" trademark for Celanese's and the "Trevira" trademark for American Hoechst's polyester textile fiber business, respectively, as well as assets and operations related to the manufacture, distribution, sale, research and development of polyethylene terephthalate for use in the manufacture of polyester staple and textile filament fibers.

(d) "*Celanese*" means Celanese Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by Celanese and their respective successors and assigns. [5]

(e) "*Hoechst*" means Hoechst Aktiengesellschaft, American Hoechst Corporation, Hostachem Acquisition Incorporated, their predecessors, subsidiaries, divisions, groups and affiliates controlled by Hoechst and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

II.

It is further ordered, That:

(A) Hoechst shall divest, absolutely and in good faith, within twelve months from the date this order becomes final, either:

1. the following portion of the polyester textile fiber assets and businesses in the United States of the Celanese Textile Fibers Business Group, which group is included in the descriptions on pages 5-6 of the Celanese Corporation 1985 Annual Report on Form 10-K filed with the Securities and Exchange Commission and on pages 12-13 of the 1985 Celanese Annual Report:

(a) all assets at Celanese's Florence ("Palmetto"), South Carolina and Fayetteville, North Carolina manufacturing facilities; [6]

(b) All polyester staple production capacity, and all polyester terephthalate production capacity currently used in the production of polyester staple, at Celanese's Salisbury, North Carolina manufacturing facility and such additional assets as are currently used at that facility in the production of polyester staple fiber and are requested by the prospective acquirer provided, however, that Hoechst (i) is not required to divest the assets at the facility that relate to the supply, utilities and service arrangements and agreements that Hoechst is required to supply in accordance with the provisions of paragraph II (B) 3; (ii) is only required to permit the acquirer to use on a nonexclusive basis (under a suitable license, lease, contract or similar arrangement), and is not required to divest, current technology or know-how at the Salisbury facility that is also used or usable in the businesses of Celanese or Hoechst that are not being divested; and (iii) will not be required to divest any portion of the Salisbury manufacturing facility, or any assets at that facility, if the Commission in its discretion determines that such divestiture is not required; [7]

(c) such assets at Celanese's Dreyfus Research Park in Charlotte, North Carolina as the prospective acquirer requests and will continue to use in conjunction with the operations of Celanese's polyester textile fiber manufacturing facilities that are divested to that acquirer;

(d) two of the type 30 POY spinning machines and associated winding equipment currently located and operating at Celanese's plant located in Greenville, South Carolina that the acquirer intends to use to produce POY textile filament in the United States;

(e) such other Celanese polyester textile fiber assets and business in the United States as are currently used by the Celanese Textile Fibers Business Group and are requested by the prospective acquirer for continued use in the administration, manufacture, distribution, sale,

research and development, or technical support of polyester staple and textile filament fibers, except such of those assets specified in the following provision to this paragraph II (A) 1. [8]

Provided, however, that Hoechst shall not be required to divest:

(i) Celanese's facilities at Shelby, North Carolina and (except as provided in II (A) 1 (d), above) Greenville, South Carolina,

(ii) the "Fortrel" trademark unless the II A 1 properties are divested and the prospective acquirer requests the right to use that trademark and then Hoechst is only required to provide suitable licenses or similar arrangement for use of that trademark in the United States for polyester staple and textile filament fibers; or

(iii) Celanese's polyester textile fiber assets and businesses that satisfy the following conditions: 1) either such assets are administrative facilities that are not located at the facilities or locations specified in paragraph II (A) 1 (a), (b) and (c) or such assets consist of technology or know-how, 2) such assets have been used or continue to be used in conjunction with other assets of Celanese not required to be divested, and 3) Hoechst provides the acquirer in lieu of [9] divestiture of such assets suitable leases, licenses or similar arrangements on a nonexclusive basis.

(The foregoing assets and businesses are hereinafter referred to as the "II A 1 properties.") or

2. All of the polyester textile fiber assets and businesses of American Hoechst, including:

(a) all of the polyester textile fiber assets and businesses of Hoechst Fiber Industries ("HFI"), a division of American Hoechst; provided, however, Hoechst is entitled to negotiate suitable arrangements with the acquirer necessary to operate the retained assets and businesses relating to the manufacture and sale of monofilament, spunbond and solid-state resins;

(b) all polyester staple and textile filament production capacity at American Hoechst's, Spartanburg, South Carolina manufacturing facility and such additional assets as are currently used at that facility in the production of polyester staple and textile filament fiber and are requested by the [10] prospective acquirer; provided, however, that Hoechst (i) is not required to divest the assets at that facility that relate to the supply, utilities and service arrangements and agreements that Hoechst is required to supply in accordance with the provisions of paragraph II (B) (3); and (ii) is only required to permit the acquirer to use on a nonexclusive basis (under a suitable license, lease contract or similar arrangement), and is not required to divest, current technology or know-how at the Spartanburg facility that is

also used or useable in the businesses of Celanese or Hoechst that are not being divested.

(c) all the capacity to manufacture polyethylene terephthalate necessary to ensure a self sufficiency of supply for the divested assets at the capacity levels that they currently operate; and

(d) such research and development assets at Spartanburg, South Carolina as the prospective acquirer requests and will continue to use in conjunction with the operations of American Hoechst's polyester textile fiber [11] manufacturing facilities that are divested to that acquirer.

Provided, however, that Hoechst shall not be required to divest the "Trevira" trademark unless the II A 2 properties are divested and the prospective acquirer requests the right to use that trademark and then Hoechst is only required to provide suitable licenses or similar arrangement for use of that trademark in the United States for polyester staple and textile filament fibers.

(The foregoing assets and businesses are hereinafter referred to as the "II A 2 properties".)

(B) In conjunction with the divestiture, Hoechst and Celanese shall:

1. assign to the acquirer of the II A 1 properties the Service Agreement dated March 13, 1981 (and certain related agreements) between Celanese and Monsanto Company;

2. provide any easements and rights of way that are requested by the prospective acquirer and that facilitate the operation of the II A assets; [12]

3. if the polyester staple operations of Celanese's Salisbury facility or the II A 2 properties are divested, provide the acquirer, at fair market price, supply arrangements and utilities and service agreements (such as nitrogen, inert air, process and drinking water, steam, and waste treatment) that are requested by the prospective acquirer for use in conjunction with the assets and businesses sold to the acquirer; and

4. if the II A 2 properties are divested, provide the acquirer, at fair market prices, supply arrangements for terephthalic acid and dimethyl-terephthalate that are requested by the prospective acquirer for use in conjunction with the assets and businesses divested to the acquirer.

(Hereinafter referred to as "II B agreements".)

(C) Hoechst and Celanese shall:

1. retain all liabilities arising from the operation of any of the II A

properties that are divested through and including, but not following, the date of closing of the sale of such properties; [13]

2. ensure that all persons who accept employment with any acquirer of the II A 1 properties shall become fully vested in their account balances under Celanese's Stock Bonus and Investment Plan Trust;

3. transfer from Celanese's pension plan if the II A 1 properties are divested, or from Hoechst's pension plan if the II A 2 properties are divested, to a pension fund(s) to be established by an acquirer or acquirers of those properties assets equal to the actuarially accrued liability as of the closing date, or otherwise secure the accrued pension benefits, with respect to Celanese, or, as the case may be, Hoechst, employees who accept employment with an acquirer or acquirers of any II A property; and

4. encourage its employees who are employed at any divested II A property to accept employment with any acquirer(s) of any II A property.

(D) Hoechst and Celanese shall maintain the viability and marketability of the assets required to be divested and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear. [14]

(E) II A 1 or II A 2 properties shall be divested to and II B agreements and agreements provided for in paragraph II (A) made with, an acquirer or acquirers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture and agreements is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the manufacture, distribution, sale, research and development of polyester staple and textile filament fibers in the United States and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(F) If Hoechst has not divested the II A 1 or II A 2 properties within the twelve-month period specified in II (A), Hoechst shall consent to the appointment of a trustee by the Commission to divest the II A 1 properties. In the event that the Commission brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Hoechst shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Hoechst to comply with paragraphs II (C) through VI of this order.

(G) If a trustee is appointed by the Commission or a court pursuant to paragraph II (F) of this order, Hoechst shall [15] consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Hoechst's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest any II A 1 properties or enter into any II B agreements and other agreements provided for in paragraph II (A) that have not been divested or entered into by Hoechst within the time period for divestiture in paragraph II(A). The trustee shall have 18 months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee. Provided, however, the Commission or the court for a court-appointed [16] trustee may only extend the divestiture period two times.

3. The trustee shall have full and complete access to the personnel, books, records and facilities of any business that the trustee has the duty to divest, and Hoechst shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Hoechst shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(E).

5. The trustee shall serve at the cost and expense of Hoechst on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to [17] Hoechst and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission, Hoechst shall, subject to the Commission's prior approval, and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture and sign agreements.

7. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

8. The trustee shall report in writing to the Commission and Hoechst every sixty days concerning the trustee's efforts to accomplish divestiture.

(H) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as (1) all the II A 1 properties, except Type 30 POY spinning machines at Greenville, have been divested by Hoechst or [18] a trustee pursuant to this order, or (2) all of the II A 2 properties have been divested by Hoechst pursuant to the order.

III.

It is further ordered, That, within sixty days after the date of service of this order, and every sixty days thereafter until Hoechst and Celanese have fully complied with the provisions of paragraph II of this order, Hoechst and Celanese shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying with, or have complied with that provision and those reports shall be accorded such confidential treatment as is available pursuant to Section 6(f) and 21 of the Federal Trade Commission Act, as amended. Hoechst and Celanese shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of the paragraph II A properties, including the identity of all parties contacted. Hoechst and Celanese also shall include in compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture. [19]

IV.

It is further ordered, That for a period commencing on the date of service of this order and continuing for ten years from and after the date of service of this order, Hoechst shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company engaged in, the manufacture, distribution, or sale of polyester staple and textile filament fibers in the United States. Provided, however, that these prohibitions shall not relate (i) to the construction of new facilities, (ii) to the acquisition of assets outside of the United

States, (iii) to the acquisition of any interest in, or the whole or part of the stock or share capital of any company engaged in the manufacture, distribution or sale of polyester staple and textile filament fibers outside of the United States if such company has annual sales in the United States of less than one percent of the then current respective total United States annual sales of polyester staple fibers or polyester textile filament fibers or (iv) to the acquisition of used assets that Hoechst intends to relocate to existing or new facilities for use in production of polyester staple and textile filament fibers if such used assets have production capacity of less than one percent of the United States' then current respective capacity for the production of polyester staple fibers [20] or polyester textile filament fibers.

One year from the date of service of this order and annually thereafter, Hoechst shall file with the Commission a verified written report of its compliance with this paragraph.

V.

For the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to American Hoechst Corporation or Celanese made to their principal offices, Hoechst and Celanese shall permit any duly authorized representatives of the Commission:

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

2. Upon five days' notice to American Hoechst Corporation or Celanese and without restraint or interference from them, to interview officers or employees of Hoechst or Celanese, who may have counsel present, regarding such matters. [21]

VI.

It is further ordered, That Hoechst and Celanese shall notify the Commission at least thirty days prior to any change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this order.

Chairman Oliver was recorded as voting in the negative.

DISSENTING STATEMENT OF CHAIRMAN DANIEL OLIVER

Two separate concerns lead me to dissent from final Commission acceptance of the consent order in this matter. First, I do not believe that Hoechst's acquisition of Celanese is likely to lessen competition substantially in the production, distribution or sale of either polyester staple or textile polyester filament, the two relevant product markets alleged in the complaint. The theory of the complaint is that the acquisition—if not modified pursuant to the consent order—may have this effect in the United States. However, strong competition from foreign producers is likely to make it impossible for domestic producers—including the combined Hoechst-Celanese operation—to exercise any significant degree of market power, whether to raise prices above competitive levels or to injure competition in any other respect. There is therefore no reason to believe that the acquisition violates section 7 of the Clayton Act, and the consent order is unnecessary.

Second, the consent order will require the respondent—for ten years—to secure Commission approval prior to acquiring virtually any assets located in the United States that are used to manufacture, distribute, or sell polyester staple or textile filament fibers. If, as I have concluded, there is no reason to believe that the current acquisition would violate section 7, then there is no reason to require prior approval of future equally innocuous acquisitions. The Commission has recently determined that the appropriateness of prior approval provisions depends on “industry market structure and market conditions.”¹ The record in this case does not establish that “market conditions and market structure in [the covered markets] are such that all such acquisitions . . . necessarily [would be] anticompetitive.”²

For both reasons, I therefore respectfully dissent from final approval of the consent order in this matter.

¹ *American Medical International*, 104 FTC 1, 224 (1984); accord, *Hospital Corp. of America*, 106 FTC 361, 514 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, ___ U.S. ___, No. 86-1492 (May 3, 1987).

² See *American Medical International*, 104 FTC at 225; see also *Hospital Corp. of America*, 106 FTC at 513-17.

IN THE MATTER OF

L'AIR LIQUIDE SOCIETE ANONYME, ET AL.

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

Docket C-3216. Complaint, July 15, 1987—Decision, July 15, 1987

This consent order requires, among other things, L'Air Liquide to divest some assets to resolve any antitrust concerns in the production and sale of liquid gases and to obtain prior Commission's approval for similar acquisitions.

Appearances

For the Commission: *Ernest A. Nagata.*

For the respondents: *Robert A. Lipstein, Coudeot Brothers, Wash-
ington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude has undertaken an acquisition of the voting securities of Big Three Industries, and a proposed merger of Big Three Industries with a subsidiary of L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude, either of which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

(a) "*L'Air Liquide*" means L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude, its officers, directors, agents, representatives, employees, successors and assigns together with all subsidiaries it controls.

(b) "*BTI*" means Big Three Industries, its officers, directors, agents,

representatives, employees, successors and assigns together with all subsidiaries it controls.

(c) "Acquisition" means L'Air Liquide's acquisition of the voting securities of BTI.

(d) "Merger" means the proposed merger of BTI with a subsidiary of L'Air Liquide.

(e) "Air separation gases" means oxygen, nitrogen, and argon in gaseous or liquid form.

(f) "Merchant" oxygen, nitrogen, or argon means any such gas sold in liquid form or packaged in cylinders.

II. L'AIR LIQUIDE

2. L'Air Liquide is a corporation organized and doing business under the laws of France, with its principal office at 75 Quai d'Orsay, Paris 75321 France.

3. L'Air Liquide is an 88% stockholder in Liquid Air Corporation ("LAC"), a corporation organized and doing business under the laws of Delaware, with its principal office at California Plaza, 2121 North California Blvd., Walnut Creek, California.

4. For the year ending December 31, 1985, L'Air Liquide's total net sales were \$2.8 billion, and its total assets amounted to approximately \$3 billion.

5. L'Air Liquide does business in four areas: industrial gases; welding and cutting; engineering and construction; and chemicals and related activities.

6. L'Air Liquide, at all times relevant herein, has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. BTI

7. BTI is a corporation organized and doing business under the laws of Texas, with its office and principal place of business located at 3535 West 12th Street, Houston, Texas.

8. In 1985, BTI's net sales totalled \$384 million, and its total assets were approximately \$1 billion.

9. BTI has worldwide operations in three product areas: industrial gas; oil field related tools, equipment and services; and welding equipment and supplies.

10. BTI, at all times relevant herein, has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in

or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION AND MERGER

11. Pursuant to an Agreement and Plan of Merger dated August 12, 1986, L'Air Liquide has offered to purchase all outstanding shares of capital stock in BTI for \$29.00 per share. The parties have agreed, upon completion of the tender offer, to merge L'Air Liquide's wholly owned subsidiary, AAL Acquisition Corp., into and with BTI. The total value of the tender offer and merger is approximately \$1.2 billion.

V. TRADE AND COMMERCE

12. Relevant lines of commerce in which to evaluate the effects of the acquisition and merger are the production and sale of:

- (a) merchant argon; and
- (b) merchant oxygen and nitrogen.

13. The United States is a relevant area in which to evaluate the effects of the acquisition and merger in the production and sale of merchant argon.

14. Relevant sections of the United States in which to evaluate the effects of the acquisition and merger on the production and sale of merchant oxygen and nitrogen are:

- (a) the Southern Rocky Mountain region;
- (b) West Texas;
- (c) North Texas;
- (d) South Texas; and
- (e) Florida.

15. The production of merchant argon in the national market is highly concentrated. In terms of production, the Herfindahl-Hirschman Index ("HHI") for 1985 in the national merchant argon market was approximately 2500 and would increase approximately 125 points to approximately 2625 as a result of the acquisition and merger.

16. L'Air Liquide and BTI both are actual competitors in the production and sale of merchant argon in the national market.

17. The productive capacity of merchant oxygen and nitrogen in each relevant section of the country is highly concentrated. In terms of capacity, the HHI for 1985 in the:

- (a) Southern Rocky Mountain merchant oxygen and nitrogen market was approximately 2850 and would increase approximately 1050 points to approximately 3900 as a result of the acquisition and merger;

(b) West Texas merchant oxygen and nitrogen market was approximately 2150 and would increase approximately 1300 points to approximately 3450 as a result of the acquisition and merger;

(c) North Texas merchant oxygen and nitrogen market was approximately 2350 and would increase approximately 700 points to approximately 3050 as a result of the acquisition and merger;

(d) South Texas merchant oxygen and nitrogen market was approximately 3000 and would increase approximately 450 points to approximately 3450 as a result of the acquisition and merger; and

(e) Florida merchant oxygen and nitrogen market was approximately 2600 and would increase approximately 900 points to approximately 3500 as a result of the acquisition and merger.

18. L'Air Liquide and BTI both are actual competitors in the production, distribution and sale of merchant oxygen and nitrogen in each relevant section of the country.

19. The barriers to entry into the production and sale of merchant oxygen, nitrogen and argon in the relevant sections of the country are significant. Impediments to entry arise from sunk costs, minimum efficient scale plant size, demand elasticity and market size. These factors operate together to create a situation where rapid, new entry may not be available to restrain anticompetitive activity.

VI. EFFECTS

20. The effect of the proposed acquisition and merger may be substantially to lessen competition or tend to create a monopoly in the production and sale of merchant oxygen, nitrogen, and argon in the relevant sections of the country in the following ways, among others:

(a) actual competition between L'Air Liquide and BTI in the relevant lines of commerce and relevant sections of the country will be eliminated;

(b) actual competition between competitors in the relevant lines of commerce and relevant sections of the country will be lessened;

(c) concentration in the relevant lines of commerce and relevant sections of the country will be significantly increased; and

(d) the possibility of collusion or interdependent coordination among the remaining firms in the relevant lines of commerce and relevant sections of the country will be enhanced.

VII. VIOLATIONS CHARGED

21. The effect of the acquisition and merger may be substantially to lessen competition or tend to create a monopoly in the production and sale of merchant argon in the United States market and in the production and sale of merchant oxygen and nitrogen in the Southern Rocky Mountain region, West Texas, North Texas, South Texas and

Florida markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act; and

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

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

1. Respondent L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude ("L'Air Liquide") is a corporation organized, existing and doing business under and by virtue of the laws of France, with its principal office located at 75 Quai d'Orsay, Paris 75321 France.

L'Air Liquide is an 88% stockholder in Liquid Air Corporation ("LAC"), a corporation organized and doing business under the laws of Delaware, with its principal office at California Plaza, 2121 North California Blvd., Walnut Creek, California.

2. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

I.

It is hereby ordered, That as used in this order the following definitions shall apply:

1. "*L'Air Liquide*" means L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

2. "*Liquid Air*" means Liquid Air Corporation, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

3. "*Big Three*" means Big Three Industries Inc., its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

4. "*Air separation gases*" means oxygen, nitrogen and argon in gaseous or liquid form.

5. "*Air separation gases plant*" means a facility that produces air separation gases.

6. "*Merchant air separation gases*" means oxygen, nitrogen and argon sold in liquid form or packaged in cylinders.

7. "*Merchant air separation gases producer*" means any person that is engaged in all of the following: (i) production, (ii) distribution and (iii) sale of two or more merchant air separation gases.

8. "*Ncrth Texas*" means that portion of the State of Texas within a 200 mile radius of Dallas, Texas, but does not include customers currently served by Liquid Air's Stafford or Odessa air separation gases plants.

9. "*Merchant Divestiture Assets*" means the assets described in paragraphs IIA and IIB of this order.

10. "*Material confidential information*" means competitively sensitive or proprietary information not independently known to L'Air Liquide and includes, but is not limited to, customer lists and price lists.

II.

It is further ordered, That:

A. Within 9 months from the date this order becomes final L'Air

Liquide shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the following properties. Divestiture shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

1. All of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts, excluding any contracts with Texas Instruments, specifying a delivery location in the state of Texas, together with associated storage vessels and cylinders;

2. Liquid Air's air separation gases plants located in Odessa, Texas and Stafford (Houston), Texas, together with associated distribution equipment, and distribution equipment sufficient to serve Liquid Air's merchant air separation gases customers located in North Texas;

3. Big Three's West Palm Beach, Florida air separation gases plant together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

4. Big Three's Albuquerque, New Mexico air separation gases plant, together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

5. Big Three's interest in the Palmer, Alaska air separation gases plant and associated merchant air separation gases customer, dealer and distributor contracts, storage vessels and distribution equipment. *Provided, however*, that if the aforementioned interest is divested to The Lincoln Electric Company, such divestiture will not require the prior approval of the Commissioner under this order.

B. L'Air Liquide shall also make available in North Texas for a period of up to 3 years from the date the divestiture of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts in North Texas is completed whether by L'Air Liquide or by the trustee identified in paragraph V, up to 50 T/D of liquid oxygen and 95 T/D of liquid nitrogen, which may be purchased by the acquirer of the merchant air separation gases customer, dealer and distributor contracts of Liquid Air in North Texas at a price equal to the electric power costs of the supplying air separation gases plant plus 5 cents/hundred cubic feet, F.O.B. the supplying plant.

C. Within 12 months from the date this order becomes final, L'Air Liquide shall enter into a contract to sell to an unrelated third party all argon to which Liquid Air is entitled under an Operating Agree-

ment among Borden, Inc., BASF Wyandotte Corporation, Liquid Air Corporation and LAI Properties, Inc., dated December 14, 1984, as amended. Such contract shall be made only with a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of requiring such contract is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

III.

It is further ordered, That, pending the divestiture of all of the assets described in paragraphs IIA and IIB, above, L'Air Liquide will hold such assets separate and apart on the following terms and conditions:

A. Within 30 days from the date this order becomes final, L'Air Liquide shall cause all of its right, title and interest in the Merchant Divestiture Assets to be transferred to a separate corporation ("Nucorp"), whose management and directors will be independent of and separate from the management and directors of L'Air Liquide, Liquid Air, or Big Three.

B. Nucorp and the Merchant Divestiture Assets shall be operated independently of L'Air Liquide, Liquid Air or Big Three.

C. L'Air Liquide shall not exercise direction or control over, or influence directly or indirectly, the day-to-day operations of Nucorp or the Merchant Divestiture Assets, except as may be necessary (i) to assure compliance with this Order, (ii) to prevent an event of default under financing arrangements to which L'Air Liquide or any of its subsidiaries is a party, or (iii) to prevent wasting or deterioration of the Merchant Divestiture Assets.

D. Except as provided in paragraph III(C)(i)-(iii) or as required by law and except to the extent that necessary information is exchanged in the course of defending litigation or negotiating agreements to dispose of Nucorp or all or any part of the Merchant Divestiture Assets, L'Air Liquide shall not receive or have access to, or the use of, any "material confidential information" relating to the Merchant Divestiture Assets not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph.

E. Each transaction in the amount of \$100,000 or more, or transactions in the aggregate of \$500,000 or more which are not otherwise precluded to Nucorp by paragraph III(A)-(D), shall be subject to a majority vote of the Board of Nucorp. Prior to the Board of Nucorp approving any such transaction, such transaction must be submitted

for review and approval by an officer of L'Air Liquide only for the limited purpose of determining whether such transaction would impair L'Air Liquide's obligations under this order, including L'Air Liquide's ability to divest Nucorp or the Merchant Divestiture Assets, or would create an event of default under any financing arrangement. The submission of such proposed transactions to an executive of L'Air Liquide shall be made in writing only, and L'Air Liquide's response shall also be in writing only, and copies of all such writings shall be maintained by L'Air Liquide for two years following the divestiture of the Merchant Divestiture Assets. The approval of an officer of L'Air Liquide shall not be unreasonably withheld and shall be granted within a reasonable period of time.

F. Subject to the other provisions of this order:

1. L'Air Liquide shall have the sole right to determine the terms of sale of Nucorp or any of the Merchant Divestiture Assets, including timing of sale and purchase price, and to cause Nucorp management to enter into any agreements or arrangements, or to take any other action, to fulfill L'Air Liquide's obligations under this order, and

2. In the event L'Air Liquide has submitted one or more acquirers of the Merchant Divestiture Assets or of Nucorp to the Commission prior to the date this order becomes final, L'Air Liquide will not be required to cause those assets for which it has a contract or contracts to sell to be transferred to Nucorp, unless and until the Commission denies approval of such acquirers. If the Commission denies such approval, L'Air Liquide shall transfer the Merchant Divestiture Assets to Nucorp (a) within ten (10) calendar days, or (b) if L'Air Liquide has not as yet transferred assets to Nucorp pursuant to paragraph III(A), then L'Air Liquide shall be required to transfer the Merchant Divestiture Assets described in this subparagraph in accordance with paragraph III(A).

IV.

It is further ordered, That L'Air Liquide shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with paragraph II of this order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production, sale or distribution of industrial gases. *Provided, however,* that deterioration in the ordinary course of operation and normal wear is not a violation of this paragraph.

V.

It is further ordered, That:

A. If L'Air Liquide has not divested all of the Merchant Divestiture Assets within the 9-month period, or has not obtained approval for the contract described in paragraph II(C) within the 12 month period, L'Air Liquide shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45 (1), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, L'Air Liquide shall consent to the appointment of a trustee by the Commission pursuant to the order.

B. If a trustee is appointed by a court or the Commission pursuant to paragraph V(A) of the order, L'Air Liquide shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to L'Air Liquide's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have 18 months from the date of appointment to submit for prior approval the divestiture of any undivested assets, which shall be subject to the prior approval of the Commission, and if the trustee was appointed by the court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Nucorp or L'Air Liquide shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Nucorp and L'Air Liquide shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest.

5. The trustee shall serve at the cost and expense of L'Air Liquide on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by

the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to L'Air Liquide and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting undivested assets.

6. Promptly upon appointment of the trustee, L'Air Liquide shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture of undivested assets.

7. If the trustee ceases to act or fails to act diligently, the court or the Commission may, upon its own motion or by motion of L'Air Liquide, appoint a substitute trustee for the balance of the 18-month period specified in paragraph V(B)(2) or any extension thereof.

8. The trustee shall report in writing to L'Air Liquide and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

9. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. L'Air Liquide shall reimburse the trustee for the reasonable value of all expenses so incurred.

10. If L'Air Liquide and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the plant or plants, then L'Air Liquide and the trustee shall submit the dispute to the Commission for resolution. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon L'Air Liquide and the trustee.

VI.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until L'Air Liquide has fully complied with the provisions of paragraphs II(A)-II(C) of this order, L'Air Liquide shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. L'Air Liquide shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for divestiture, including the identity of all parties contacted.

VII.

It is further ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from and after the date this order becomes final, L'Air Liquide shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of any United States merchant air separation gases producer, or any of the merchant air separation gases assets of any United States merchant air separation gases producer, provided, however, that nothing in this order shall require L'Air Liquide to obtain prior Commission approval for acquisitions of (a) gas or any product for resale, (b) transportation, delivery or storage equipment, (c) cylinders, (d) converters, (e) bulk customer stations, or (f) plant equipment not incorporated in an operating merchant air separation gases plant, and provided further that nothing in this order or in the Commission's order entered in Docket C-2990 shall require L'Air Liquide to obtain prior Commission approval if L'Air Liquide increases its ownership in Liquid Air or causes Big Three to acquire Liquid Air. One year after the date this order becomes final, and annually thereafter, L'Air Liquide shall file with the Commission a verified written report of its compliance with this paragraph.

VIII.

It is further ordered, That for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to L'Air Liquide made to its principal office, L'Air Liquide shall permit any duly authorized representatives of the Commission access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of L'Air Liquide relating to any matters contained in this order.

IX.

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

DISSENTING STATEMENT OF CHAIRMAN DANIEL OLIVER

I would support a consent order in this matter that required the respondent—for a prescribed period of years—to furnish prior *notice* to the Commission before making additional acquisitions in the markets at issue. Unfortunately, the consent order the Commission has accepted requires the respondent—for ten years—to secure prior Commission *approval* before making acquisitions in those markets. The Commission has recently determined that the appropriateness of prior approval provisions depends on “industry market structure and market conditions.”¹ I do not support imposing the prior approval requirement in the consent order because it is not clear from the record that “market conditions and market structure in [the covered markets] are such that all such acquisitions . . . necessarily [would be] anticompetitive.”² I therefore respectfully dissent from final acceptance of the consent order in this matter.

¹ *American Medical International*, 104 FTC, 1, 224 (1984); accord, *Hospital Corp. of America*, 106 FTC 361, 514 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, — U.S. —, No. 86-1492 (May 3, 1987).

² See *American Medical International*, 104 FTC at 225; see also *Hospital Corp. of America*, 106 FTC at 513-17.

IN THE MATTER OF
TICOR TITLE INSURANCE COMPANY, ET AL.

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

Docket 9190. Complaint, Jan. 7, 1985—Decision, July 30, 1987

This consent order prohibits, among other things, Santa Ana, Calif.-based respondent, First American Title Insurance Co., from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, First American Title Insurance Co. agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint and requires the respondent to notify the Commission at least thirty days prior to any changes in the corporate respondent.

Appearances

For the Commission: *Michael Antalics.*

For the respondents: *Paul J. Laveroni, Frank D. Tatum, & Karen J. Kubin, Cooley, Godward, Castro, Huddleson & Tatum, San Francisco, Calif.*

COMPLAINT*

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

DEFINITIONS

PARAGRAPH 1. The following definitions shall apply in this complaint:

a. "*Title search and examination services*" means all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property.

b. "*Settlement services*" means those services related to the closing

* The Decision and Order following this Complaint applies to respondent First American Title Insurance Company only. The Complaint against the other named respondents remain in litigation.

of a real estate transaction, including but not limited to those services performed in connection with or in supervision of the execution, delivery or recording of transfer and lien documents, or the disbursement of funds.

RESPONDENTS

PAR. 2. Respondent Ticor Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 6300 Wilshire Boulevard, Los Angeles, California.

PAR. 3. Respondent Chicago Title Insurance Company is a corporation organized under the laws of the State of Missouri, with its principal place of business at 111 W. Washington Street, Chicago, Illinois.

PAR. 4. Respondent Safeco Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 13640 Roscoe Boulevard, Los Angeles, California.

PAR. 5. Respondent First American Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 114 East 5th Street, Santa Ana, California.

PAR. 6. Respondent Lawyers Title Insurance Corporation is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business at 6630 West Broad Street, Richmond, Virginia.

PAR. 7. Respondent Stewart Title Guaranty Company is a corporation organized under the laws of the State of Texas, with its principal offices at Stewart Building, Galveston, Texas.

JURISDICTION

PAR. 8. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce within the meaning of the Federal Trade Commission Act.

PAR. 9. Title search and examination services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

PAR. 10. Settlement services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

ANTICOMPETITIVE ACTS AND PRACTICES

PAR. 11. Respondents have agreed on the prices to be charged for title search and examination services or settlement services through rating bureaus in various states. Examples of states in which one or

more of the respondents have fixed prices with other respondents or other competitors for all or part of their search and examination services or settlement services are Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin and Wyoming.

ANTICOMPETITIVE EFFECTS

PAR. 12. As a result of the aforesaid acts and practices, competition in the sale of title search and examination services or settlement services has been restrained in various states.

PAR. 13. The aforesaid acts and practices therefore constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent First American Title Insurance Company with violation of Section 5 of the Federal Trade Commission Act, as amended, and respondent having been served with a copy of the complaint, together with a notice of contemplated relief; and

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

The Secretary of the Commission having thereafter withdrawn this matter from adjudication as to respondent First American Title Insurance Company in accordance with Section 3.25(c) of its Rules; and

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

1. Respondent First American Title Insurance Company 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 114 East 5th Street, Santa Ana, 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 purposes of this order, the following definition shall apply:
"Affected States" means the states of Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin.

II.

It is ordered, That respondent, its successors and assigns, and its officers, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device shall not discuss, propose, set, or file any rates for title search and examination services or settlement services through any rating bureau in any of the Affected States, unless respondent can establish that such state has clearly articulated and affirmatively expressed a policy permitting collective rate filing through rating bureaus, and actively supervises this conduct.

III.

It is further ordered, That respondent shall within thirty days after service of this order deliver a copy of this order to all its present officers, directors, and personnel having any responsibility in determining rates as well as to the commissioner of insurance in each of the Affected States.

IV.

It is further ordered, That respondent notify the Commission at least thirty days prior to any 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.

V.

It is further ordered, That respondent shall, within ninety days after the order becomes final, 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

BUCKINGHAM PRODUCTIONS, INC., ET AL.

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

Docket 9194. Amended Complaint, July 30, 1987—Decision, July 30, 1987

This consent order requires, among other things, the Furlong, Pa. marketers of mail-order weight reduction or weight control products, programs or services to cease falsely representing the effectiveness of its programs, products or services without competent and reliable evidence supporting such claims.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *John J. Hare, Jr., Buckingham Commons, Furlong, PA.*

AMENDED COMPLAINT*

The Federal Trade Commission, having reason to believe that Buckingham Productions, Inc., trading and doing business as Rotation Diet Center; Furlong-Elliot Corp.; Freedom Center, Inc.; Plaza Business Services, Inc.; N.F. Rotation, Inc.; Rotation-Freedom Diet, Inc., Health and Diet Corp., Inc., corporations; Howard Elliot, individually and as an officer of said corporations, ("respondents"); and Dr. Barry Bricklin, individually, ("expert respondent") have violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1.

(a) Buckingham Productions, Inc., trading and doing business as Rotation Diet Center, 73 Valley Drive, Furlong, Pennsylvania; Furlong-Elliot Corp., 73 Valley Drive, Furlong, Pennsylvania; Freedom Center, Inc., 73 Valley Drive, Furlong, Pennsylvania; Plaza Business Services, Inc., 73 Valley Drive, Furlong, Pennsylvania; N.F. Rotation, Inc., 73 Valley Drive, Furlong, Pennsylvania; and Rotation-Freedom Diet, Inc., 73 Valley Drive, Furlong, Pennsylvania; and Health and Diet Corp., Inc., 73 Valley Drive, Furlong, Pennsylvania are Pennsylvania corporations.

* Complaint issued June 24, 1985. Published at 106 F.T.C. 115 (1985).

(b) Furlong-Elliot Corp. dominates and controls the acts and practices of its wholly-owned subsidiaries, Buckingham Productions, Inc.; Freedom Center, Inc.; Plaza Business Services, Inc.; N.F. Rotation, Inc.; and Rotation-Freedom Diet, Inc.

(c) Howard Elliot is an officer of Furlong-Elliot Corp. Howard Elliot formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices alleged in this complaint. His address is 73 Valley Drive, Furlong, Pennsylvania.

(d) Dr. Barry Bricklin is a clinical psychologist, with a doctor of philosophy degree in psychology, and a license to practice psychology in Pennsylvania. He is now and at all material times has been an associate professor of clinical psychology at Hahnemann University. His address is 470 General Washington Road, Wayne, Pennsylvania. Expert respondent Bricklin possesses an expertise in psychology, and in the physiological and psychological aspects of dieting, superior to that generally acquired by ordinary individuals.

PAR. 2. Respondents manufacture, offer for sale, and sell weight reduction and/or weight control programs and products. Expert respondent Dr. Barry Bricklin, for his part, developed some of the basic principles upon which the weight reduction and/or weight control programs offered for sale through the corporate respondents are based. Expert respondent Bricklin has had a continuing role in the marketing of these programs by serving as the Director of the programs' Professional Advisory Board, and by providing advice concerning the products and programs to Howard Elliot, to other respondents, and/or to employees of the respondents as requested. In addition, expert respondent Bricklin has aided in the promotion and sale of these weight reduction and/or weight control programs and products by providing as an expert in the field endorsements of the efficacy of the programs and products that appear in advertisements. The advertisements in which expert respondent Bricklin's endorsements appear depict him as possessing an expertise in psychology, and in the physiological and psychological aspects of dieting, superior to that generally acquired by ordinary individuals.

PAR. 3. Respondents have disseminated or caused to be disseminated, advertisements for weight reduction and/or weight control programs and products that include a "food" and/or a "drug" within the meaning of these terms in Section 12 of the Federal Trade Commission Act. These advertisements, some of which contain expert respondent Dr. Barry Bricklin's endorsement, have been disseminated (a) by United States mails, or in or having an effect upon commerce by any means for the purpose of inducing, or which have been likely to induce, directly or indirectly, the purchase of food and/or drugs, or (b) by any means, for the purpose of inducing, or which is likely to

induce, directly or indirectly, the purchase in or having an effect upon commerce of food and/or drugs.

PAR. 4. The acts and practices of respondents and expert respondent Dr. Barry Bricklin alleged in this complaint have been in or affecting commerce.

PAR. 5. Typical of respondents' advertisements, but not necessarily inclusive thereof, are the advertisements attached hereto as Exhibits A through L. Specifically, the aforesaid advertisements contain the following statements:

(a) "Women usually lose 8 to 20 pounds a month, men 12 to 25 pounds [on the Rotation Diet]."

(b) "[... The] 'No Frills' Rotation Diet Plan ... works just like the original Plan. It's just as safe, just as effective. ..."

(c) "Now you can truly eat whatever you want, as much as you want without feeling guilty and you'll still lose weight."

(d) "The all natural diet—no drugs or medicine! The Rotation Diet is really SANE and PROVEN SAFE!"

(e) "My total loss so far has been 62 pounds ... There are thousands of Rotation Diet Center Members who've lost as much weight as I have. Even more!"

(f) "Reach your goal then keep it off with the Rotation Diet Maintenance Plan."

(g) "... [R]eal breakthrough [of the Rotation Diet] is the unique way it allows a person to find his or her right weight and then stay there."

(h) "Once you reach your weight goal, you only diet two days each week. Then as your body adjusts to its new weight, you diet just one day a week. You'll be able to stay slim all your life ... comfortably and easily."

(i) "Q. What do the [Rotation] tablets do?"

A. They stop all hunger and increase your energy level."

(j) "Rotation Wafers makes (sic) the diet work. They're critical to the success of the diet because they: STOP HUNGER (yet they're not a medicine, drug, or shot, so they're perfectly safe) ... ELIMINATE FATIGUE. ..."

(k) "Take-A-Break Tablets are specially formulated to work with the Rotation Diet and help to keep food from turning to fat. This means that for one day, two days, any number up to 15 days, you can enjoy taking a break from your Rotation Diet. Soon as you ... get back on the Rotation Diet ... in one week or less you'll be back at your 'Pre-Break' weight."

(l) "[I]t saves you more than it costs. ... *You'll save more than you spend on this diet!* Most people cut about 40% off their food bill because they've cut down on expensive foods during their three Balance Days a week."

(m) "Q. How much weight can I really lose on the FREEDOM DIET?"

A. ... [A]s a rule, women usually lose anywhere from 8 to 20 pounds the first month; men up to 25 pounds."

(n) "The Freedom Chewable Tablets are the key to your weight-loss success. They contain no medicine or drugs, yet they stop hunger and help you to feel good on your diet day."

(o) "Q. Can the FREEDOM DIET harm me in any way?"

A. No. Our experience is that the diet when followed accurately, takes off weight safely and naturally."

(p) "After You Reach Your Goal, It's Easy to Maintain. Once you've lost all the weight you want, it's easy to keep it off because FREEDOM DIET has a special Maintenance Program. You'll reduce your Diet Days to 2 per week ... then as your system adjusts

to your new weight, you'll cut back to just 1 diet day per week and you'll be able to stay slim for the rest of your life!"

(q) "Here's how the FREEDOM DIET works: This amazing diet actually let you eat and drink what and whenever you want on TUESDAYS, THURSDAYS, SATURDAYS AND SUNDAYS. You can have foods like spaghetti, ravioli, fettucini, and pizza. Bread and potatoes too. And desserts like chocolate layer cake, ice cream, banana splits, sundaes, pecan pie with whipped cream—whatever your favorites might be! You can even have double helpings of everything because that's the whole idea of the FREEDOM DIET. You're FREE to eat anything you want, as much as you want 4 days every week."

(r) "Our 'Make-A-Break' Plan will help you maintain your weight for up to 15 days when you have to take a break from FREEDOM DIET."

(s) "[T]he majority of women [on the Rotation-Freedom Diet] fit within range of 8 to 20 pounds loss during the first month, men usually lose more."

(t) "Take-A-Break Tablets [in the Rotation-Freedom Diet] let you go off your diet for 9 days without regaining."

PAR. 6. Typical of the statements in endorsements authorized by expert respondent Dr. Barry Bricklin, which appear in respondents' advertisements, and are attached hereto as Exhibits A and I, are the following:

"Q. Does the Rotation Diet really work? Do people lose weight on it?

A. It works extremely well. But as any doctor with years of experience in weight control knows, designing a way to lose weight is only a small part of the challenge. My years of observation of this diet convince me that its real breakthrough is the unique way it allows a person to find his or her right weight and then stay there. . . .

Q. How much weight can I lose?

A. Women usually lose 8 to 20 pounds a month, men 12 to 25 pounds. The amount depends on many personal variables, including the total amount of weight you have to lose. . . ."

PAR. 7. Respondents' advertisements also contain the following statements, which purport to be actual and genuine testimonials from customers of the Rotation Diet Center:

(a) "The Rotation Tablets taste like Necco Wafers. They really stop my hunger and increase my energy level. I feel good on my 3 diet days!" E.R., Boston, Massachusetts"

(b) "I really pig-out on my free days—pizza, cheesecake, beer, potato chips. I eat to my 'heart's content' and have still lost 57 pounds!" N.M., Princeton, New Jersey"

(c) "I save enough on my 3 diet days to more then pay for the whole week. The diet actually costs me nothing!" J.A., Stowe, Ohio"

(d) "The all natural diet—no drugs or medicine! The Rotation Diet is really SANE and PROVEN SAFE!" C.D., Wilmington, DE"

(e) "I just used your switching process to make Wednesday a FREE DAY—it worked great!" A.Z., Hartford, CT"

(f) "I've been on maintenance for 6 months and it's working great! I now have only ONE diet day each week." S.R., Los Angeles, CA"

(g) "I've lost over 70 pounds while eating all of the ice cream that I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET EVER!" P.A., Philadelphia, PA"

(h) "I've lost over 70 pounds while eating all of the ice cream I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET EVER! D.C., Norristown, PA"

PAR. 8. Respondents' advertisements also contain photographs of individuals accompanied by the following statements:

(a) "I'm Dottie Woolslager. I'm thin for the first time since the kids came, and I know I'll never be fat again. I found the Rotation Diet, the only diet I've ever been able to live with. . . ."

"I'm so pleased about what happened to me, I'd love to help it happen to you. . . ."

"I'm beginning to feel like a celebrity. Hundreds of people have been calling me personally, asking, 'Why did you pick the Rotation Diet?'. . . They had read about me and The Rotation Diet, and seen how successful I was. But they weren't sure they could actually do it themselves.

That's why I volunteered to let The Rotation Diet Center relay calls to my home. I want to help spread the word about this wonderful diet. . . .

P.S. I'm no celebrity. I'm someone exactly like you, who's just a few months ahead of you on the Rotation Diet Program. . . ."

(b) "I'm Judy Ruthrauff. After the birth of my last little girl, I couldn't get rid of 23 pounds. I was always hungry, and I ate enormous amounts of diet food until I discovered The Rotation Diet. It really worked for me. It not only got the weight off, it got me feeling good about myself again."

PAR. 9. Through the use of the statements referred to in paragraphs five and seven, and other statements in advertisements not specifically set forth herein, respondents have made the following material representations, directly or by implication:

(a) Consumers can eat unlimited quantities of food four days a week and, regardless of how much they eat on those four days, still lose substantial amounts of weight on the Rotation Diet, the Freedom Diet, and the Rotation-Freedom Diet.

(b) Thousands of consumers on the Rotation Diet have lost sixty-two pounds or more.

(c) Rotation Diet Wafers, Rotation Chewable Tablets, and Freedom Chewable Tablets stop hunger.

(d) Rotation Diet Wafers, Rotation Chewable Tablets, and Freedom Chewable Tablets eliminate or prevent fatigue.

(e) Rotation Diet "Take-A-Break" tablets help keep food from turning to fat.

(f) The testimonials in paragraph seven represent actual and genuine consumer testimonials from customers of the Rotation Diet Center.

PAR. 10. Through the use of the endorsements authorized by expert respondent Dr. Barry Bricklin, referred to in paragraph six, and other endorsements in respondents' advertisements not specifically set

forth herein, expert respondent Bricklin has made the following material representation, directly or by implication:

Consumers can eat unlimited quantities of food four days a week and, regardless of how much they eat on those four days, still lose substantial amounts of weight on the Rotation Diet, the Freedom Diet, and the Rotation-Freedom Diet.

PAR. 11. In truth and in fact:

(a) Consumers cannot eat unlimited quantities of food four days a week and regardless of how much they eat on those four days, still lose substantial amounts of weight on the Rotation Diet, the Freedom Diet, and the Rotation-Freedom Diet.

(b) Only a small number of consumers on the Rotation Diet have lost sixty-two pounds or more.

(c) Rotation Diet Wafers, Rotation Chewable Tablets, and Freedom Chewable Tablets do not stop hunger.

(d) Rotation Diet Wafers, Rotation Chewable Tablets, and Freedom Chewable Tablets do not eliminate or prevent fatigue.

(e) Rotation Diet "Take-A-Break" Tablets do not help keep food from turning to fat.

(f) The testimonials in paragraph seven do not represent actual and genuine consumer testimonials from customers of the Rotations Diet Center.

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

And therefore, the representation contained in endorsements authorized by expert respondent Dr. Barry Bricklin, set forth in paragraph ten was, and is, false and misleading and expert respondent Bricklin knew or should have known that said representation was, and is, false and misleading.

PAR. 12. Through their use of the photographs and statements referred to in paragraph eight, and others not specifically set forth herein, respondents have represented that the photographed individuals are satisfied users of the Rotation Diet and have endorsed the Rotation Diet, but respondents failed to disclose that the photographed individuals were employees of respondents. Consumers would not reasonably expect individuals so portrayed to be employees of the advertiser and that fact might materially affect the weight or credibility given to the endorsements. Therefore, respondents' representations, because of their failure to disclose such a material connection between respondents and the photographed individuals was, and is, false and misleading.

PAR. 13. Through the use of the statements referred to in para-

graphs five and seven, and other statements in advertisements not specifically set forth herein, respondents have represented, directly or by implication, that:

(a) Usual weight loss for women customers of the Rotation Diet is eight to twenty pounds per month, and for men is twelve to twenty-five pounds per month.

(b) Usual first month weight loss for women customers of the Freedom Diet is eight to twenty pounds. A significant portion of men lose twenty-five pounds the first month on the Freedom Diet.

(c) The Rotation Diet is safe.

(d) The Freedom Diet cannot harm consumers.

(e) The Rotation Diet, the Freedom Diet, and the Rotation-Freedom Diet include maintenance programs that are effective in enabling consumers to maintain weight loss.

(f) Consumers on the Rotation Diet "Take-A-Break" plan can cease dieting for 15 days and after one week back on the diet, will have lost all weight gained during those 15 days.

(g) Consumers on the Freedom Diet "Make-A-Break" Plan can maintain their weight for up to fifteen days without any dietary restrictions and regardless of the type and quantity of food consumed.

(h) The Rotation Diet saves consumers more than it costs.

(i) Most Rotation Diet customers save approximately 40% on their food bill.

(j) Most women customers of the Rotation-Freedom Diet lose eight to twenty pounds the first month on the diet, while most men lose even more.

(k) Customers on the Rotation-Freedom Diet "Take-A-Break" plan can cease dieting for nine days and can maintain their prior weight without any dietary restrictions and regardless of the type and quantity of food consumed.

(l) The majority of women customers of the Rotation-Freedom Diet lose eight to twenty pounds the first month on the diet; men usually lose more.

PAR. 14. Through the use of the endorsements authorized by expert respondent Dr. Barry Bricklin, referred to in paragraph six, and other endorsements in respondents' advertisements not specifically set forth herein, expert respondent Bricklin has made the following representation, directly or by implication:

Usual weight loss for women customers of the Rotation Diet is eight to twenty pounds per month, and for men is twelve to twenty-five pounds per month.

PAR. 15. Through the use of the statements set forth in paragraphs

five and seven, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in paragraphs nine and thirteen they possessed and relied upon a reasonable basis for those representations.

PAR. 16. Through the use of the endorsements authorized by expert respondent Dr. Barry Bricklin, set forth in paragraph six, and other endorsements in respondents' advertising not specifically set forth herein, expert respondent Bricklin has represented, directly or by implication, that at the time of making the representations set forth in paragraphs ten and fourteen he possessed and relied upon a reasonable basis for those representations, consisting of an actual exercise of his expertise in evaluating weight reduction and/or weight control programs and products with respect to which he is expert, in the form of an examination or testing of the programs and products at least as extensive as someone with a similar degree of expertise would normally conduct in order to support the conclusions presented in the endorsement.

PAR. 17. In truth and in fact, at the time of the initial dissemination of the representations set forth in paragraphs nine and thirteen and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, respondents' representations, as set forth in paragraph fifteen were, and are, false and misleading.

PAR. 18. In truth and in fact, at the time of the initial dissemination of the representations set forth in paragraphs ten and fourteen and each subsequent dissemination, expert respondent Dr. Barry Bricklin did not possess and rely upon a reasonable basis for making such representations. Therefore, expert respondent Bricklin's representations, as set forth in paragraph sixteen were, and are, false and misleading.

PAR. 19. Expert respondent Dr. Barry Bricklin has received compensation for the use of his endorsements in respondents' advertisements for weight reduction and/or weight control programs and products.

PAR. 20. The acts or practices of respondents and expert respondent Dr. Barry Bricklin as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements and endorsements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

EXHIBIT A

Losers Are Winners
With Rotation Center's Revolutionary Weight-Loss Program



It's easy because it's the diet you can live with.
You can eat anything you want...without guilt...without injuring your health...without drugs...without being hungry all the time.

There are no special foods to buy...no weighing out portions...no calorie counting...no exercising. In fact, people don't even need to know you're on a diet. Best of all, you're never more than 24 hours away from the best meal of your life!

Think it's impossible? It's not! Read on for complete details... 

The Diet You Can Live With. Does It Really Work?

It Worked For Dot Woolslager...



Dot before she started the Rotaton Diet



Dot now 62 pounds lighter

and she ate cheesecake, fettucine, ice cream sundaes, Tia Manas and all the other foods that she loves! Here's Dot's fabulous success story.

I started the Rotaton Diet on April 23, 1979. By the end of the summer I had lost 65 pounds, dropping my weight from 185 to 120 pounds. I was beginning to regain the human race.

Since then I have been able to enjoy a modified maintenance program (fewer diet days) and still my weight continues to drop. My original goal was 100 pounds. I'm now 100 down to 123 pounds with a new goal of 115. I've lost a total of 62 pounds so far. I'm slimmer than I was over 29 inches (see my chart below). I'm almost down to the same weight as when I was a teenager. My skin is tight and I feel great!

I'm very proud of the way I look now — and looking good makes me feel good. My family is also very proud of the dramatic change in their "old" Mom. And although my husband was extremely understanding during my fat years, I know he enjoys having his "Dad" back. (And I enjoy being back.)

I just bought a new dress — size 9-10 — that shows off my legs, and I couldn't help but think how truly miraculous the Rotaton Diet has been for me.

Not only have I lost 62 pounds and 29 plus inches, but I've been able to enjoy all the foods I love during this diet without that nagging guilty feeling.

The Rotaton Diet has transformed my life and I know I could do the same for you!

Dot's statistics	Before	Now
WEIGHT	185 lbs.	123 lbs.
WAIST	34"	26"
HIPS	43"	36"
CHEST	35"	34"
NECK	13"	11"
THIGH	22"	15 1/2"
CALF	13"	10"
UPPER ARM	12"	10"



It worked for Arlene...

Here's Arlene H. at 218 pounds before the Rotaton Diet. And here she is at 143 pounds. Her goal is 125 and Rotaton Diet is going to help her get there!

It worked for Judy...

Here I am with the slacks I used to wear before the Rotaton Diet. Now I'm 33 pounds lighter!



And it worked for all these people, too!

Name	Pounds Lost	Name	Pounds Lost
Pat	74	Ann	40
Arlene H.	53	Linda	52
Bill	31 in 30 days	Bill	30
Bob	10 in 1 week	Jean	10 in 2 wks. 24 total
Barry	25 & maintaining	William	50
Ann	40	Judy	25
June	7 in 1 week	Maxine	15 in 2 weeks
Mary	16	Ruth	25 and maintaining
Lady	24	Jerry	25
Jo	23	Jarce	13 in 3 weeks
Mary	25	June	25

Plus tens of thousands more!

With the Rotaton Diet, losers are winners. Wouldn't you like to see your name added to our list of winners? Start the Rotaton Diet now and it won't be long before you too are saying, "I'm a losing winner with Rotaton, and I feel great!"

In fact, people from all walks of life have become winners with the Rotaton Diet.

Just look at all the professions represented by Rotaton Dieters from all across the country.

- housewife
- physician
- stewardess
- dancer
- psychologist
- real estate agent
- school teacher
- minister
- factory worker
- dentist
- choreographer
- eye doctor
- baker
- nurse
- student
- teenager
- beautician
- model
- radio personality
- politician
- dress shop owner
- computer analyst
- writer
- fireman
- trucker
- senior citizen
- secretary
- law professor
- theatrical producer
- journalist
- teen-athlete
- artist
- business manager
- farmer
- fireman
- business executive

"I feel normal!" J.F., New York, NY
 "I've lost over 70 pounds while eating all the ice cream that I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET EVER!" P.A., Philadelphia, PA
 "I've been on maintenance for 6 months and it's working great! I now have only ONE diet day each week." S.R., Los Angeles, CA

The Diet You Can Live With. Does It Really Work?

It Worked For Dot Woolslager...



Dot before she started the Rotation Diet.



Dot now 62 pounds lighter

and she ate cheesecake, fettucine, ice cream sundaes, Tia Maria and all the other foods that she loves! Here's Dot's fabulous success story:
I started the Rotation Diet on April 23, 1979. By the end of the summer I had lost 45 pounds, dropping my weight from 235 to 145 pounds. I was beginning to "rejoin the human race!"

Since then I have been able to enjoy a modified maintenance program (fewer diet days) and still my weight continues to drop. My original goal was 130 pounds. I'm now down to 123 pounds with a new goal of 115. I've lost a total of 62 pounds so far. Translated, that's over 29 inches (see my chart below). I'm almost down to the same weight as when I was a teenager. My skin is tight and I feel great!

I'm very proud of the way I look now — and looking good makes me feel good. My family is also very proud of the dramatic change in their "Dad." Mom and my high school husband was extremely understanding during my fat years. I know he enjoys having his "Dad" back. (And I enjoy being back!)

I just bought a new dress — size 9-10 — that shows off my legs and I'm confident that these new trunks muscous the Rotation Diet has been for me.

Not only have I lost 62 pounds and 29 plus inches, but I've been able to enjoy all the foods I love during this diet without that nagging guilty feeling.

The Rotation Diet has transformed my life and I know it could do the same for you!

Diet's statistics	Before	Now
WEIGHT	185 lbs.	123 lbs.
WAIST	34"	26"
HIPS	43"	36"
CHEST	35"	34"
NECK	13"	11"
THIGH	22"	15"
CALF	13"	10"
UPPER ARM	12"	10"

It worked for Arlene...

Here's Arlene H. at 218 pounds before the Rotation Diet. And here she is at 143 pounds! Her goal is 125 and Rotation Diet is going to help her get there!



It worked for Judy...

Here I am with the slacks I used to wear before the Rotation Diet. Now I'm 23 pounds lighter!



And it worked for all

these people, too!

Name	Pounds Lost	Name	Pounds Lost
Pete	74	Ann	40
Arlene H.	53	Linda	52
Bill	31 in 30 days	Bill	30
Bob	10 in 1 week	Jean	10 in 2 wks. 24 total
Barry	25 & maintaining	William	50
Ann	40	Judy	25
June	17 in 1 week	Mazara	15 in 2 weeks
Mary	16	Ruth	25 and maintaining
Andy	24	Jerry	25
John	23	Jarvis	13 in 3 weeks
Henry	25	June	25

Plus tens of thousands more!

In fact, people from all walks of life have become winners with the Rotation Diet.


Just look at all the professions represented by Rotation Dieters from all across the country.

- housewife
- physician
- stewardess
- dancer
- psychologist
- real estate agent
- school teacher
- minister
- factory worker
- senator
- photographer
- eye doctor
- baker
- nurse
- student
- teenager
- beautician
- model
- radio personality
- politician
- theatrical producer
- computer analyst
- journalist
- lawyer
- doctor
- secretary
- professor
- theatrical producer
- journalist
- artist
- theatrical producer
- journalist
- theatrical producer

With the Rotation Diet, losers are winners. Wouldn't you like to see your name added to our list of winners? Start the Rotation Diet now and it won't be long before you too are saying, "I'm a losing winner with Rotation, and I feel great!"

"I feel normal!" J.F., New York, NY
"I've lost over 70 pounds while eating all the ice cream that I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET EVER!" P.A., Philadelphia, PA
"I've been on maintenance for 6 months and I'm working great! I now have only ONE diet day each week." S.R., Los Angeles, CA

EXHIBIT B



Discover
DIET FREEDOM with
The **FREEDOM** DIET

Read what glamorous
Barbara Eden
Star of "I Dream of Jeannie" and "Harper Valley" has to say
about The Freedom Diet.

"No wonder homemakers, business people, workers
everywhere have chosen The Freedom Diet. It's fantastic."
Now, You too can Discover Diet Freedom with the Safe,
Simple and Affordable Freedom Diet. You can eat anything
you want 4 days a week and still lose weight.

Eat AND Lose...
 the **FREEDOM DIET** gives you the freedom to eat while you lose weight.
 No more fighting will power. no more guilt. no more changing your lifestyle!

NO MANDATORY EXERCISING:
 no jogging, no office visits, or carpooling.

OUR "MAKE-A-BREAK" PLAN
 will help you maintain your weight for up to 15 days when you have to take a break from Freedom Diet. Enjoy your vacation. Don't feel uncomfortable when you have house guests.

DIET DAYS ARE EASY
 when you're only here once from the end of your diet.

EAT ONE DAY
 eat the best. That's freedom!

GET THE FREEDOM
 eat pie, cake, ice cream, pizza, french fries, pasta and anything you want!

FREEDOM FRIENDS
 will help you along the way.

**THE FREEDOM DIET™**

Freedom Headquarters • Washington Crossing, Pennsylvania 18977

215-794-3255 or 215-794-5643

**NOW FOR THE FIRST TIME YOU CAN GET ALL
THE ADVANTAGES OF A ROTATION DIET
BUT AT A BARGAIN PRICE!**

Eat anything you want, as much as you want, whenever you want 4 days a week and still lose the weight you want. No counting calories, no calorie counting, no special diets.

Dear Friend,

If you're like me, you've read all about the "Rotation Diet" that so many people have been using. It's true that it works. But it's also true that it's expensive — you have to pay a membership fee in order to use the diet program, and then of course you have to pay a high price for the diet itself.

It's for this reason that I'm writing you today. I'm very pleased to be able to tell you about the FREEDOM DIET. It's the same kind of diet, but it doesn't cost you nearly as much. You get the same advantages — the plan works the same way — and the Freedom Chewable Tablets do the same job. The big difference is the price!

If you're wondering how we can make this offer, let me explain. You save money because:

- we don't have big, costly newsletters
- we don't have a toll-free phone line
- we don't send you separate vitamins — they're included as part of the Freedom Chewable Tablet
- we don't waste money on fancy packaging
- we don't charge you a costly membership fee
- we don't promise expensive 1-day service (but we do process all orders within 3 days)

But are you getting a real "Rotation Diet"? Yes! And as you will see when you read the enclosed brochure, there are thousands of people who have already lost many pounds with the FREEDOM DIET. They've freed themselves of unwanted weight safely and easily — and saved money at the same time.

Just like me, these people found that the FREEDOM DIET gives them the freedom to eat while they lose weight. There's no more fighting will power, no more guilt, no more need to change your lifestyle because you can eat whatever you want, as much as you want, whenever you want 4 days a week — including Saturdays and Sundays!

Imagine losing up to 20 pounds the first month without having to give up all the fattening foods you love. Like cakes and pies, bread and potatoes, ice cream and candy, pasta, pizza and other fast food. With the FREEDOM DIET you can keep right on eating all these wonderful foods and still lose weight!

Even after you've reached your weight-loss goal, you needn't worry about gaining all those unwanted pounds back again. FREEDOM DIET has a special weight maintenance plan to keep you slim.

So what are you waiting for? Read the enclosed brochure for complete details and then order your own FREEDOM DIET Kit today. See for yourself how you can have the freedom of eating while you lose — without it costing you a fortune!

Sincerely,

Barbara L. Thompson
Director, Freedom Diet Headquarters

P.S. We've enclosed a special personalized order form and postage paid return envelope for your convenience. However, if you wish, you can call us at 215-794-3255 or 215-794-5643 and place your order immediately. We accept Visa, MasterCard, American Express and Diners Club.



THE FREEDOM DIET™ Order Form
Freedom Diet Headquarters • Washington Crossing, Pennsylvania 18977

DIET FREEDOM with the FREEDOM DIET

Special Diet Opportunity For:

Now You Can Eat Whatever You Want...As Much As You Want... Whenever You Want 4 Days A Week And Still Lose All Those Unwanted Pounds!

And that's exactly what you'll get—the freedom to eat whatever you want while you lose weight
• without exercising • without pills or drugs
• without counting calories • without special diets • without getting dizzy or fatigued
• **WITHOUT GUILT!** Best of all you get all the advantages of the "Rotation Diet" but at a bargain price. There are no membership fees. No office visits or consultation fees.

It's Easy To Begin The FREEDOM DIET

- Here's all you have to do:
1. Complete the form at right. (There are additional order blanks on the reverse for your friends.)
 2. Be sure to fill in your credit card information and sign if you are charging your order.
 3. Mail your order form and payment (if paying by check or money order) in the handy postage paid envelope we've provided for your convenience.

IF YOU PREFER, you can phone in your order. Just call 215 794 3255 or 215 794 3643 any day of the week, including Saturdays and Sundays between 8 a.m. and 11 p.m. eastern time.

"However you do, don't wait any longer. Take your first step to diet freedom by ordering your own FREEDOM DIET Kit today!"

Name _____
Address _____ Apt. _____
City _____ State _____ Zip _____

↑
This will be your mailing label. No P.O. Boxes please. UPS cannot deliver. Also please include apartment number.

- YES!** I want to get diet freedom with the FREEDOM DIET. Please send me the following right away:
- 1 FREEDOM DIET KIT (4 week supply) \$19.95 total
\$19.95 (we pay postage & handling)
 - 1 FREEDOM DIET KIT (2 week introductory offer) \$23.75 total
\$19.98 + \$3.75 postage & handling

Where did you first hear about the FREEDOM DIET? _____

Please check one:
 check money order VISA M.C. D.S. made payable to: FREEDOM DIET
OR VISA MASTERCARD AMERICAN EXPRESS DINERS CLUB
Card # _____ expiration date _____
Date _____ Signature _____
Phone # _____

If we ship you may add \$4.00 for each kit for LPS AIR delivery if you live in one of these states: AL AK AZ AR CA CO FL GA HI IL IN IA KS KY LA MI MN MS MO MT NE NV NH ND OK OR SD TN TX UT WA WY



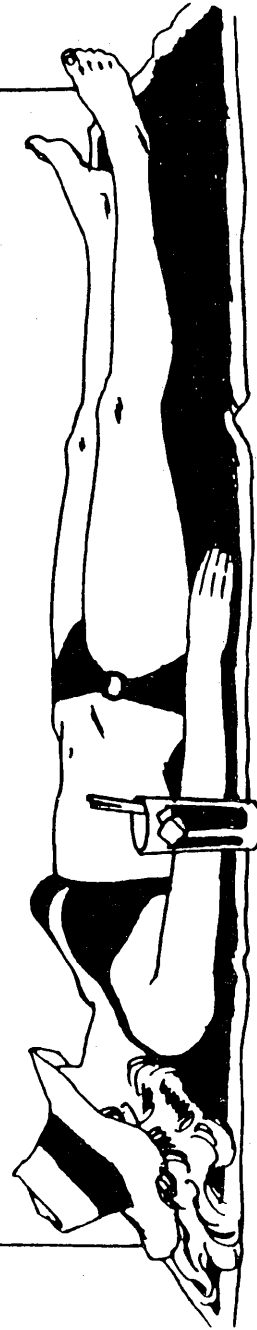
Additional order forms for your friends on the back.

Now You Can Get Bathing Suit Freedom With The Freedom Diet!

If you feel a little self-conscious when you slip (or struggle) into your swimsuit, then you need the **FREEDOM DIET!** It's the safe, simple, affordable way to shed unwanted pounds **WITHOUT** giving up any of the foods you love.

No exercising...no counting calories...no special foods...no drugs...
NO GUILT.

OUR "MAKE-A-BREAK" PLAN will help you maintain your weight for up to 15 days when you have to take a break from Freedom Diet. Enjoy your vacation...don't feel uncomfortable when you have house guests...



Amended Complaint

It worked for Dot Woolslager

Dot's Fabulous Success Story

I started the Rotation Diet™ on April 23, 1979. By the end of the summer I had dropped from 185 pounds to 140 pounds and was beginning to "rejoin the human race." During these intervening months, I have been able to enjoy a modified maintenance program (minus diet days) and still my weight has continued to drop. I am now down to 123 pounds with a new goal of 115 pounds. (My original goal was 130 pounds.) My total loss so far has been 62 pounds! AND hundreds of inches! (see my chart!) My skin is tight and I feel great! I'm almost down to the same weight as when I was a teenager. I'm very proud of the way that I look - and looking good makes me feel good! My family is also proud of this dramatic change in their "old" Mom. Although my husband Bob was extremely understanding during my "fat" years, I know that he enjoys having his "bride" back. (And I enjoy being back!) I just bought a new dress - size 8-10 (one that shows off my legs) and I couldn't help but think how really miraculous the Rotation Diet™ has been. Not only have I lost 62 pounds and hundreds of inches but I've been able to enjoy all of the food that I love all during the diet - cheesecake, fennel, ice cream, sunolives, Tia Maria on the rocks - everything that I love. The Rotation Diet™ has transformed my life and it can do the same for you.



ROTATION DIET™ LOSERS ARE WINNERS			
Pat	74 pounds lost	Bill	31 pounds lost in 30 days
Arthur	23 pounds lost	Ann	40 pounds lost



Wanda, 58 lbs. lost, 20 lbs. maintenance, 20 lbs.



James, 35 pounds lost, 33 lbs. lost

Dot's Statistics	THEN	NOW
WEIGHT	185	123
WAIST	34	27
HIPS	43	37
CHEST	35	35
NECK	13	11
THIGHS	22	16 1/2
CALF	13	11
UPPER ARM	12	10

IT WORKED FOR THOUSANDS MORE WHO LOST AS LITTLE AS 5 AND AS MUCH AS 110 POUNDS.

"I've been on the diet for 10 days and I've lost 10 pounds. I'm feeling great and I'm enjoying every minute of it. I'm on the Rotation Diet. I'm losing 10 lbs. every 10 days." - Mary, 45

"I've been on the diet for 10 days and I've lost 10 pounds. I'm feeling great and I'm enjoying every minute of it. I'm on the Rotation Diet. I'm losing 10 lbs. every 10 days." - Mary, 45

"I've been on the diet for 10 days and I've lost 10 pounds. I'm feeling great and I'm enjoying every minute of it. I'm on the Rotation Diet. I'm losing 10 lbs. every 10 days." - Mary, 45

The Rotation Diet™ will work for YOU



"I've been on the diet for 10 days and I've lost 10 pounds. I'm feeling great and I'm enjoying every minute of it. I'm on the Rotation Diet. I'm losing 10 lbs. every 10 days." - Mary, 45



JUDY LOST 22 POUNDS - SHE'S NOW AT HER GOAL.

Here's how...

It's easy! It's successful!

And it saves you more than it costs!

EAT WHATEVER YOU WANT, AS MUCH AS YOU LIKE

Tuesday, Thursday, Saturday and Sunday are "FREE DAYS." You'll eat and drink what you like - good food or junk food - anything you want. Not just ice cream, but a sundae with fudge sauce, with whipped cream, with nuts. A cheeseburger and french fries (double order if you're hungry). Precious and beer. Imagine! Everything you want to eat in whatever quantities you choose! Absolutely no restrictions!

• Four "FREE DAYS" every week. You're eating the way you like to eat.
• "FREE DAYS" are your "reward days."

They make the difference between your staying on the diet and giving it up. Most people give up diets because they feel deprived of favorite foods, because they're bored with the same foods, or bothered counting calories, or tired of purchasing special foods. There's none of that with The Rotation Diet™.

• The Rotation Diet™ is the diet you can live with and stick with. After you reach your goal weight, you'll get more and more "FREE DAYS" each week - up to six out of seven!

SPECIAL "FLEXIBILITY" FEATURE

The Rotation Diet™ is the "no-one-has-to-know-you're-on-a-diet" Diet. That's because of its wonderful switching day program. It lets you make all special days into "FREE DAYS" without messing up your diet.

• celebrate birthdays with the cake

• at parties, join in the eating and drinking

• dine in restaurants knowing you can choose anything on the menu - and still stay on your diet

• stuff the stocking at Christmas, then stuff yourself.

It won't be hard for you to remember your "FREE DAYS." But to help you highlight these feast days, you'll find in your Rotation Diet™ kit a supply of brightly-colored "FREE DAY" and Balance Day stickers for your calendar. When you look at the month, you'll see that "FREE DAYS" far outnumber the rest.

And it saves you more than it costs!

LOSE WEIGHT FEELING GREAT

The other three days a week - Monday, Wednesday and Friday - you'll follow our special 3 point program.

That's what makes The Rotation Diet™ the diet you can live with. You see, on "FREE DAYS" you'll really live it up. You'll have a feast, satisfy all your cravings. The next day you won't have trouble doing without your favorite foods. Because you'll know you can have as much as you want of them - and anything else - in less than 24 hours. And remember, every Tuesday, Thursday, Saturday and Sunday are Free Days! The Rotation Diet™ doesn't have "fast days." The "fast-and-feel" method of dieting doesn't work. It often causes dizziness and fatigue. And when hunger pangs come, most people end up eating on their "fast days."

The Rotation Diet™ gives you BALANCE DAYS.

• On Balance Days you'll have Rotation Wafers™, Rotation Multi-Vitamins™ and a number of Rotation foods. In addition, you'll have unlimited, private consultation by phone with the Rotation Diet Center and your Phonememo - a very important part of your diet.

• Rotation Wafers™ make the diet work. They're critical to the success of the diet because they:

STOP HUNGER (yet they're not a medicine, drug or snort, so they're perfectly safe)
PROVIDE ENERGY (through a unique combination of healthful, high-energy, natural ingredients)

ELIMINATE FATIGUE (you can do whatever you want on a Balance Day from early morning til late at night)

• This is a personalized, custom diet, not a "mass program" that's the same for everyone. The amount of Rotation Wafers you must take is determined by a Rotation Diet Center counselor, based on the enclosed questionnaire and then filed in by hand in your member's instruction Handbook.

• Rotation foods make the diet even easier to live with. Choose from a list that includes a full 16 ounces of cottage cheese, Rotation Custard in every flavor you can imagine, Rotation Jello in every color of the rainbow, and all the diet sodas, coffee, tea or water you want. Additional foods will be added later by your personal counselor.

• You'll save more than you spend on the diet! Most people cut about 40% off their food bill because they've cut down on expensive foods during their three Balance Days a week. That more than covers the cost of The Rotation Diet™. And, with The Rotation Diet™, there are no office visits or expensive consultations. You get unlimited telephone support included in your low weekly charge.

- No calorie counting
- No forbidden foods
- No drugs or medicine
- No weighing of portions
- No gadgets or machines
- No expensive office visits.

Enjoy unlimited advice, support and encouragement

You'll lose more, lose faster with the help of your personal counselor.

"I'm so pleased about what happened to me, I'd love to help it happen to you."



*Talk it over with
Dot herself.....*

Amended Complaint

Dear Friend:

I'm beginning to feel like a celebrity. Hundreds of people have been calling me personally, asking, "Why did you pick The Rotation Diet™?" "Didn't you feel guilty eating so much on your 'FREE DAYS', and weren't you worried you wouldn't lose weight?" They had read about me and The Rotation Diet™ and seen how successful I was. But they weren't sure they could actually do it themselves.

That's why I volunteered to let The Rotation Diet Center relay calls to my home. I want to help spread the word about this wonderful diet.

So just call toll free (800) 523-6262 (In Penna. (215) 794-3278) and ask for Dot. I'm available most days and evenings plus weekends. I hope I'll be talking to you soon.

Sincerely,

Dot Woolslager

Dot Woolslager

P.S. I'm no celebrity. I'm someone exactly like you who's just a few months ahead of you on "The Rotation Diet" Program. And I'm not even unusual — there are thousands of Rotation Diet Center members who've lost as much weight as I have. Even more! In fact, many of these people have joined the Center as Phonefriends. Any one of them would be glad to speak to you. Look for their names and numbers on the yellow sheet.

In Pennsylvania the Center's Number is (215) 794-3278



Return Address (please print):

Name _____

Street _____

City _____ State _____ Zip _____



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 6 FURLONG, PA

POSTAGE WILL BE PAID BY ADDRESSEE

THE ROTATION DIET CENTER
National Headquarters
Rotation Plaza
Furlong, Pennsylvania 18925

Amended Complaint

110 F.T.C.

EXHIBIT D



"THE DIET YOU CAN LIVE WITH!"

PARTYLINE

Published by the Phonofriend Rotation Diet®

ROTATION CENTER, Bucks County, Pennsylvania • (215) 794-3278 7 days, 9 to 9 • Outside PA (800) 523-4262 toll free, 7 days, 9 to 9

ROTATION DIET CALLED — "MOST SUCCESSFUL DIET EVER!!"

Here are some comments from the thousands of people who are currently enjoying the Rotation Diet:

"I love the true freedom of being able to eat whatever I want every TUESDAY, THURSDAY, SATURDAY and SUNDAY!"
M.A., Harrisburg, Pennsylvania

"I feel normal!"

J.F., New York, NY

"I've lost over 70 pounds while eating all of the ice cream that I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET EVER!"
P.A., Philadelphia, PA

"I've been on maintenance for 6 months and it's working great! I now have only ONE diet day each week."
S.R., Los Angeles, CA

"The Rotation Tablets taste like Necco Wafers. They really stop my hunger and increase my energy level. I feel good on my 3 diet days!"
S.S., Boston, Massachusetts

"I really pig-out on my free days — pizza, cheesecake, beer, potato chips. I eat to my heart's content and have still lost 57 pounds!"
T.M., Princeton, New Jersey

"I save enough on my 3 diet days to more than pay for the whole week. The diet actually costs me nothing!"
J.A., Boston, Ohio

"The all natural diet — no drugs or medicine! The Rotation Diet is really SANE and PROVEN SAFE!"
C.D., Washington, DC

"I just used your switching process to make Wednesday a FREE DAY — it worked great!"
A.L., Hartford, CT

"It's wonderful to know that I'll never have to miss another 'eating day' — no more birthday parties without the cake!"
O.W., New Haven, Pennsylvania

Dr. Barry Bricklin Joins Rotation Diet Staff as DIRECTOR of our Professional Advisory Board

Dr. Barry Bricklin, Ph.D., is an assistant professor of psychology at the Hahnemann Medical College of Philadelphia. Previously, he served on the faculty of the Jefferson Medical College of Philadelphia. He has served as consultant in psychology to the Walter Reed Army Hospital Research Center in Washington, D.C. and the United States Army to the U.S. Air Force Company at Wiesbaden, Germany, to the National Research Council in Washington, D.C., to the New York Academy of Medicine and to the Columbia Broadcasting System. He is past-president of the Philadelphia Society for Personality Assessment. He has authored or co-authored a number of books and articles on a wide variety of topics.

Among the results of Dr. Bricklin's cooperative experience with the Rotation Diet are: a study on maintenance, three books, and four children (Gren, Scott, Carol and Alfred). Some of their books have been translated, English-Chinese — *Four Greats: The Psychology of Underachievement*, and *Strong Family — Strong Child*. These books have been translated into nine different languages.

CONGRATULATIONS!

Pat	74 lb. loss	40 lb. loss	
Arline	52 lb. loss	30 lb. loss	
Bob	31 lb. loss in 20 days	20 lb. loss	
Bill	18 lb. loss in 1 week	10 lbs. in 2 wks., 24 lbs.	
Barry	28 lbs. and maintenance	William	20 lb. loss
Ann	40 lb. loss	John	20 lb. loss
John	7 lb. loss in 1 week	Annelle	15 lb. loss in 2 weeks
Mary	18 lb. loss	Paul	20 lb. loss and maintenance
John	20 lb. loss	Barry	15 lb. loss
Phyllis	20 lb. loss	Barry	12 lb. loss in 3 weeks
Barry	20 lb. loss	Barry	20 lb. loss

One Day Service Fast and Personal

We know that when you decide to go on a diet you want to start NOW! With this in mind we are geared-up to process all new orders the same day that they are received. We ship UPS and usually the order is delivered within a day or two in the East and two or three days to the West Coast. Many orders are actually delivered the next day.

How are we so efficient? Easy — we use people not computers! My son Blair ordered a book from Time-Life and it took 6 weeks before it was delivered. He asked me every day for 6 weeks where his book was (he's 12) and I kept telling him that computers take time. He asked why they were used if they took so long and I explained that they were needed in large-scale operations. The Rotation Diet Center is relatively small. All together we are run by 75 people (up from 10 people only 12 months ago.) Don't expect Sears-Roebuck. When you call us you get a person who is on the Rotation Diet and CARES about YOU! No answering machines — no computers — just people who care!

Amended Complaint

The Rotation Diet™ will work for YOU!



Now 71
Dorothy
Liggett

Paul
Liggett

Thank I am
with the
diets I used
to eat!

I just bought a new dress - size 9-10 (one that shows off my legs) and I couldn't keep buttons from popping out. I've lost 62 pounds and been able to wear the dress I've always wanted to wear. I love all during the diet - cheesecake, lettuce, ice cream, sundaes, etc. Made on the rocks - everything that I love. The Rotation Diet™ has transformed my life and I can do the same for you.

I've been on the diet for 18 months. I've lost 123 pounds and I feel great! I'm almost down to the same weight as when I was a teenager. I'm very proud of the way that I look - and looking good is a great feeling. I just bought a new dress - size 9-10 (one that shows off my legs) and I couldn't keep buttons from popping out. I've lost 62 pounds and been able to wear the dress I've always wanted to wear. I love all during the diet - cheesecake, lettuce, ice cream, sundaes, etc. Made on the rocks - everything that I love. The Rotation Diet™ has transformed my life and I can do the same for you.

I've been on the diet for 18 months. I've lost 123 pounds and I feel great! I'm almost down to the same weight as when I was a teenager. I'm very proud of the way that I look - and looking good is a great feeling. I just bought a new dress - size 9-10 (one that shows off my legs) and I couldn't keep buttons from popping out. I've lost 62 pounds and been able to wear the dress I've always wanted to wear. I love all during the diet - cheesecake, lettuce, ice cream, sundaes, etc. Made on the rocks - everything that I love. The Rotation Diet™ has transformed my life and I can do the same for you.

Here's How . . .

- Tuesday, Thursday, Saturday and Sunday are "FREE DAYS". You'll eat and drink what you like - good food, fun, no guilt. But just before you go to bed, you'll eat a small amount of cottage cheese with fruit.
- If our "FREE DAYS" every week you're eating the way you like to eat!
- "FREE DAYS" are your "reward" for staying on the diet and giving it up.
- Most people give up diets because they feel deprived of favorite foods. Because of our "FREE DAYS", you'll never be bothered counting calories or fretting over purchasing special foods. There's none of that with the Rotation Diet!
- The Rotation Diet™ is the diet you can live with and stick with. After you reach your goal weight, you'll get more and more "FREE DAYS" each week - up to six out of seven!
- "FREE DAYS" is the "no one has" to know you're on a diet! Diet! That's because of its wonderful switching day program. It lets you make all special days into "FREE DAYS" without messing up your habit with the cake, coffee, or the eating and drinking.
- dine in restaurants knowing you can choose anything on the menu - and still stay on your diet!
- skip the stocking at Christmas, then till yourself!
- It won't be hard for you to remember your "FREE DAYS" - just to have you high-light the days on your calendar in brightly colored "FREE DAY" stickers bought by colored "FREE DAY" stickers in your calendar. When you look at the month, you'll see that "FREE DAYS" outnumber the rest!

It worked for Dot Woolslager



Dot's Fabulous Success Story
I started the diet on April 23, 1978. By the end of this summer, I had dropped from 185 pounds to 140 pounds and was beginning to regain the human race. During these intervening months, I have been able to enjoy a modified maintenance program (minus diet traps) and still my weight has continued to drop. I've lost 123 pounds and I feel great! I'm almost down to the same weight as when I was a teenager. I'm very proud of the way that I look - and looking good is a great feeling. I just bought a new dress - size 9-10 (one that shows off my legs) and I couldn't keep buttons from popping out. I've lost 62 pounds and been able to wear the dress I've always wanted to wear. I love all during the diet - cheesecake, lettuce, ice cream, sundaes, etc. Made on the rocks - everything that I love. The Rotation Diet™ has transformed my life and I can do the same for you.

Dot's Statistics	THEN	NOW
WEIGHT	185	123
WAIST	34	27
HIPS	43	37
CHEST	35	35
NECK	13	11
THIGHS	22	18 1/2
CALF	13	11
UPPER ARM	12	10

ROTATION DIET™
LOSERS ARE WINNERS
Pat - 74 lbs. lost
Bill - 31 lbs. lost in 30 days
Arleen - 53 lbs. lost
Ann - 40 lbs. lost



Nancy lost 25 lbs. - 62 lbs. Marianne, 30 lbs.

Amended Complaint

EXHIBIT E

THE DIET YOU CAN LIVE WITH!

You can lose 16-20 pounds per month with The Rotation Diet, without giving up your favorite foods.

Four days a week, eat what you like, as much as you like. Tuesday, Thursday, Saturday and Sunday, eat and drink whatever you like, good food or junk food, from pancakes to pizza to pastry.

Three days a week, Monday, Wednesday, and Friday, you follow our special three-point program. The weight comes off and stays off.

- No calories to count • No forbidden foods • No drugs
- No foods to weigh • No gadgets • No fatigue

To start looking the way you want, call for your free, no-obligation information package.

CALL US TOLL FREE.

(800) 523-5763

In Penna. call (215) 794-3278

Call 7 days a week, from 9 AM to 9 PM



Dot Wooslager
before at
185 pounds

Now on the
Rotation Diet
plan, holding
steady at 123.
Goal: 115 lbs



I'm Dottie Wooslager. I'm thin for the first time since the kids came, and I know I'll never be fat again. I found the Rotation Diet, the only diet I've ever been able to live with.

Included in the free information packet will be telephone numbers of people like me who are on the Rotation Diet right now and can tell you about their experience with it. OR get your free information packet by filling out the coupon below.

Do It Right Now!

ROTATION DIET CENTER
NATIONAL HEADQUARTERS
FURLONG, PA 18925

Please send me your FREE NO-OBLIGATION information packet today!

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Amended Complaint

110 F.T.C.

EXHIBIT F

*Rotation Diet***Buckingham**
Direct Response Advertising

Buckingham, PA 18912-0102 • (215) 794-5914

SCRIPT FOR BUCKINGHAM PRODUCTS
60 SECCND DIET SPOT

PLEASE GET A PENCIL AND STAND BY.

I'M GOING TO TELL YOU ABOUT AN EXCITING NEW DIET THAT IS SWEEPING THE COUNTRY. THERE ARE NOW OVER 100,000 PEOPLE ON THE ROTATION DIET---AND THESE PEOPLE ARE LOSING POUNDS WHILE EATING WHATEVER THEY WANT 4 DAYS EVERY WEEK.

THAT'S RIGHT! ON THE ROTATION DIET EVERY TUESDAY, THURSDAY, SATURDAY AND SUNDAY ARE FREE DAYS WHEN YOU ARE ENTIRELY FREE TO EAT WHATEVER YOU WANT---AND AS MUCH AS YOU WANT. THE OTHER 3 DAYS YOU OPERATE ON A PERSONALIZED DIET THAT KEEPS YOUR ENERGY HIGH AND YOUR HUNGER LOW AND YOU'RE NEVER MORE THAN TOMORROW MORNING AWAY FROM BEING ABLE TO HAVE WHATEVER YOU WANT. FOR A FREE BROCHURE CALL NOW TOLL FREE.

800-523-62-62

THAT'S

800-523-62-62

ONCE AGAIN, FOR A FREE BROCHURE CALL

800-523-62-62

SEE OUR AD IN THIS WEEK'S TV GUIDE

Amended Complaint

EXHIBIT G

Take-A-Break Tablets[®]

help to maintain
your current weight up to 15 days
if you must "Take-A-Break" from your
Rotation Diet.[®]

That's right! You can now enjoy up to 15 consecutive Free Days without regaining the weight that you have lost!

We know that there are times when it's impossible to diet
— even *Rotation Diet*™

- Vacations with meals paid in advance.
- Last-second business dinners.
- When you're sick in the hospital.
- Just a feeling that you can't argue with...
- All sorts of pleasant times, emotional times,
hard times — when it's just not the time to diet.

NO DRUGS OR MEDICINE

Take-A-Break Tablets[®] are specially formulated to work with the Rotation Diet[®] and help to keep food from turning to fat. This means that for one day, two days, any number up to 15 days you can enjoy taking a break from your Rotation Diet[®]. Soon as you return — get back on the Rotation Diet[®] and in one week or less you'll be back at your "Pre-Break" weight. It takes 1 to 3 balance days to rid your body of the food that was accumulated during your "Break Time".



Order Now ...

You should have a supply
of Take-A-Break Tablets[®]
on hand for those
situations that develop
at the last minute.
Don't worry about keeping
the tablets around —
they have unlimited life!

COST

Per Day	\$ 3.25
15 Days	\$48.75

(includes postage
and handling)

Amended Complaint

110 F.T.C.

EXHIBIT H



ROTATION CENTER

National Headquarters • Rotation Plaza • Furlong, Pennsylvania 18925

You were very wise to request information about our popular
Rotation Diet...

*And because you acted at this time, you can now take advantage of
a very special offer, including a valuable free gift
and a money back guarantee.*

The ROTATION DIET is the only diet available to you that lets you
eat or drink anything you want 4 days a week and still lose up to 20
lbs. a month!

No Pills. No calorie counting. No special foods. No weighing or
measuring. No exercising. No boredom. No gimmicks. NO KIDDING!

Dear Friend,

If you're like me, and the thousands of people I've helped to lose weight, you've tried
everything to shed all those unwanted pounds...from calorie counting and weighing foods to
carbohydrate, grapefruit, water, and liquid protein diets. But the problem with diets is just that.
They're diets! And as we all know, anything that demands that you alter your lifestyle is difficult
to stick with. And when you don't, all those pounds and inches come right back!

The Rotation Program is the diet you can live with.

That's right—the Rotation Diet is different from all the others because 4 days a week you eat and
drink anything you want, as much as you want. Not celery and carrots, but sundaes, pizza, french fries,
pies, cake, anything at all. These 4 days are your "FREE DAYS" and they help satisfy your cravings so
you can stay with the program and lose each and every pound you want to.

Unlike other weight-loss plans, Rotation Diet lets you celebrate birthdays with cake...dine out with no
restrictions...vacation without limitations...and enjoy parties without guilt just like everybody else.

"Dieting" 3 days a week to lose weight month after month, including 16 to 20 pounds the
first month. Impossible? Not at all...I've lost 62 pounds!

That's right. I've lost 62 pounds by using the Rotation Plan. Three days a week I followed a
personalized weight-loss program using Rotation Waters and Vitamins. I didn't experience fatigue, dizziness,
hunger or boredom. I lost the weight I wanted to without guilt and without drugs.

Plus, I've kept off that unwanted weight. That's the beauty of the Rotation Diet. They don't leave you
"high and dry" after you've reached your weight loss goal like most every other diet.

OVER, PLEASE

Rotation Diet gives you an easy weight maintenance plan, too!

After you reach your goal, Rotation Center will show you how easy it is to keep that weight off without anyone ever knowing and without it interfering with your lifestyle.

In addition, the Rotation Diet also allows you to vacation free of guilt with our special TAKE-A-BREAK plan. You can now safely put your diet on hold for up to 15 days when it just isn't convenient. That's right — Rotation's special Take-A-Break packets let you take a break without feeling guilty and without gaining back all the weight you've lost.

The Rotation Diet can actually save you more money than it costs!

With the Rotation Diet you can save more than you spend for the diet. If you're like most people, you'll cut about 40% off your food bill because you'll cut down on expensive foods during your 3 "BALANCE DAYS" each week.

Plus, there are never any expensive consultations or office visits to pay for. Our TOLL FREE HOTLINE also assures that you won't have any phone bills, and we guarantee you unlimited use of this special personal and confidential service.

Now's the time to act!

I hope you will take a few minutes right now to read my personal story and all the other important information in the enclosed brochure. Then call me and I'll send out the Rotation Diet for you. Or if you prefer, use the handy personalized order form that we've enclosed. Either way, don't put it off—you've got nothing to lose except a lot of unwanted pounds.

Sincerely,

Dot Woodslager

Dot Woodslager
Director
Rotation Diet Program

PS. Just for taking the first step to a new, thinner life, we want to send you a beautiful FREE GIFT valued at over \$22.00. So don't put it off for one more day. Call or write to me now!

*I'll be looking for
your order - be sure
to mark the envelope
to my personal attention!*

EXHIBIT I



Dot Woolblager, on left, and
Judy Ruttrough, on right, are company
executives in Rotation Diet and are
one year of Rotation Diet and its Main-
tenance Plan.



Dot and Judy Introduce the
"NO FRILLS" Rotation Diet...

It's the real thing—not an imitation!

Because of overwhelming product interest, we've created a low cost "No Frills" version of our unique Rotation Diet Program. You still eat anything you want 4 days a week, and you still lose weight. It's still the diet you can live with because you're never more than 24 hours away from eating all the foods you love.

How Is This Possible?

You can now get this very popular, successful diet at a substantially reduced cost because

- there is no membership fee
- there are no expensive movie stars advertising our diet
- there are no expensive TV or radio commercials
- there's no newsletter
- there's no fancy packaging
- there are no "free" gifts to increase the cost
- there's no free "800" phone number
- and there are no separate vitamins—you chose your own multi-vitamin

Everything else about the Rotation Diet remains the same—you sacrifice nothing when it comes to losing weight!

Compare Rotation Diet With Others You See Advertised . . .

Do these other "miracle" diets require you to count calories? Prepare special foods? Do special exercises? Take some sort of drug? Do without your favorite foods for weeks at a time? Make you spend money and waste valuable time at weight reduction sessions?

Rotation Diet doesn't make you do any of these!

Please take a few minutes right now to read the enclosed details on this "NO FRILLS" Rotation Diet Plan. You'll see that it works just like the original Plan. It's just as safe, just as effective and just as easy! Best of all, you can now try it for as little as \$19.98. So go ahead—ORDER TODAY! What do you have to lose besides pounds?

Dot Woolblager Judy Ruttrough

If you're still not convinced give us a call. We'll talk with you personally and answer any questions you have!



The Rotation Diet Will Work For You, Too!

Here's how the Rotation Diet works:



It worked for Dia Woodhull. She ate everything, including ice cream sundaes, Tia Maria and all the other foods that just loved!

"I started the Rotation Diet on April 23, 1979. By the end of the summer I had lost 40 pounds, dropping my weight from 185 to 145. I was beginning to rejoin the human race!

Since then I've been able to enjoy a modified maintenance plan (fewer diet days) and still lose weight. My original goal was to get down to 130 pounds, but now I wish I had stayed smaller. I'm almost 60 and my metabolism is still going strong. I had great success with the Rotation Diet. I lost 40 pounds and I feel great!

I've never had any problems with the Rotation Diet. I've been able to enjoy a modified maintenance plan (fewer diet days) and still lose weight. My original goal was to get down to 130 pounds, but now I wish I had stayed smaller. I'm almost 60 and my metabolism is still going strong. I had great success with the Rotation Diet. I lost 40 pounds and I feel great!

The Rotation Diet has conditioned me. Now I know it can do the same for you!

It worked for Judy, too:

Have fun with the stacks I used to wear before the Rotation Diet. Now I'm 23 pounds lighter!



It also worked for these happy people . . .

"I've lost over 70 pounds while eating all the ice cream that I want 4 days a week. THIS IS THE MOST SUCCESSFUL DIET EVER!"

"I've been on maintenance for 6 months and it's working great! I now have only ONE diet day each week."

"The first week I lost 6 lbs. The second week I lost 3 lbs. I couldn't believe how good this works and how easy it is to get back day in a second!"

"The diet is everything it is claimed to be. I've lost 40 lbs. but enjoyed every minute of it. My metabolism is still going strong!"

PHYSICIAN REVIEWED



A. J. Robbins, M.D., thoracic surgeon, nutritionist, superintendent of a large hospital in NJ, and a member of the Professional Advisory Board of the Rotation Diet Center says . . .

"Experience, both personally and professionally, with the Rotation Diet has enabled me to attest to its effectiveness as well as its safety."

Phone Friends Help You Succeed

Available 7 days a week, 12 hours a day, Phone Friends will answer your questions, lend support and help you celebrate your weight losses. They also guide you through holiday alterations and switches.

FREE DAYS

Tuesday, Thursday, Saturday and Sunday are FREE DAYS. You eat and drink whatever you like—good food or junk food—just as much as you want. Not just ice cream, but a sundae with fudge sauce, whipped cream, nuts, a cheeseburger and french fries. Some diet foods are honey, pretzels and beer. Absolutely anything is okay!

For a fast a week you're eating the way you want to eat. FREE DAYS are your reward days and they are what makes the difference between your staying on the diet and giving up. Most people give up diets because they're tired with the same foods or bored with eating. They're tired of buying special and frequent expensive foods. There's nothing that won't the Rotation Diet.

The Rotation Diet is the diet you can live with and stick with. After you reach your weight goal, you'll get more FREE DAYS each week—up to 6 out of 7.

We call the Rotation Diet the "no-one-has-to-know-you're-on-a-diet" diet. That's because of its special switching day feature. It lets you enjoy all special days without messing up your diet.

It won't be difficult for you to remember your FREE DAYS. And when you look at the month you'll see that FREE DAYS are outnumber the others.

S	M	T	W	T	F	S
Free Day	Diet Day	Free Day	Diet Day	Free Day	Diet Day	Free Day
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

DIET DAYS

Monday, Wednesday and Friday are DIET DAYS. On these days you follow our special program which includes Rotation Chewable Tablets. We also give you simple, quick recipes for additional diet foods. You can have all the diet soda, coffee, tea and water you want.

Rotation Chewable Tablets make the diet work. They're made from the success formula of the "STOP HUNGER" without the side effects. FROM DIETARY is the most complete combination of vitamins, minerals and ingredients. HUMANITARIAN TABLETS are made by the same manufacturer. Diet Days are the most successful diet days.

With the Rotation Diet you can enjoy Rotation Chewable Tablets, Beverages and the DIET DAYS each week. You can have FREE DAYS after you reach your weight goal and still stay on the diet. The diet days are the most successful diet days. You can have all the diet soda, coffee, tea and water you want.

MAINTENANCE

Once you reach your weight goal you'll only have two diet days a week. Then you'll have 5 days for your new weight. You'll still have 2 diet days a week. You'll be able to stay on your diet for the rest of your life.

TAKE-A-BREAK

The Rotation Diet allows you to take a break from the diet. Take-A-Break tablets. You can now safely put on the diet for 10 to 15 days when it's most convenient. You'll gain back all the weight you've lost.

It's Easy To Get The Diet You Can Live With . . .

Here's How:

- 1. Complete this brief order form.
- 2. Don't forget to fill in the credit card information and sign if you are charging your order.
- 3. Mail your order form along with your payment if paying by check or money order in the handy postage paid envelope enclosed.

CREDIT CARD USERS:
Get extra fast service by phoning in your order. Call (215) 794-3293 or (215) 794-8881, 7 days a week 9:00 a.m. - 9:00 p.m. EST.

ADDITIONAL ORDER BLANKS ON REVERSE FOR YOUR FRIENDS

DON'T WAIT . . . ACT TODAY TO GET THE DIET YOU CAN LIVE WITH!
Orders processed within 24 hours!



The Real Rotation Diet "NO FRILLS" Plan

National Headquarters • Rotation Plaza • Furlong, Pennsylvania 16925

- YES! I want to begin the "NO FRILLS" Rotation Diet Plan right away. Please send the following:
 - NO FRILLS" Rotation Diet—2 Week Introductory Supply \$19.98 + \$3.95 for postage & handling TOTAL \$23.93
 - NO FRILLS" Rotation Diet—4 Week Supply \$39.95. Rotation Center pays postage & handling TOTAL \$39.95

OH7021000

Andrea Sacks
2727 29th St NW Apt 311
Washington, DC 20008

PLEASE CHANGE ANY INCORRECT INFORMATION USE STREET & APARTMENT ADDRESS — UPS CANNOT DELIVER TO P.O. BOXES

Please Check One: (no C.O.D.)

- Money Order Check Payable to: ROTATION DIET
- OR
- MasterCard Visa American Express Diners Club

Card # _____
Expiration Date _____
Signature _____
Date _____ Phone # () _____

Tell a friend about the "NO FRILLS" Rotation Diet Plan . . .

If you have friends or relatives who would also like to get the diet they can live with, just have them use the forms below. Then mail all orders with appropriate payment in the enclosed postage paid reply envelope.



NAME _____
ADDRESS _____ APT _____
CITY _____ STATE _____ ZIP _____

- No P.O. boxes please! PS cannot deliver.
- YES! I want to begin the "NO FRILLS" Rotation Diet Plan right away. Please send the following:
 - NO FRILLS" Rotation Diet—2 Week Introductory Supply \$19.98 + \$3.95 for postage & handling TOTAL \$23.93
 - NO FRILLS" Rotation Diet—4 Week Supply \$39.95. Rotation Center pays postage & handling TOTAL \$39.95

PLEASE CHECK ONE: (no C.O.D.) Money Order Check Payable to: ROTATION DIET
OR MasterCard Visa American Express Diners Club
Card # _____ Expiration Date _____
Signature _____ Date _____ Phone # _____

NAME _____
ADDRESS _____ APT _____
CITY _____ STATE _____ ZIP _____

- No P.O. boxes please! PS cannot deliver.
- YES! I want to begin the "NO FRILLS" Rotation Diet Plan right away. Please send the following:
 - NO FRILLS" Rotation Diet—2 Week Introductory Supply \$19.98 + \$3.95 for postage & handling TOTAL \$23.93
 - NO FRILLS" Rotation Diet—4 Week Supply \$39.95. Rotation Center pays postage & handling TOTAL \$39.95

PLEASE CHECK ONE: (no C.O.D.) Money Order Check Payable to: ROTATION DIET
OR MasterCard Visa American Express Diners Club
Card # _____ Expiration Date _____
Signature _____ Date _____ Phone # () _____

4F103-02

EXHIBIT J

The Rotation Diet Can Actually Save You More Money Than It Costs!

That's right! With the Rotation Diet you'll save more than you spend on this diet. If you're like most people, you'll cut about 40% off your food bill! You'll also cut down on expensive foods during your 3 Balance Days each week. And that will more than cover the cost for the Rotation Diet. Plus, there are never any expensive office visits or consultations. Our TOLL FREE HOTLINE also

assures that you won't even have any phone bills because we guarantee you unlimited use of this service. It's included in your low weekly cost.

So what do you have to lose besides a lot of pounds? Call us today or use the easy order blank on page 13 to start your Rotation Diet. Remember, losers are winners with Rotation Diet!

"Everyone has one problem or another during weight loss, but on this diet, you get the answers and all the help you need."
C.T. Toronto, Canada

"I love the true freedom of being able to eat whatever I want every TUESDAY, THURSDAY, SATURDAY AND SUNDAY!"
M.A. Harrisburg, PA

lose Weight. Feel Great and Improve Your Health...
The Rotation Plan is truly a diet you can live with!

eat anything you want and as much as you want 4 days a week — no limitations, no guilt
diet only 3 days each week

This is a personalized diet. It isn't the same for everybody. A special Rotation Center Diet Counselor will analyze your needs and set up your diet accordingly.

no special foods to buy
no drugs, no medicines — just natural ingredients
no weighing out portions, no counting calories

And remember with the Rotation Diet you are never more than 24 hours away from the best meal of your life!

- enjoy better health and longer life
- experience weight loss without dizziness or fatigue
- save up to 40% on your current food bills
- reach your goal then keep it off with the Rotation Diet Maintenance Plan
- enjoy unlimited help and support from your Rotation Center Phonefriends

FOR EASY ORDERING CALL
TOLL FREE 800-523-5763



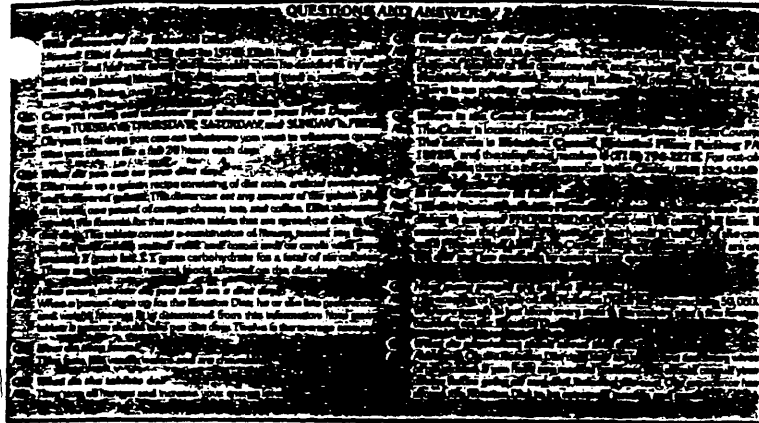
Your new Phonefriends are waiting to help you in any way they can.



"I've lost over 70 pounds while eating all the ice cream that I want 4 days every week. THIS IS THE MOST SUCCESSFUL DIET-EVER!"
P.A. Philadelphia, PA

"I've been on maintenance for 8 months and it's working great! I now have only ONE diet day each week."
S.B. Los Angeles, CA

Amended Complaint



CALL FOR MORE INFORMATION

TOLL FREE (800) 523-6262

In Penna. (215) 794-3278

Seven days a week from 9 A.M. to 11 P.M. (Eastern time)
there is a Phonefriend ready to answer your questions or take your order.
Why not call now!

**A FRIEND CAN USE THE COUPON BELOW
TO ORDER AN INFORMATION PACKET LIKE THE ONE YOU RECEIVED**

Yes, I'm interested in finding out more about a diet that lets me eat whatever I want every TUESDAY, THURSDAY, SATURDAY and SUNDAY. Please send me the Rotation Diet Information Packet. I understand that the Packet is FREE and that there is absolutely no obligation!

Name _____

Street address _____ Apt. _____

City _____ State _____ Zip _____

Telephone (optional) () _____
area code

Please fill out this FREE request form and mail it in an envelope to:
ROTATION DIET CENTER
 Furlong, PA 16925
 or call:
 Toll Free (800) 523-6262
 In Penna. (215) 794-3278

ROTATION REP NUMBER

DIET GRAM

**FREE GIFTS PLUS SPECIAL PRICE
... BUT YOU MUST ACT NOW!**

Rotation-Freedom ... the diet people

ANNOUNCE

the breakthrough diet of the future!

FREEDOM *Plus!*

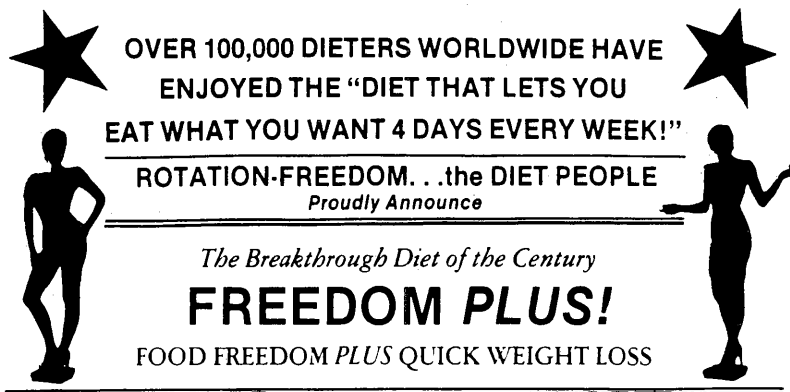
Food Freedom plus Quick Weight Loss

Just like Rotation-Freedom, you will enjoy 4 ABSOLUTELY FREE EATING DAYS every week BUT NOW LOSE UP TO 3 TIMES AS FAST!! Every Tuesday, Thursday, Saturday, and Sunday enjoy your ice cream, French Fries, cake and cookies — whatever you want, and as much as you want WHILE YOU LOSE 10, 20, 40, 60, or more POUNDS FAST!

All FREEDOM *Plus!* dieters are automatically eligible for \$500 weight loss prizes! You will receive complete information with your supplies.

Monday, Wednesday, and Friday you'll enjoy the all-natural FREEDOM *Plus!* Chewable Tablets and eat real foods as outlined in your instructions. It's pretty easy getting through the Diet Day when you know that tomorrow you can eat whatever you want!

We've added Q-L 2001 to the Free Day. Q-L 2001 can be used as a delicious soup or as a dip with crackers or vegetables. ITS SPECIAL ALL-NATURAL INGREDIENTS HELP THE FREE DAY FOOD MOVE RIGHT OUT OF YOUR BODY. Within 3 days you'll see the change IN YOUR CLOTHES AND ON YOUR SCALE as this dramatic new weight loss plan DOES ITS JOB!



OVER 100,000 DIETERS WORLDWIDE HAVE
ENJOYED THE "DIET THAT LETS YOU
EAT WHAT YOU WANT 4 DAYS EVERY WEEK!"

ROTATION-FREEDOM. . .the DIET PEOPLE
Proudly Announce

The Breakthrough Diet of the Century
FREEDOM PLUS!
FOOD FREEDOM *PLUS* QUICK WEIGHT LOSS

Here's How The FREEDOM *PLUS* DIET Works:

Free Days... it really is fabulous because on Tuesdays, Thursdays, Saturdays and Sundays you eat and drink anything you want. As much as you want. And still lose weight. It's truly a diet you can live with.

Eat Anything You Want... eat spaghetti, ravioli, pizza, breads, potatoes. And desserts: chocolate mousse, and fudge cake. Goopy banana splits. Pecan pie (with ice cream if you want). Eat all your favorites. Seconds if you want.

It's Fantastic... imagine: eat anything you want 4 days every week and still lose weight. Tuesdays, Thursdays, Saturdays and Sundays are your Free Days.

YOU ARE NEVER MORE THAN ONE DAY
AWAY FROM YOUR NEXT EXCITING MEAL.
QL 2001!

On your Free Days you will sip 3 cups of QL-2001: a delicious soup that comes in chicken, onion and beef flavors. The special all-natural fiber in the soup helps to move the free day food right out of your body!

Diet Days... on just 3 days (Mondays, Wednesdays and Fridays) you follow the simple Freedom Plus Weight Loss Program. On Diet Days, you eat tasty Freedom Plus Chewable Tablets along with as much water, tea, coffee or diet soda that you want.

There Are Even Real Foods allowed on Diet Days (listed in your Instruction Booklet). The Freedom Plus Chewable Tablets are one of the keys to your weight-loss

success. They are specially formulated, food supplement tablets, manufactured only for the Freedom Plus Center. They contain no medicine or drugs yet help to make your Diet Days easier. They are only available for members of this weight-loss plan.

Great News... You Can Switch Diet Days. Wow, that is great news... Special Occasions, Holidays, and weektime parties take precedence. Your friends won't even know you're on a diet. (The "Switching Plan" is in the Freedom Plus Instruction Booklet).

A Way To Maintain Weight-Loss Too... the Freedom Plus Diet has a built-in weight maintenance plan. Once you have reached your goal you reduce your Diet Days to "2," then as your system adjusts to your new weight your Diet Day Number is "1." You can then adjust any weight changes by adding and subtracting diet days as you need them. In other words, if you stick to the plan you should be able to stay at the weight you want for the rest of your life. Isn't that incredible!

Exciting Weight Loss the First Month. Rate of weight loss varies with different people, but the majority of women usually fit within a range of 8 to 20 pounds loss during the first month, men usually lose more.

S	M	T	W	T	F	S
Free	Diet	Free	Diet	Free	Diet	Free
Days	Days	Days	Days	Days	Days	Days
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



Dot Woodrager, left, age 62, and John Rahn, right, age 52, both Company Executives at Main Pizza, made an exciting announcement in response to demanding product interest, as they offer the FREEDOM PLUS Diet Plan.

DOT and JUDY
Answer Your Questions



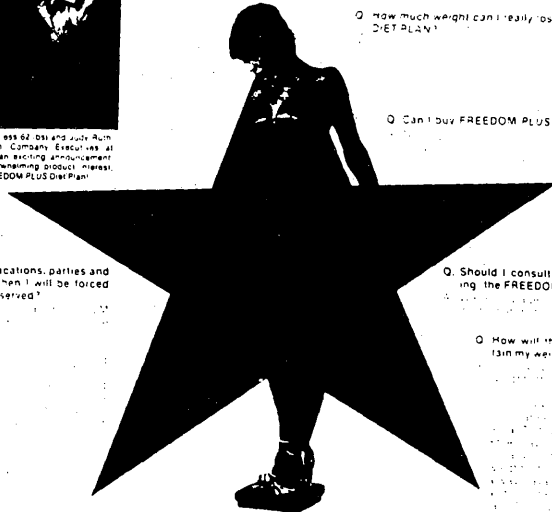
Q How much weight can I really lose on the FREEDOM PLUS DIET PLAN?

Q Can I buy FREEDOM PLUS waters in the store?

Q What about vacations, parties and other times when I will be forced to eat what is served?

Q Should I consult my doctor before starting the FREEDOM PLUS Diet Plan?

Q How will this diet help me to maintain my weight loss?



*Here's what dieters were telling us before QL-2001
Imagine what they'll be saying NOW!!!*



"I'm very, very happy. For the first time in my life I can be included in the 'before-after' file of a diet plan. I have sent you three more members."



"I've lost 39 lbs. Your diet was fantastic. I have been on your maintenance program for over a year now and I am holding my weight right where I want it."



She heard about the diet's success stories while working in our shipping department and decided to try it. Janet needed a diet that let her eat anything she wanted while attending Dog Shows. Dieting on Mondays, Wednesdays and Fridays was perfect for her.

Full copies of the testimonial letters above are available from the Center. Weight loss is a personal matter and, therefore, it should not be concluded that the testimonials above (although exact quotes) are typical of the weight loss that any specific individual should expect.

Read What Other Happy Dieters Say

"I began at 193 lbs. A little less than three weeks later I am at 178 lbs. It feels terrific. I love the program."

"Your diet is the only one I've found that really works. I've lost 36 lbs. in 22 weeks." (13 lbs. the first month.)

"She stopped smoking! I went from 112 to 138 lbs. I'm now down to 118 and feel great. I would recommend the diet to anyone."

"Eva Mae: "This is one diet you can really live with and enjoy yourself while on it." (Dress size down from 18 to 14).

"John: "I weighed 250 pounds when I first started the diet... and am now down to 200 pounds... from a waist size of 48 to 42."

"Bernie: "...a loss of 61 pounds in 4 months. My waist dropped from 39" to 32" inches."

AND IT CAN WORK FOR YOU TOO!

FREE \$14.⁹⁵ WEIGHT-MATE PLUS LOWER PRICES IF YOU ORDER NOW!

As Seen In . . .



ORDER FORM

I'm ready for Diet Freedom with the FREEDOM Plus Diet! Please send me:

One 2 week FREEDOM Plus Diet Kit including FREEDOM Plus Chewable Tablets, QL 2001, complete instructions, information on the free weight loss contest, and Diet Tips.
~~\$19.95~~ plus \$2.00 postage & handling. TOTAL ~~\$21.95~~ **\$16.⁹⁵ SAVE!**

One 4 week FREEDOM Plus Diet Kit including FREEDOM Plus Chewable Tablets, QL 2001, complete instructions, information on the free weight loss contest, and Diet Tips.
~~\$39.90~~ (we pay postage & handling). TOTAL ~~\$39.90~~ **\$29.⁹⁰ SAVE!**

LOSE FASTER!

Substitute one of our wonderful milkshakes for any meal on your Free Day. Contains the vitamins, minerals, and fiber that you need! We'll send Vanilla, Chocolate and Strawberry!

8 Shakes — Add \$7.95—
(2 Week Plan)

16 Shakes — Add \$14.95
(4 Week Plan)

SAVE!

We pay postage & handling

Name _____
Address _____ Apt. _____
City _____ State _____ Zip _____
(No P.O. Boxes please. UPS cannot deliver.)
Please check one:
 check money order (no C.O.D.'s)
made payable to: FREEDOM Plus!
 VISA MasterCard AE Diners Club
Card # _____ Exp. Date _____
Signature _____
Phone # () _____

TOLL FREE

Credit Card Orders Only:
Call (800) 433-3378, Ext. 300
In PA call (215) 794-5643, Ext. 300
9 AM to 9 PM Eastern Time
7 days a week

FREEDOM Plus! ROTATION-FREEDOM CENTER, HEALTH PLAZA, FURLONG, PA 18925

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

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

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

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

1. Respondent Buckingham Productions, Inc., trading and doing business as Rotation Diet Center, is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Furlong-Elliot Corp. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Freedom Center, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Plaza Business Services, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent N.F. Rotation, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Rotation-Freedom Diet, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Health and Diet Corp., Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania.

Respondent Howard Elliot is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, and his address is the same as the corporate respondents.

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

ORDER

I.

It is ordered, That respondents Buckingham Productions, Inc., also trading and doing business as Rotation Diet Center, Furlong-Elliot Corp., Freedom Center, Inc., Plaza Business Services, Inc., N.F. Rotation, Inc., and Rotation-Freedom Diet, Inc., and Health and Diet Corp., Inc., corporations, their successors and assigns, and their officers, and Howard Elliot, individually and as an officer of the corporations; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, distributorship or other device, in connection with the advertising, offering for sale, sale or distribution of any weight reduction or weight control product, program, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Representing, directly or by implication, that:

(1) Any consumer can eat any quantity of food and still lose weight or maintain that weight loss, without an accompanying and proximate, clear and prominent disclosure that the consumer's weight loss or ability to maintain that weight loss depends on a reduction in caloric intake in the short term and an overall reduction in caloric intake over the long term.

(2) Thousands of consumers, or any number of consumers, have lost or maintained a specified amount of weight loss, or range of weight loss, unless such is the case.

(3) Any such product, either alone or in conjunction with any weight reduction or weight control program or service, will stop hunger or otherwise function as an appetite suppressant, or will eliminate or prevent fatigue, unless such is the case.

(4) Any such product, either alone or in conjunction with any weight

reduction or weight control program or service, will help keep food from turning to fat, unless such is the case.

(B) Representing, directly or by implication, that any person has endorsed any such product, program or service, unless that person has committed that endorsement in writing and has authorized, in writing, its use in promotional or advertising materials, and unless respondents have good reason to believe that at the time of their representation that person continues to subscribe to the views presented.

(C) Failing to disclose any material connection, where one exists, between an endorser (except for a celebrity endorser) of any such product, program or service and any respondent; provided, however, that a "*material connection*" shall mean, for purposes of this order, any relationship between an endorser of any such product, program or service, and any entity marketing such product, program or service which relationship would not reasonably be expected by consumers and, if known by consumers, might materially affect the weight or credibility given to the endorsement.

(D) Representing, directly or by implication, the usual or average weight loss, or range of weight loss, obtained or obtainable from any such weight reduction or weight control product, program or service, unless at the time of making such representation respondents possess and rely upon competent and reliable survey or other scientific evidence that substantiates the representation.

(E) Making any representation, directly or by implication, regarding the efficacy, safety, or performance of any weight reduction or weight control product, program or service, the content or mode of action of any weight reduction or weight control product, program or service, or the monetary savings that may or will result from the purchase or use of such product, program or service, unless at the time of making such representation respondents possess and rely upon competent and reliable survey of other scientific evidence that substantiates the representation.

For purposes of Part I of this order, "*competent and reliable*" evidence shall mean tests, analyses, research, studies, surveys, or other evidence, conducted and evaluated by qualified persons in an objective manner and using generally accepted procedures.

II.

It is further ordered, That for three years from the date that the representations to which they pertain are last disseminated, respondent corporations, their successors and assigns, and their officers, and the individually named respondent, and respondents' agents, repre-

sentatives and employees shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any such representation.
2. All test reports, studies, surveys, or other materials in their possession or control that contradict, qualify, or call into question such representation.

III.

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

IV.

It is further ordered, That respondents and their successors or assigns, shall forthwith distribute a copy of this order to each of their operating divisions, to all officers, agents or representatives who are engaged in the preparation and placement of advertisements or promotional materials, to all employees who communicate with customers or potential customers as part of their employment responsibilities, and to all distributors of products manufactured or marketed by respondents.

V.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of 10 years from the date of service of this order, the individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program, or service, and of his affiliation with a new business or employment in which his own duties and responsibilities involve the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or

weight control product, program or service, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VI.

It is further ordered, That respondents and their successors or assigns, shall, within sixty (60) days after service of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Bailey was recorded as voting in the negative.

IN THE MATTER OF
PURITAN-BENNETT AERO SYSTEMS COMPANY

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

Docket C-3217. Complaint, Aug. 25, 1987—Decision, Aug. 25, 1987

This consent order prohibits, among other things, an El Segundo, California seller of fire and smoke protection masks from making deceptive advertising claims that any emergency escape mask or hood can absorb, remove or filter out any hazardous gas associated with fire, or that any mask or hood can protect users from any fire hazards, unless the claim is substantiated and supported by a scientific test. Respondent is required to retain for three years all test reports or materials it uses as substantiation for claims and is also required to make specified disclosures on its packaging and in advertisements.

Appearances

For the Commission: *Joel Winston and Susan Cohn.*

For the respondents: *Daniel C. Weary and Robin Foser, Blackwell, Sanders, Matheny, Weary, & Lombardi, Kansas City, Mo.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Puritan-Bennett Aero Systems Company, a corporation ("respondent"), has 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 Puritan-Bennett Aero Systems Company is a California corporation with its office and principal place of business at 111 Penn Avenue, El Segundo, California. It is a wholly-owned subsidiary of Puritan-Bennett Corporation.

PAR. 2. Puritan-Bennett Aero Systems has been engaged in the advertising, marketing, distribution and sale to the public of the Escape Fire and Smoke Hood ("Escape Hood" or "Hood").

PAR. 3. The acts and practices of Puritan-Bennett Aero Systems alleged in this complaint have been in or affecting commerce.

PAR. 4. Typical of Puritan-Bennett Aero Systems' advertising and promotional material for the Escape Hood, but not necessarily all inclusive thereof, is the attached Exhibit A. The aforesaid material contains the following statements:

a. "IN CASE OF FIRE: ESCAPE! Introducing ESCAPE Fire and Smoke Hood, the best way to increase your chance of surviving a fire."

b. "ESCAPE is designed to protect eyesight, minimize panic and filter out toxic fumes for a reasonable amount of time. With this extra time, your chances for escape from fire are greatly enhanced."

c. "Fires can generate searing, intense heat. Worse they normally develop dense clouds of smoke. And the burning materials give off poisonous fumes. Without effective protection against these hazards, your chances for escape will be slim indeed. Now you can have that effective protection against fire and smoke! It's called ESCAPE, and it is . . . capable of . . . removing 99% of all smoke particles and absorbing most toxic gases."

PAR. 5. Through the use of the statements referred to in paragraph four and others in advertisements not specifically set forth herein, Puritan-Bennett Aero Systems has represented, directly or by implication, that:

a. The Escape Hood will absorb or filter out all significant noxious or poisonous gases associated with fires.

b. The Escape Hood will protect the user from all significant hazards associated with gases in fires for a reasonable amount of time.

PAR. 6. In truth and in fact:

a. The Escape Hood will not absorb or filter out all significant noxious or poisonous gases associated with fires, because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires.

b. The Escape Hood will not protect the user from all significant hazards associated with gases in fires for a reasonable amount of time, because it does not absorb or filter out carbon monoxide, a lethal gas associated with fires.

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

PAR. 7. In the advertising and sale of the Escape Hood, Puritan-Bennett Aero Systems has failed to disclose adequately to consumers that the Hood does not absorb or filter out carbon monoxide, a lethal gas associated with fires. This fact would be material to consumers in their decisions on whether to purchase or how to use the Escape Hood. The failure to disclose this fact, in light of the representations made as alleged in paragraph five, is a deceptive practice.

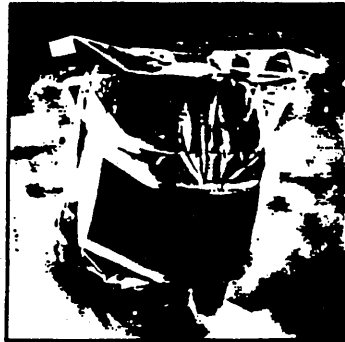
PAR. 8. The acts and practices of Puritan-Bennett Aero Systems alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

110 F.T.C.

EXHIBIT A

IN CASE OF FIRE: ESCAPE!



Introducing ESCAPE Fire and Smoke Hood, the best way to increase your chance of surviving a fire.

Have you ever been trapped in a fire? And tried to escape without some sort of protection? Let's hope you never have to. Because it can be a terrifying experience.

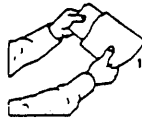
Fire at home. A hotel fire. Fire in an office building or hospital. Fire aboard an airliner. A boat or ship fire. They're all dangerous. Fires can generate searing, intense heat. Worse, they normally develop dense clouds of smoke. And the burning materials give off poisonous fumes. Without effective protection against these hazards, your chances for escape will be slim indeed.

Now you can have that effective

protection against fire and smoke! It's called ESCAPE, and it is a combination of two elements: (1) a thin transparent hood made of DuPont KAPTON, capable of withstanding flames of 1200°F and (2) a four-layer filter capable of removing 99% of all smoke particles and absorbing most toxic gases. Oxygen is freely passed.

The ESCAPE Fire and Smoke Hood weighs only 2½ ounces and folds into a compact sealed plastic pouch measuring 7" x 5½" x ¾" (thick). It can be carried in a pocket, purse or briefcase. You can take your own ESCAPE with you at all times, and provide one for each member of your family for their protection.

Putting on the ESCAPE hood is as simple as 1-2-3:



1. Open: Break seal of plastic pouch and tear along dotted line to open. Remove hood from pouch.



2. To Put On: Open hood at bottom with both hands, and pull over head and down around neck.



3. To Secure: Hood's elastic neck band automatically seals around neck.

NOTE. The ESCAPE Fire and Smoke Hood carries no guarantee other than the three-rear filter system efficacy maintained when plastic seal remains unbroken. ESCAPE is designed to protect eyesight, minimize panic and filter out toxic fumes for a reasonable amount of time. With this extra time, your chances for escape from fire are greatly enhanced.

A product of PURITAN-BENNETT AERO SYSTEMS CO.,
El Segundo, Fountain Valley, CA, Lenexa, KS

ESCAPE FIRE AND SMOKE HOOD \$49.50 Postpaid. Order yours today from the Puritan-Bennett Aero Systems Co. Distributor: ATLANTIC AVIATION SUPPLY CO., P.O. Box 11170, Wilmington, DE 19850.

Include local, state and federal taxes, where applicable.

Please send me _____ Escape Hood(s) in \$49.50 ea.

I enclose Money Order Certified Check

Charge my MASTERCARD VISA

Card number _____ Exp. date _____

Name _____

Address _____

City _____ State _____ Zip _____

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, and its parent corporation, Puritan-Bennett Corporation, having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure 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 Puritan-Bennett Aero Systems Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business at 111 Penn Avenue, El Segundo, California.

2. Puritan-Bennett Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business at 9401 Indian Creek Parkway, P.O. Box 25905, Overland Park, Kansas.

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

ORDER

I.

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

(1) "*The Escape Fire and Smoke Hood*" shall mean the over-the-head transparent Kapton hood manufactured by Cybertronics, Ltd., a British company.

(2) "*Competent and reliable scientific test*" shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

II.

It is ordered, That respondent Puritan Bennett Aero Systems Company, a corporation, its parent corporation, Puritan-Bennett Corporation, their successors and assigns, (hereinafter collectively "the companies"), and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Escape Fire and Smoke Hood or any other emergency escape mask or hood, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

a. That the mask or hood is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas associated with fire unless, at the time the representation is made, the representation is true and the companies possess and rely upon a reasonable basis consisting of a competent and reliable scientific test that substantiates the representation.

b. That the mask or hood can protect the user from any hazards associated with fire unless, at the time the representation is made, the representation is true and the companies possess and rely upon a reasonable basis consisting of a competent and reliable scientific test that substantiates the representation.

III.

It is further ordered, That the following notice shall be included in all advertising and promotional materials for the Escape Fire and Smoke Hood, or any other emergency mask or hood manufactured or

sold by the companies that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if that advertising or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire:

NOTICE: This device does not filter carbon monoxide—a lethal gas associated with fire.

Nothing contrary to, inconsistent with, or in mitigation of the above required language shall be used in any such advertising or promotional material. In print advertising and promotional material, the above required language shall appear in at least ten-point bold type print, in close conjunction with the representation. In any television advertising, film, videotape or slide promotional material, the above required language shall be included both orally and visually in a manner designed to ensure clarity and prominence. In radio advertising, the above required language shall be read in a clear manner.

IV.

It is further ordered, That the following statement shall be included on all package labels for the Escape Fire and Smoke Hood, or any other emergency mask or hood manufactured or sold by the companies that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide:

WARNING: This device does not filter carbon monoxide—a lethal gas associated with fire.

The above required language shall be printed in at least ten-point bold type print. Nothing contrary to, inconsistent with or in mitigation of the above required language shall be used on any such package label.

V.

It is further ordered, That the companies shall deliver by certified mail or in person a copy of this order to all present and future distributors and sub-distributors of the Escape Fire and Smoke Hood, or any other emergency mask or escape hood marketed by either of the companies, and instruct such distributors and sub-distributors in writing not to make any of the representations, directly or by implication, prohibited by this order. Delivery shall be made within thirty (30) days after the date of service on the companies of this order to all such present distributors and sub-distributors. For all such future

distributors and sub-distributors, delivery shall be made prior to the time said distributors begin distribution of the product.

VI.

It is further ordered, That, for three years from the date that the representations are last disseminated, each company shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials upon which the company relied to substantiate any claim or representation covered by this order, and
2. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which the company relied for such representation.

VII.

It is further ordered, That each company shall notify the Commission at least thirty (30) days prior to any proposed change in the company 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 the companies shall, within sixty (60) days after service of this order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this order.

IN THE MATTER OF
ALLEGHANY CORPORATION

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

Docket C-3218. Complaint, Sept. 9, 1987—Decision, Sept. 9, 1987

This consent order allows, among other things, a New York City title insurance company to acquire Safeco Title Insurance Co. by requiring respondent to divest two title plants to alleviate concerns that acquisition could reduce competition in the production and sale of title information in Cook County, Ill. and Los Angeles County, Calif. Respondent is also required to continue to honor all Chicago Title and Trust Company and Safeco plant access contracts that expire pending divestiture.

Appearances

For the Commission: *Michael Antalics* and *Andrew Goodson*.

For the respondents: *John C. Christie, Jr., Bell, Boyd, & Lloyd*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Alleghany Corporation, a corporation subject to the jurisdiction of the Commission, through one of its subsidiaries, has entered into an agreement that violates Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. Section 45); that through this agreement Alleghany Corporation has agreed to acquire certain assets of Safeco Corporation; and that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18); and it appearing that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. Section 45(b)), stating its charges as follows:

I. DEFINITION

1. For purposes of this Complaint, the term "*title plant*" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis and is indexed, posted or otherwise organized to update data regarding specific land

parcels. The term "*title plant information*" means that information contained in and obtained from a title plant.

II. ALLEGHANY CORPORATION

2. Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at Park Avenue Plaza, New York, New York.

3. Alleghany is the sole owner of Chicago Title & Trust Company, which is the sole owner of Chicago Title Insurance Company ("Chicago Title").

4. At all times relevant herein, Alleghany Corporation has been and is a corporation whose business is in or affecting commerce within the meaning of the Federal Trade Commission and Clayton Acts, as amended.

III. ACQUISITION

5. On October 10, 1986, Chicago Title & Trust Company entered into an agreement with Safeco Corporation to acquire all of the outstanding shares of Safeco Title Insurance Company ("Safeco"), a wholly-owned subsidiary of Safeco Corporation.

IV. TRADE AND COMMERCE

6. The relevant sections of the country are Cook County, Illinois, and Los Angeles County, California.

7. The relevant line of commerce is the production and sale of title plant information.

8. There are two title plants in Cook County, one of which is wholly-owned by Safeto and one of which is wholly-owned by Chicago Title Insurance Company.

9. There are three title plants in Los Angeles County, one of which is wholly-owned by Safeco Title Insurance Company and one of which is owned jointly by Chicago Title Insurance Company and four other companies.

10. There are no reasonable substitutes for access to title plant information for purposes of issuing title insurance policies in Cook County and Los Angeles County.

11. There are substantial barriers to entry into the creation of title plants in Cook County and Los Angeles County.

12. Through their respective ownership interests, Chicago Title and

Safeco are significant competitors in the production and sale of title plant information in Cook County and Los Angeles County.

V. EFFECTS OF THE ACQUISITION

13. The effects of the acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant line of commerce in the following ways, among others:

a. it will eliminate substantial actual competition between Chicago Title and Safeco in the production and sale of title plant information in Cook County and Los Angeles County;

b. it will provide Chicago Title with a monopoly over title plant information in Cook County;

c. it will, by virtue of Chicago Title's ownership interest in two of the three title plants in Los Angeles County, increase the possibilities for collusion in the provision of title plant information in Los Angeles County; and

d. customers of title plant information in Cook County and Los Angeles County will be denied the benefits of free and open competition.

VI. VIOLATION CHARGED

14. The acquisition agreement described in paragraph 5 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45, and the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and Clayton 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 jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said

agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

1. Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at Park Avenue Plaza, New York, New York.

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

ORDER

I.

It is hereby ordered, That as used in this order the following definitions shall apply:

A. "*Alleghany*" means Alleghany Corporation, its subsidiaries, divisions, groups and affiliates controlled by Alleghany, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

B. "*Safeco*" means Safeco Corporation, its subsidiaries, divisions, groups and affiliates controlled by Safeco, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

C. "*Title plant*" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis, and is indexed, posted or otherwise organized to update data regarding specific land parcels.

D. "*TRI Plant*" means the title plant located in Los Angeles County, California, in which Alleghany maintains an ownership interest.

II.

It is further ordered, That Alleghany shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the properties described in paragraphs IIA and IIB. Divestiture shall be made within the times specified in paragraph IIA and IIB, and shall be made only to a buyer or buyers and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable title plants engaged in the production and sale of title plant information, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

A. Safeco's title plant in Cook County and all user or access agreements with that plant shall be divested within twelve months from the date this order becomes final. Computer and other services provided for the plant by Safeco from Safeco's other facilities, at the buyers's option at the time of purchase, will continue to be provided by Alleghany at a commercially reasonable price, for a period of up to three years from the date this order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

B. Either Safeco's title plant in Los Angeles County or Alleghany's interest in the TRI plant in Los Angeles County shall be divested within fourteen months from the date this order becomes final. Alternatively, Alleghany shall abandon its interest in the TRI plant within the same 14 month period. If the Safeco title plant is divested, all user or access agreements with the Safeco plant shall also be divested. If the Safeco title plant in Los Angeles County is divested, computer and other services provided for the plant by Safeco, at the buyer's option at the time of purchase will continue to be provided by Alleghany at a commercially reasonable price for a period of up to three years from the date this order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

III.

It is further ordered, That:

A. If Alleghany has not divested the Safeco Cook County title plant within the twelve month period, Alleghany shall consent to the appointment of a trustee by the Commission pursuant to the order. The appointment of a trustee shall not preclude the Commission from

seeking civil penalties and other relief available to it for any failure by Alleghany to comply with paragraphs IIB through IX of this order.

B. If a trustee is appointed by the Commission pursuant to paragraph IIIA of the order, Alleghany shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Alleghany's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have six months from the date of appointment to submit for prior approval of the Commission the divestiture of the Safeco Cook County title plant.

3. If, at the end of the six month period, the trustee has not submitted for prior approval of the Commission a divestiture of the Safeco Cook County title plant, the trustee shall have an additional twelve month period in which to submit for prior approval of the Commission a divestiture of either the Safeco Cook County title plant or a copy of Alleghany's own computerized Cook County title plant.

4. If the trustee chooses to sell a copy of Alleghany's computerized Cook County title plant pursuant to paragraph IIIB3, the sale shall include copies of all of the computer tapes and other information used by Alleghany in its operation of the computerized title plant, with the exception of the computer hardware, updated in the future on a daily basis until such time as the buyer(s) has established a separate title plant including that information and has, in full operation, the personnel needed to continue updating the plant information without Alleghany's assistance.

5. If at the end of the trustee's twelve month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission.

6. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Alleghany shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Alleghany shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

7. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the Commission's

intention to ensure that a viable, going concern will be divested, but there shall be no minimum price.

8. The trustee shall serve at the cost and expense of Alleghany on such reasonable and customary terms and conditions as the Commissioner may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Chicago Title & Trust Company and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (percentage of price) that is contingent on the trustee causing the divestiture of the assets and that shall provide an incentive for the trustee to divest the assets as soon as possible.

9. Promptly upon appointment of the trustee, Alleghany shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and power necessary to permit the trustee to cause divestiture of undivested assets.

10. If the trustee ceases to act or fails to act diligently, the Commission may, on its own or by request of Alleghany, appoint a substitute trustee for the balance of the time periods specified in paragraph IIIB2 and IIIB3, or any extensions thereof.

11. The trustee shall report in writing to Alleghany and the Commission every thirty days concerning the trustee's efforts to accomplish divestiture.

12. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. Alleghany shall reimburse the trustee for the reasonable value of all expenses so incurred.

13. If Alleghany and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the assets, then Alleghany and the trustee shall submit the dispute to the Commission for resolution, but the time periods shall continue to run. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon Alleghany and the trustee.

IV.

It is further ordered, That Alleghany shall not cause or permit the wasting or deterioration of the assets and operations to be divested in

accordance with paragraphs IIA and IIB of this order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production and sale of title plant information. In this regard:

A. Alleghany shall maintain the Safeco Cook County title plant and Safeco Los Angeles County title plant to the extent and in the manner maintained by Safeco prior to this acquisition, including but not limited to updating the records contained in the plants on a daily or regular basis such that the plants are as current as possible at all times.

B. Alleghany shall maintain in good faith all contracts for access to the Safeco Cook County title plant and Safeco Los Angeles County title plant subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable to Safeco under the terms of those agreements.

C. Alleghany shall, at the option of the accessor, automatically continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to the Safeco Cook County title plant that expire by their terms prior to divestiture of that plant for a period lasting until the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts shall cease, or, if divestiture of a copy of Alleghany's own plant as contemplated by paragraph IIIB3 of this order is accomplished, for a period lasting until six months after the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts will cease.

D. Alleghany shall, at the option of the accessor, continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to its own Cook County title plant that expire by their terms prior to divestiture of either a copy of that plant as contemplated by paragraph IIIB3 of this order or prior to divestiture of the Safeco Cook County title plant, for a period lasting until six months after the closing date upon which either divestiture is completed, at which time Alleghany's obligations under such contracts shall cease.

v.

It is further ordered, That for a period of ten years from the date this order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern,

corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant that services either Cook County, Illinois, or Los Angeles County, California, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, an existing title plant that services either Cook County, Illinois or Los Angeles County, California, without the prior approval of the Federal Trade Commission.

VI.

It is further ordered, That for a period of ten years from the date this order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern, corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Alleghany shall provide the Notification to the Federal Trade Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). Alleghany shall provide to the Commission supplemental information either in Alleghany's possession or reasonably available to Alleghany. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Alleghany and of the firm Alleghany desires to acquire who negotiated the acquisition agreement, any management or strategic plans discussing the proposed acquisition, and all documents relating to competition for the provision of title plant services in that particular county. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information, Alleghany shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provi-

sions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18A).

VII.

It is further ordered, That acquisitions resulting in an ownership interest of not more than 10% of publicly traded companies, solely for the purpose of investment, are not subject to the requirements of paragraphs V and VI of this order, except that acquisitions resulting in an ownership interest of more than 5% of publicly traded companies, even if solely for the purpose of investment, are subject to the requirements of paragraphs V and VI of this order if such companies, directly or indirectly, have an ownership interest of 5% or more in Tigor Title Insurance Company, Lawyers Title Insurance Corporation, First American Title Insurance Company, Commonwealth Land Title Insurance Company, Transamerica Title Insurance Company, Stewart Title Guaranty Company, Minnesota Title Insurance Company, or TRW, Inc. or any of their successors or assigns.

VIII.

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

IX.

It is further ordered, That:

A. Within thirty days after the order becomes final, and every thirty days thereafter until Alleghany has fully complied with paragraph II of this order, Alleghany shall file with the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order. Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a summary of all contacts and negotiations with potential purchasers of the stock, assets, or other rights or interests to be divested under this order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

B. Within one year after the order becomes final, and annually for the next nine years, Alleghany shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order.

Commissioners Bailey and Azcuenaga were recorded as voting in the negative.