

misrepresenting, in any manner, the size, status, sales or purchasing position of respondents' dealership.

It is further ordered:

(a) That respondents shall forthwith distribute a copy of this order to each of their operating divisions;

(b) That respondents deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale, or sale, of any motor vehicle, and in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person;

(c) That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order;

(d) That respondents post in a prominent place in each salesroom or other area wherein respondents sell motor vehicles or other products or services, a copy of this cease and desist order, with the notice that any customer or prospective customer may receive a copy on demand;

(e) That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities; and

(f) That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

NATIONAL TALENT ASSOCIATES, INC., ET AL.

Docket 8960. Complaint, Apr. 3, 1974-Decision, Nov. 26, 1975

Consent order requiring a New York City talent and modeling agency and three closely held corporations in New Jersey, Illinois and California, among other things to cease misrepresenting their ability to place customers into modeling and entertainment positions; using unethical and exploitative high pressure sales tactics and failing to disclose relevant facts. Further, respondents are

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Complaint

required to give consumers a three-day cooling-off period within which they may cancel their contracts and receive full refund of all monies paid.

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

Appearances

For the Commission: *Harriet G. Mulhern.*

For the respondents: *Donald J. Williamson, Burgoyne, Michels, Rose & Williamson, New York City. John T. Dolan, Crummy, DelDeo, Dolan & Purcell, Newark, N.J.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that National Talent Associates, Inc., a New Jersey corporation, National Talent Associates, Inc., an Illinois corporation, and National Talent Associates, Inc., a California corporation, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and William Schuller Agency, Inc., a corporation and Monica Stuart, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents National Talent Associates, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the States of New Jersey, Illinois and California. They maintain offices at 280 Park Ave., Rutherford, N.J., 110 Jericho Turnpike, Floral Park, N.Y., 3525 W. Peterson Ave., Chicago, Ill., and 1900 N. Highland Ave., Hollywood, Calif., respectively.

Respondents Sanford Storm and Jerome P. Ashfield are individuals and officers of all of the corporate respondents. They formulate, direct and control the policies, acts and practices hereinafter set forth. Their address is 280 Park Ave., Rutherford, N.J.

Respondent William Schuller Agency, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its principal place of business is located at 667 Madison Ave., New York, N.Y. and it also maintains an office at 9110 Sunset Blvd., Hollywood, Calif.

Respondent Monica Stuart is a principal owner and officer of William

Schuller Agency, Inc., and as such formulates, directs and controls the policies, acts and practices of the corporate respondent.

PAR. 2. Respondents are now, and for some time in the past have been engaged in the advertising, solicitation, offering for sale and sale of photographs or services used in connection with the selection, placement and employment of persons in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses or entertainers.

In the course and conduct of their business respondents, their employees, agents or representatives have contracted to sell and have sold their photographs or services to purchasers located in the States of New Jersey, New York, Illinois, California and various other States, and have disseminated flyers, brochures, contracts and other printed materials to such purchasers and to prospective purchasers by means of the United States mails. Respondents maintain and have maintained a course of trade in said photographs or services in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of photographs or services is and has been substantial.

PAR. 3. Respondents are now and at all times mentioned herein have been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale of photographs or services in connection with the selection, placement and employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their photographs or services, respondents have made, and are now making, numerous statements and representations in letters of solicitation which are addressed and mailed to parents of children throughout the United States, in brochures and pamphlets, advertisements in telephone directories, on their written contract, and in other promotional materials which are distributed to prospective purchasers of their photographs or services by means of the United States mails, in oral solicitations, and by other means, which have the tendency and capacity of exaggerating and misrepresenting respondents' ability, effectiveness and success in placing persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, of which the following are typical but not all inclusive:

In their sales solicitation letters, respondents represent as follows:

Your child has recently been brought to our attention. Information comes to us from many sources including referrals from the parents of our children who feel some other

child may have the necessary qualifications for the commercial advertising field, and other available sources.

Your child has recently been brought to our attention. Information and referrals come to us from the parents of our children who feel some other child may have the necessary qualifications for the commercial advertising field, and other available sources * * *. Although a great deal of our information may be inaccurate and incomplete, it is possible we could be quite interested in your child. If you would please call our Rutherford office before 2:30 at (201) 935-0330, we will try to fill in the details.

We have received information indicating that your child may have the necessary qualifications for the commercial advertising media * * *. If the information we have is correct, we could be very interested in your child. It may be to your advantage if you would call our Floral Park office at 212-343-6730 before 2:30 P.M.

We have been informed about your child, however, in order to determine any youngster's potential for the advertising field, all vital statistics are necessary (height, weight, age, coloring, etc.). This information was not included * * *. Although our continued success depends on the children selected, time is also limited. Therefore, we ask you do not bring children in or send photographs. Due to the fact that very few children possess the necessary qualifications, a phone call will generally give us all the information necessary.

2. In their brochures mailed to parents, respondents represent as follows:

NTA WORLD'S LARGEST PERSONAL MANAGERS DEVOTED EXCLUSIVELY TO CHILDREN * * *. N.T.A. was formed to supply to the agencies the most qualified new faces for the advertising industry * * *. Opportunity is what N.T.A. can offer. Children are accepted only on the basis that they may have the necessary qualifications * * *.

Our children are handled by the leading agencies in the country * * *

In New York on MADISON AVENUE * * * the William Schuller—East.

This agency has been supplying models for over 25 years * * * numbers among its clients the leading advertising agencies in the country.

Monica Stuart:

Chief consultant for T.V. and modeling for the William Schuller Agency, New York City. Miss Stuart has been a specialist in placing talent in print advertising and television commercials for the past fifteen years * * *. Miss Stuart personally places hundreds of children in print and T.V. advertisements every year.

N.T.A. will arrange for Baratta Professional Service to do a series of photographs in natural color of the children accepted by their agency.

In their contract forms, and other similar forms, respondents represent as follows:

National Talent Associates, Inc. agrees to render the following services:

We will arrange for a professional photographer to do a series of poses in natural color. These will be submitted to Monica Stuart, chief television and modeling consultant for the William Schuller Agency, Inc., New York for her consideration for placement in the field of print advertising and television commercials. This agreement in no way guarantees placement will be made.

The client will receive one black and white 8 x 10 portrait of their choice from the series. You are under no obligation to obtain additional portraits, but additional poses may, if you wish, be purchased through your photographer.

National Talent Associates, Inc., reserves the right to submit to Monica Stuart photographs of any other child in the family who, in their opinion may have a potential

ability. We will continue this service for a period of five years or until the child herein enrolled is accepted by the William Schuller Agency, whichever occurs first.

The complete cost of this service is \$65 plus state tax, for the entire five year period. The photographer's service charge is \$5 per year.

No photographs may be used by N.T.A. without a written release. This agreement is binding upon both parties and is not subject to change or cancellation.

National Talent Associates, Inc. agrees to render the following services:

We will arrange for a professional photographer to do a series of poses of natural color. These will be submitted to Monica Stuart, chief television and modeling consultant for the largest children's modeling agency in New York City for her consideration for placement in the field of print advertising and television commercials. This agreement in no way guarantees placement will be made.

We will continue this service for a period of five years or until the child herein enrolled is accepted by the agency, whichever occurs first. Should the enrolled child or any other child of said family be accepted and booked, the legal commission of 10% of the child's earnings will be paid to said Agency.

All children signed will be under our personal management contract for an additional 10%. After the first \$1,000 in earnings, the commission shall increase to 15%.

The complete cost of this service is \$135 for the entire five year period. The photographer's service charge is \$5 per year.

The client will receive one black and white 8 x 10 photograph of their choice from the series. There is no obligation to obtain additional photographs, but additional poses may, if desired, be purchased through the photographer.

No photographs may be used by N.T.A. without a release. This agreement is binding upon both parties and is not subject to change or cancellation.

PAR. 5. By and through the use of the aforesaid written statements and representations quoted in Paragraph Four, respondents have represented, and are now representing, directly or by implication, that:

1. National Talent Associates, Inc. has received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of National Talent Associates' photographs and services are a significant source of information about persons who may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

3. Respondents, when requested, provide persons who contact them with the source from which the information referred to in National Talent Associates' sales solicitation letters was obtained or the nature of such information.

4. National Talent Associates, Inc. has the business experience, knowledge or expertise needed to select the most qualified persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

5. National Talent Associates' salesmen, agents or representatives are qualified by training or experience to select and judge the

suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. Persons who have been contacted by National Talent Associates, Inc. have been specially selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

7. A major portion of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising, modeling, talent or entertainment agencies.

8. Persons are selected and offered contracts by National Talent Associates, Inc. solely on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

9. A person's chances for selection by Monica Stuart or the William Schuller Agency, Inc. will be greatly increased by entering into a contract with National Talent Associates, Inc.

10. Access to Monica Stuart or to the William Schuller Agency, Inc. is available solely to persons who contract with National Talent Associates, Inc.

11. Monica Stuart or the William Schuller Agency, Inc. review photographs of only those persons who have contracted with National Talent Associates, Inc.

12. National Talent Associates, Inc. arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

13. Persons who contract with National Talent Associates, Inc. receive one black and white 8 x 10 inch photograph of their choice, annually for a five-year period, without any obligation to purchase additional photographs at an added cost.

14. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five-year period, to Monica Stuart of the William Schuller Agency, Inc. for her consideration and review.

15. National Talent Associates, Inc. photographs other persons in a family, in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

16. The remuneration received by Monica Stuart of the William

Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

PAR. 6. In truth and in fact:

1. In the vast majority of instances, National Talent Associates, Inc. has not received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries. In the vast majority of instances, respondents' information consists solely of a person's birth date, the name and address of the person's parents, or other similar information obtained from commercial mailing lists, newspaper birth announcements, hospital birth records, or other sources.

2. Referrals from past purchasers of National Talent Associates' photographs and services are not a significant source of information about persons who may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries. Any such referrals from past purchasers are rare and, when made, are actively solicited by representatives of respondent National Talent Associates, Inc.

3. Respondents, when requested, do not provide persons who contact them with the source from which the information referred to in National Talent Associates' sales solicitation letters was obtained or the nature of such information. Persons who request the source from which information about them was obtained, or the nature of such information, are routinely told that such information is confidential and cannot be divulged.

4. National Talent Associates, Inc. does not have the business experience, knowledge or expertise needed to select the most qualified persons to be employed as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries. Approximately 98 percent to 99 percent, (*i.e.*, 98 to 99) out of 100 persons, selected and placed under contract by National Talent Associates, Inc., are thereafter rejected by Monica Stuart of the William Schuller Agency, Inc. and are not signed to any agency contract.

5. National Talent Associates' salesmen, agents or representatives are not qualified by training or experience to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries. Such salesmen, agents or representatives are recruited from all walks

of life and are not experienced, trained or qualified talent scouts in the selection of models, actors, actresses or entertainers but are sales employees who earn a commission for each contract they sell.

6. Persons who have been contacted by National Talent Associates, Inc. have not been specially selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries. Persons who are contacted by National Talent Associates, Inc. have been arbitrarily selected from commercial mailing lists, newspaper birth announcements, hospital birth records or from other similar sources and have not been observed by any talent scout, theatrical agency, advertising or modeling agency. The vast majority of persons placed under contracts by National Talent Associates, Inc. have little or no chance for obtaining paid employment as models, actors, actresses or entertainers in the commercial advertising, modeling, talent or entertainment industries.

7. A major portion of National Talent Associates' income is not derived from its personal management contracts and its ability to place persons under contract with the leading advertising, modeling, talent or entertainment agencies. Its income is derived primarily from the monies it receives from persons with whom contracts are signed as set forth under Paragraph Four of the complaint.

8. Persons are not selected and offered contracts by National Talent Associates, Inc. only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries. The ability and willingness of parents to pay the initial contract fee plus a photographer's service charge each year for the five-year period, to National Talent Associates, Inc., as set forth on their standard contract form, appearing under Paragraph Four of this complaint, is a crucial and central element in the acceptance of any person.

9. A person's chances for selection by Monica Stuart or the William Schuller Agency, Inc. will not be greatly increased by entering into a contract with National Talent Associates, Inc. Approximately 98 percent to 99 percent (*i.e.*, 98 to 99) out of 100 persons whose photographs are submitted to Monica Stuart of the William Schuller Agency, Inc. by National Talent Associates, Inc., after payment of monies to National Talent Associates, Inc. under the terms of its contract, are rejected by Miss Stuart by means of a standard form letter of rejection in which no specified reason for such rejection is provided.

10. Access to Monica Stuart or to the William Schuller Agency, Inc.

is not available solely to persons who contract with National Talent Associates, Inc. Any person may gain access to Monica Stuart or to the William Schuller Agency, Inc., through other sources.

11. Monica Stuart or the William Schuller Agency, Inc. do not review photographs of only those persons who have contracted with National Talent Associates, Inc. Any person may mail either a snapshot or a professional portrait to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and evaluation of the person's potential for the commercial advertising, talent, modeling or entertainment industries without entering into a contract with National Talent Associates, Inc. for this purpose.

12. National Talent Associates, Inc. does not arrange for professional photographs to be taken of each person placed under its contract by an independent photographic studio. Individual respondents Sanford Storm and Jerome P. Ashfield each own approximately a one-third interest in Baratta Photo Studios to which persons are routinely sent by National Talent Associates, Inc. to have their photographs taken.

13. Persons who contract with National Talent Associates, Inc. do not receive one black and white 8 x 10 inch photograph of their choice, annually for a five-year period, without any obligation to purchase additional photographs at an added cost. Persons are required to travel to Baratta Photo Studios to select the 8 x 10 inch black and white photograph referred to on National Talent Associates' contract, or are solicited at their homes by salesmen from Baratta Photo Studios whose main interest is in selling additional photographs to persons at an added cost.

14. Natural color photographs of persons who contract with National Talent Associates, Inc. are not submitted annually, for a five-year period, to Monica Stuart of the William Schuller Agency, Inc. for her consideration and review.

15. National Talent Associates, Inc. does not photograph other persons in a family, in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

16. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is not derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc. Miss Stuart receives a monetary fee from National Talent

Associates, Inc. for each series of photographs she reviews prior to the signing of any contract with the William Schuller Agency, Inc.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents and their representatives have made oral representations for the purpose of inducing persons to enter into written contracts with them. Such oral representations are made on the telephone to persons responding to respondents' initial sales solicitation letter and in personal interviews conducted by respondents' salesmen and representatives in the homes of prospective purchasers. Through such oral statements and representations, made by respondents or their representatives, agents or salesmen, respondents have, directly or indirectly, stated or implied that:

1. Persons placed under contract by National Talent Associates, Inc. can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses or entertainers.

2. In a significant number of instances, money sufficient to provide for a college education has been earned by persons placed under contract by National Talent Associates, Inc.

3. The chances or opportunities of persons for selection by Monica Stuart of the William Schuller Agency, or of being placed under contract by said agency, are appreciably enhanced by their placement under a contract by National Talent Associates, Inc.

4. A person's chances for selection as a model, actor, actress or entertainer in the commercial advertising, modeling, talent or entertainment industries, are greatly enhanced because he or she is Black, Oriental, has red hair, freckles, or because of his or her size, age, or some other specific racial or personal characteristic.

5. Respondents have received confidential information about the person or persons being interviewed by representatives of National Talent Associates, Inc. which cannot be divulged.

6. Access to Monica Stuart or to the William Schuller Agency, Inc. can be obtained only by entering into a contract with National Talent Associates, Inc.

PAR. 8. In truth and in fact:

1. Persons placed under contract by National Talent Associates, Inc. cannot reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers. In the vast majority of instances, persons placed under contract by National Talent Associates, Inc. are thereafter rejected as unsuitable for employment as models, actors, actresses or entertainers of Monica

Stuart of the William Schuller Agency, and thus have no opportunity of earning any money.

2. In no significant number of instances has money sufficient to provide for a college education been earned by persons placed under contract by National Talent Associates, Inc. Few if any, persons discovered and placed under a contract by National Talent Associates, Inc. have earned money sufficient to provide for a college education.

3. The chances or opportunities of persons for selection by Monica Stuart of the William Schuller Agency, or of being placed under contract by said agency, are not appreciably enhanced by their placement under a contract by National Talent Associates, Inc. In the vast majority of instances, persons placed under a contract by National Talent Associates, Inc. are not offered a contract by either Monica Stuart or by the William Schuller Agency, Inc.

4. A person's chances for selection as a model, actor, actress or entertainer in the commercial advertising, modeling, talent or entertainment industries are not greatly enhanced because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or some other specific racial or personal characteristic. The importance of such racial or personal characteristics are exaggerated by representatives, agents or salesmen of National Talent Associates, Inc. in an effort to obtain the signatures of persons on its contract and collect the contract fee.

5. In the vast majority of instances, respondents have not received confidential information about the person or persons being interviewed by representatives of National Talent Associates, Inc. which cannot be divulged.

6. Access to Monica Stuart or to the William Schuller Agency, Inc. can be obtained, not only by entering into a contract with National Talent Associates, Inc. Such access is available to persons through other sources.

PAR. 9. In the further course and conduct of their business, as aforesaid, the representatives, agents or salesmen of National Talent Associates, Inc., during their sales solicitations at the homes of potential purchasers, have made and are now making numerous false, misleading and deceptive statements concerning the qualifications of persons being interviewed and their chances for success as models, actors, actresses or entertainers in the commercial advertising, modeling, talent or entertainment industries, in an effort to induce such persons to enter into contracts with National Talent Associates, Inc.

During the course of said solicitations, said representatives, agents or salesmen insist that persons being interviewed sign National Talent Associates' contract, set forth herein under Paragraph Four, at the

time of the solicitation and write a check in payment therefor, or else forfeit their opportunity for consideration and possible selection by Monica Stuart of the William Schuller Agency, Inc.

No time is permitted for thought, consideration, evaluation or discussion of said contract and, in numerous instances, persons signing said contract under such sales pressure have changed their minds immediately after the termination of said visit or on the following day. Respondents, in numerous such instances, have failed or refused to cancel the contract or refund the money.

Such sales techniques, based upon false, misleading, deceptive, unethical, oppressive and exploitative high pressure tactics, take advantage of the desire of persons to achieve personal and financial success, cause substantial injury to consumers and constituted, and now constitute, unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. In the further course and conduct of their business, respondents have failed to disclose to potential purchasers of their photographs or services the following material facts:

a) That any person may submit his or her photograph directly to Monica Stuart, or to any other consultant of the William Schuller Agency, Inc., without entering into any contract or agreement with National Talent Associates, Inc.

b) That, in addition to the agency fee of 10 percent of the client's earnings paid to the William Schuller Agency, Inc., as stated on National Talent Associates' standard contract form, set forth herein under Paragraph Four, Monica Stuart personally receives an additional monetary fee from National Talent Associate, Inc.

c) That the principals of National Talent Associates, Inc. own a financial interest in the photographic studios to which persons are routinely referred by respondents to have their photographs taken.

d) The recent number and percentage of persons under contract to National Talent Associates, Inc. who were able to obtain contracts with the William Schuller Agency, Inc. and paid employment in the commercial advertising, modeling, talent or entertainment industries.

e) The gross annual earnings from employment as a model, actor, actress or entertainer of all persons placed under the contract set forth in Paragraph Four by respondent National Talent Associates, Inc.

Knowledge of such facts would be of extreme importance to potential purchasers in their evaluation of the nature and value of the photographs or services offered by respondent National Talent Associates, Inc. under its contract. Thus, respondents have failed to disclose material facts, which if known to potential purchasers, would be likely to affect their consideration of whether or not to enter into a

contract to purchase said photographs or services. Therefore, the aforesaid acts and practices of respondents, as herein alleged were, and are, false, misleading, deceptive, unethical, oppressive and exploitative, cause substantial injury to consumers, and constituted and now constitute unfair or deceptive acts or practices in commerce in violation of the Federal Trade Commission Act.

PAR. 11. Respondents have cooperated and acted together in the false, misleading, deceptive or unfair acts or practices set forth under Paragraphs Four through Ten of this complaint. Such joint or concerted activities constitute a scheme designed to obtain the signatures of persons to a contract with National Talent Associates, Inc. for the mutual financial benefit of the respondents.

The use by respondents separately or collectively, whether directly or indirectly, or by permission or acquiescence, of the false, misleading, deceptive or unfair sales solicitation methods, both written and oral, and their failure to disclose relevant and material facts to potential purchasers of their photographs or services, has had, and now has the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such written and oral statements and representations were and are true and complete, and into the purchase of substantial quantities of respondents' photographs or services.

PAR. 12. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on Apr. 3, 1974, charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of negotiating a settlement by entry of a consent order; and

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

complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having thereupon placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter, now, in further conformity with the procedure prescribed in its rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent National Talent Associates, Inc. a New Jersey corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 280 Park Ave., Rutherford, N.J. It also maintains an office at 110 Jericho Turnpike, Floral Park, N.Y.

2. Respondent National Talent Associates, Inc., an Illinois corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3525 W. Peterson Ave., Chicago, Ill.

3. Respondent National Talent Associates, Inc., a California corporation, 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 1800 N. Highland Ave., Hollywood, Calif.

4. Respondents Sanford Storm and Jerome P. Ashfield are officers of the three National Talent Associates corporate respondents named above. They formulate, direct and control the policies, acts and practices of said corporations, and their address is 280 Park Ave., Rutherford, N.J.

5. Respondent William Schuller Agency, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 667 Madison Ave., New York, N.Y.

6. Respondent Monica Stuart is an officer of corporate respondent William Schuller Agency, Inc. She formulates, directs and controls the policies, acts and practices of said corporation and her address is the same as that of said corporation.

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

ORDER

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It is ordered, That National Talent Associates, Inc., New Jersey, Illinois, and California corporations, their successors and assigns, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, orally or in writing, that:

1. Respondents have received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of their products or services are a significant source from which the names of potential purchasers have been obtained.

3. Respondents have obtained the names of potential purchasers from a source which cannot be divulged.

4. Respondents, when requested, will provide persons with the source from which the information referred to in their solicitation letters, solicitation phone calls, or in any other means of solicitation was obtained and the nature of such information, unless respondents provide such information when requested.

5. National Talent Associates, Inc. has the expertise essential for the judging and selection of the most qualified persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. National Talent Associates' salesmen, agents or representatives have the expertise essential to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

7. Persons who prior to an in-person interview have been solicited by National Talent Associates, Inc. have been selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

8. The majority of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising, modeling, talent or entertainment agencies.

9. Persons are selected and offered contracts by National Talent Associates, Inc. only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

10. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc., or by any person or agency, will be aided, increased or enhanced, by entering into a contract with National Talent Associates, Inc.

11. Access to Monica Stuart or to the William Schuller Agency, Inc. is available only to persons who contract with National Talent Associates, Inc.

12. Monica Stuart or the William Schuller Agency, Inc. review photographs of only those persons who have contracted with National Talent Associates, Inc.

13. National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

14. Persons who contract with National Talent Associates, Inc. will receive annually one black and white, 8 x 10 inch, photograph of children in the family not under contract, for a five-year period, or for any period in excess of the period in which said photograph is received without any obligation to purchase additional photographs at an added cost.

15. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five-year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc., for her or their consideration and review, without disclosing that, unless the person comes back for rephotographing annually for a five-year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

16. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

17. The remuneration received by Monica Stuart of the William

Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

18. Persons placed under contract by National Talent Associates, Inc. can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses or entertainers.

19. Persons who contract with National Talent Associates, Inc. may reasonably anticipate earning sums of money sufficient to provide for a college education or for any other such formal education.

20. A person's chances for selection as a model, actor, actress or entertainer by the commercial advertising, modeling, talent or entertainment industries is, in any way, enhanced solely because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or any other specific racial or personal characteristics.

It is further ordered, That respondents shall disclose the following information, in writing, in a clear and conspicuous manner to each person who is a prospective purchaser of any of their products or services, prior to entering into any agreement for the furnishing of such products or services, including the photographing of, or assistance to, any such persons in seeking or obtaining employment opportunities as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

a. The number of persons who contracted with respondents for the purchase of photographs or services to be used in connection with the selection, placement or employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, within the two calendar years immediately preceding the year in which the prospective purchaser was contacted, the number and percentage of such persons who obtained paid employment through the auspices of respondents, as well as the number of paid jobs and agency contracts obtained by such persons.

b. The total number of persons placed under contract by respondents in each of the following categories of gross annual earnings, derived from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, during the two calendar years immediately preceding the year in which the prospective purchaser was contacted by respondents: Under \$100, \$100—\$250, \$250—\$500, \$500—\$1,000, \$1,000—\$2,000, \$2,000—\$4,000, \$4,000—\$6,000, \$6,000—\$8,000, \$8,000—\$10,000, \$10,000 and above.

c. Whether any financial agreement, arrangement or connection, exists between respondents and any photographic studio to which they may refer prospective purchasers of their photographs or services.

d. Whether any financial agreement, arrangement or connection, exists between respondents and any person, firm or agency to whom photographs, or any other information, concerning the prospective purchaser of their products or services may be sent by respondents.

e. The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents.

At the time when the foregoing disclosures are made, respondents shall furnish the prospective purchaser of any of their products or services with a retainable duplicate copy of the disclosure document, and secure from such prospective purchaser a signed acknowledgment of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be headed "*Important Information,*" and shall not contain information or representations other than those set forth above.

It is further ordered, That respondents maintain, for a five-year period following the execution thereof, the originals of the signed acknowledgments of receipt of the disclosures described in the preceding paragraphs and make them available for examination and copying, if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That, if any representations are made by the respondents, their salesmen, representatives or agents, either expressly or impliedly, orally or in writing, pertaining to any standards, qualifications or characteristics which a person must meet or possess before respondents will agree to place such a person under contract, photograph them or otherwise assist or render services to said person, respondents shall maintain complete and detailed records as to such persons who have failed to meet or possess such standards, qualifications or characteristics, including their names, addresses, date of rejection, and the reason or reasons for their rejection by respondents. Such records shall be made available for examination and copying if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That the respondents named in Part I of this order shall submit to respondents Monica Stuart and the William Schuller Agency, Inc., for their inspection and evaluation, copies of all written promotional or sales materials, including but not limited to sales solicitation letters, contract forms, brochures, flyers, and sales

presentation scripts. Said respondents will submit said materials to Monica Stuart and the William Schuller Agency, Inc., on a continuing basis whenever there is a change, revision or modification of any of the materials.

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

a. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language, *e.g.*, Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT

PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. (AMENDED NOV. 1, 1973).

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

I HEREBY CANCEL THIS TRANSACTION.

(DATE)

(BUYER'S SIGNATURE)

c. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

d. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this rule including sale in accordance with the provisions specifically his right to cancel the of this rule.

e. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

f. Misrepresenting in any manner the buyer's right to cancel.

g. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

h. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

i. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, That nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by Federal law or the law of the State in which the contract is made.

When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the State in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted in the premises.

II

It is ordered, That William Schuller Agency, Inc., a corporation, its successors and assigns, and Monica Stuart, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing to consumers, directly or indirectly, orally or in writing, that:

1. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc. or by any person or agency, will be aided, increased or enhanced by entering into a contract with National Talent Associates, Inc.
2. Access to Monica Stuart or to the William Schuller Agency, Inc. is available only to persons who contract with National Talent Associates, Inc.
3. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.
4. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.
5. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.
6. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five-year period, or for any period in excess of the period in which said photographs are

submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review without disclosing that, unless the person comes back for rephotographing annually for a five-year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall maintain complete and detailed records as to the number of persons whose photographs were submitted to them by any of the respondents set forth under Part I of the order herein, and the number of such persons who have failed to meet or possess the standards, qualifications or characteristics which a person must meet or possess before respondents herein will agree to place such a person under contract, or otherwise assist or render services to said person, including their names, place of residence, and month and year of rejection. Such records shall be made available for examination and copying if necessary by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall inspect and evaluate the written promotional and sales material submitted to them by respondents named in Part I of this order. Within 30 days of their receipt of said materials, respondents Monica Stuart and William Schuller Agency, Inc. shall notify said other respondents, in writing as to any comments, complaints they might have, or any corrections they might require, concerning any representations relating to them contained in the materials submitted. Monica Stuart and William Schuller Agency, Inc. shall simultaneously submit to the New York Regional Office a copy of such notification to the respondents named in Part I of this order.

It is further ordered, That respondents Monica Stuart and William Schuller Agency, Inc. shall notify the Federal Trade Commission, in writing, of any consumer complaints received by them concerning any of the respondents named in Part I of this order. Such notification shall be made to the New York Regional Office within 30 days after receipt of the consumer complaint. This provision shall apply only to those complaints about representations by or practices of the respondents named in Part I which relate to respondents Monica Stuart and William Schuller Agency, Inc.

III

For the purposes of the following provisions of this order, unless otherwise specified, the term "respondents" shall include each of the respondents named heretofore in this order.

It is further ordered, That respondents William Schuller Agency, Inc. and Monica Stuart shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future employees engaged in the sale of said respondents' products or services and shall secure from each such person a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered, That corporate respondents National Talent Associates, Inc. and individual respondents Sanford Storm and Jerome P. Ashfield shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future salesmen or other employees engaged in the sale of said respondents' products or services and shall secure from each such salesman or employee a signed statement acknowledging receipt of a copy of this order or the memorandum.

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

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

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

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

IN THE MATTER OF

BOISE CASCADE CORPORATION, ET AL.

Docket 8958. Order, Dec. 2, 1975

Denial of complaint counsel's application for review of administrative law judge's order requiring disclosure of certain interview reports to respondents as "Jencks statements."

Appearances

For the Commission: *Amy R. Richter, James C. Egan, Jr., John R. Hoagland and Robert W. Doyle, Jr.*

For the respondents: *Robert T. Johnson, Bell, Boyd, Lloyd, Haddah & Burns, Chicago, Ill., for Boise Cascade Corp. John K. Mallory, Jr., Cleary, Gottlieb, Steen & Hamilton, Wash., D.C., for Champion International Corp. Frank Brewer, Portland, Oreg., George J. Wade, Shearman & Sterling, New York City for Georgia-Pacific Corp. Edwin S. Rockefeller, Bierbower & Rockefeller, Wash., D.C. and Francis A. Kareken, Tacoma, Wash. for Weyerhaeuser Co. Norman J. Wiener, Miller, Anderson, Nash, Yerke & Wiener, Portland, Oreg., Edward T. Tait, Reed, Smith, Shaw & Mc Clay, Wash., D.C., and Hammond E. Chaffetz, Kirkland & Ellis, Chicago, Ill. for Willamette Industries, Inc.*

ORDER DENYING INTERLOCUTORY APPEAL

This matter is before us upon complaint counsel's application under Section 3.23(a)(1) of the rules of practice for review of an order by the administrative law judge which requires that certain interview reports be disclosed to respondents as "Jencks statements."

Complaint counsel do not argue on this appeal that the interview reports are not, in fact, "Jencks statements" but, instead, contend that the law judge made no finding that the materials to be disclosed were "substantially verbatim" accounts of oral statements made by prospective witnesses. See *L.G. Balfour Co.*, 69 F.T.C. 1118, 1123 (1966).

The Commission has ruled that respondents are "entitled to inspect * * * any written report or portions thereof which reflect in substantially verbatim form any oral statement given by the witness to [the] attorney or investigator but any summaries of such statements made by the attorney or investigator should not be produced." *Inter-State Builders, Inc.*, 69 F.T.C. 1152, 1165 (1966).¹ Variances such as "grammatical and syntactical changes, rearrangement into chronological order, or omissions or additions of information immaterial for impeachment purposes will not prevent a transcription from being substantially verbatim." *Id.* at 1156.

After reviewing the documents *in camera*, the administrative law judge ruled that "in most instances the interviewers were trying to report as accurately and as completely as possible the conversation with each prospective witness, even though inconsequential stylistic or punctuation changes may have been made in the actual transcription." The law judge further ruled that "minor sections" of some reports

¹ Production need only be made after the witness has testified on direct examination. In the present case, however, the parties have agreed that, if production is ordered, the reports are to be disclosed forthwith.

Complaint

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which contain analytical comment or the subjective impressions of the interviewer need not be produced. Memorandum and Order Respecting Jencks Statements, Nov. 12, 1975, p.2. We read this as a determination that the portions of the reports to be produced are "substantially verbatim." However, in the event that our interpretation of the law judge's order is incorrect, we would expect that he would modify the order to limit production to "substantially verbatim" transcriptions. Accordingly,

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

Chairman Engman, with Commissioner Nye joining, stated "Whatever verbal formula the Administrative Law Judge used in determining that interview reports should be turned over to opposing counsel is not of sufficient importance to warrant Commission review. I dissent insofar as the above order suggests we should review his ruling."

IN THE MATTER OF

CARGILL, INCORPORATED

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

Docket 9005. Complaint, Jan. 21, 1975—Order, Dec. 2, 1975

Order dismissing complaint issued against a Minneapolis, Minn., well-diversified, closely-held corporation challenging its acquisition of stock in Missouri Portland Cement Company Inc. Respondent divested its interest in Missouri Portland, Aug. 28, 1975.

Appearances

For the Commission: *Joseph S. Brownman, Theodore M. Jones, Jr.*
and *Laurence O. Masson.*

For the respondent: *Gordon Spivack, Lord, Day & Lord, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and the Clayton Act (15 U.S.C. §12, *et seq.*) and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cargill, Incorporated, a corporation, more particularly described and referred to herein as

respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) and Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I

DEFINITIONS

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

a. "Portland cement" includes Type I through V as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. The St. Louis marketing area consists of the counties of Franklin, Jefferson, St. Charles and St. Louis in the State of Missouri; and the counties of Madison, St. Clair, Clinton and Monroe in the State of Illinois.

c. The Kansas City marketing area consists of the counties of Cass, Clay, Jackson, Platte and Ray in the State of Missouri; and the counties of Johnson and Wyandotte in the State of Kansas.

d. The Memphis marketing area consists of the counties of Shelby and Tipton in the State of Tennessee; the county of Crittenden in the State of Arkansas; and the county of De Soto in the State of Mississippi.

e. The Omaha marketing area consists of the counties of Douglas and Sarpy in the State of Nebraska; and the county of Pottawattamie in the State of Iowa.

f. The Mississippi Valley area consists of those areas capable of being serviced by cement plants or distribution terminals located on the Mississippi River and its navigable tributaries.

II

CARGILL, INCORPORATED

PAR. 2. Respondent Cargill, Incorporated is a closely held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its home office and principal place of business located at the Cargill Building, Minneapolis, Minn.

PAR. 3. For the fiscal year ending May 31, 1973, respondent had net sales of approximately \$5.3 billion and a net income of approximately

\$107.8 million. Respondent's net worth as of May 31, 1973, was approximately \$352.4 million.

PAR. 4. Among other activities, respondent engages in grain trading, vegetable oil processing, animal feeds production, corn wet-milling, rock salt mining, copra and flax trading, chemical production, poultry processing, ore and metal trading, insurance underwriting; and the international trading of salt, flour and molasses.

PAR. 5. In 1932 respondent formed Cargo Carriers, Inc., a subsidiary corporation, to operate river barges and tow boats for the transportation of bulk commodities on inland waterways. At the present time Cargo Carriers, Inc., owns and operates numerous barges capable of transporting bulk commodities on inland waterways. Respondent also owns several ocean-going ships capable of transporting bulk commodities across sea trading routes. With little or no modification to existing vessels, respondent's barges and ocean-going ships are capable of being used to transport portland cement and materials necessary for the manufacture of portland cement.

PAR. 6. In carrying out its grain trading business, respondent owns and/or operates an extensive network of grain elevators throughout the United States. Many of respondent's elevators are located adjacent to navigable inland waterways, thereby providing respondent with the capability of receiving bulk goods and commodities from barges and loading bulk goods and commodities onto barges for shipment through inland waterways. With some modification to existing facilities, respondent's grain elevators are capable of serving as storage and/or sales points for portland cement.

PAR. 7. At all times relevant herein, respondent has been a corporation engaged in the purchase or sale of products in interstate commerce and is engaged in substantial "commerce" as that term is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

III

MISSOURI PORTLAND CEMENT COMPANY, INC.

PAR. 8. The Missouri Portland Cement Company (hereinafter referred to as "Missouri Portland") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located in St. Louis, Mo.

PAR. 9. Missouri Portland is now and for many years has been engaged in the production and sale of portland cement. For the year ending Dec. 31, 1973, Missouri Portland's total sales were approximate-

ly \$51,000,000 of which sales of portland cement were approximately \$44,000,000. As of Dec. 31, 1973, the book value of Missouri Portland's stock was approximately \$45,532,611; and total assets were approximately \$64,521,272. Missouri Portland presently has over 1,450,000 shares of outstanding common stock, traded on the New York Stock Exchange.

PAR. 10. Missouri Portland produces portland cement at each of three plants located in Independence, Mo.; St. Louis, Mo. and Joppa, Ill. The company distributes and sells portland cement from eight warehouse terminal points located in Memphis, Tenn.; Decatur, Ala.; Nashville, Tenn.; Owensboro, Ky.; Louisville, Ky.; Omaha, Neb.; Peoria, Ill. and Chicago, Ill. Each of the eight warehouse terminals is located at a navigable river in order that cement may be shipped in bulk form by barge carrier. The portland cement is stored at each of the warehouse terminals in silos, or storage elevators, for future delivery to customers in these and other areas.

PAR. 11. The production and sale of portland cement in the metropolitan marketing areas of St. Louis, Kansas City, Memphis and Omaha is highly concentrated, and Missouri Portland enjoys a substantial or dominant share of portland cement sales in each of these areas.

PAR. 12. At all times relevant herein, Missouri Portland has been engaged in the purchase or sale of products in interstate commerce and is engaged in substantial "commerce" and the Federal Trade Commission Act, as amended.

IV

THE ACQUISITION

PAR. 13. On or about Dec. 19, 1973, respondent filed an "Invitation for Tenders" with the U.S. Securities and Exchange Commission and publicly advertised its offer to buy all of the outstanding shares of Missouri Portland common stock at a price of \$30 per share. At the time, Missouri Portland stock was selling for approximately \$24 per share on the New York Stock Exchange.

PAR. 14. The cash required of respondent to purchase all of the outstanding common stock of Missouri Portland is estimated to be about \$43,500,000. As of approximately Apr. 30, 1974, respondent had acquired about 18 percent of the outstanding common stock of Missouri Portland.

NATURE OF TRADE AND COMMERCE

PAR. 15. Portland cement is a material which in the presence of water binds "coarse aggregate," such as crushed stone or gravel, and "fine aggregate," such as sand, into concrete, Portland cement is essential for the manufacture of ready mix concrete, prestressed concrete products and concrete block.

PAR. 16. The portland cement industry in the United States overall is substantial. In 1972, approximately 50 companies operating 170 plants shipped approximately 83 million tons to consumers. This cement is valued at approximately \$1.6 billion.

PAR. 17. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building materials dealers. Approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete, although in heavily populated areas, the percentage is often higher.

PAR. 18. In a substantial number of significant marketing areas, the production and sale of portland cement is highly concentrated. In the St. Louis, Kansas City, Memphis, and Omaha areas, in each of which Missouri Portland does business, the four largest firms account for approximately 80 percent or more of portland cement sales.

PAR. 19. More than 50 percent of the portland cement industry's plant capacity is owned by multi-plant companies, and the 10 largest producers of portland cement account for approximately 50 percent of the total cement production in the United States.

PAR. 20. Since 1950, approximately 34 portland cement manufacturing companies have been acquired. These acquisitions involved approximately 45 individual portland cement plants with a total capacity of nearly 100 million barrels, or approximately 20 million tons. This amount equalled 30 percent of the total industry capacity in 1950 and 20 percent of the total industry capacity by 1965. The various acquisitions have caused the number of portland cement companies in the U.S. to decline, thereby contributing to increased concentration. Since 1950, the 20 largest portland cement companies' share of portland cement manufacturing capacity in the United States increased from approximately 73 percent to 83 percent.

VI

EFFECTS OF THE ACQUISITION

PAR. 21. The effect of respondent's acquisition of a substantial amount of the stock of Missouri Portland, may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement in the St. Louis, Kansas City, Memphis and Omaha areas; in the Mississippi Valley area, and in the Nation as a whole, for each of the following reasons, among others:

a. Respondent will have been eliminated as a substantial potential entrant in the business of the manufacture, sale and distribution of portland cement.

b. The entry of any other potential competitors in the business of the manufacture, sale and distribution of portland cement will or may be prevented, delayed or inhibited.

PAR. 22. The acquisition by respondent corporation of Missouri Portland stock constitutes 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).

ORDER GRANTING MOTION TO DISMISS COMPLAINT

This matter is before us upon the administrative law judge's certification of respondent's motion to dismiss the complaint in view of respondent's divestiture of its interest in the Missouri Portland Cement Company, Inc. (Missouri Portland), on Aug. 28, 1975.

Upon consideration of the matter, the Commission has determined that further proceedings challenging respondent's acquisition of stock in Missouri Portland would not be in the public interest. Accordingly,

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

Commissioner Dixon not participating, and Commissioner Hanford dissenting.

IN THE MATTER OF

UNION CARBIDE CORPORATION

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

Docket C-2557. Decision, Oct. 4, 1974—Modifying Order, Dec. 2, 1975

Order modifying an earlier order dated Oct. 4, 1974, 84 F.T.C. 591, 40 F.R. 6477, by

Modifying Order

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eliminating order Paragraphs I.B., II.B., II.C., VII, VIII, IX, and XIII, and including a proviso that primarily institutional advertising will not require the "STOP" clause. This is to provide for a uniformity of treatment among competitors against whom the F.T.C. proceeded simultaneously issuing complaints involving the same practices. The modified order affords respondent the benefits of the terms of the consent order afforded to FMC Corporation in Docket 8961, 86 F.T.C. 897, 40 F.R. 53552, but which leaves intact those provisions which are peculiar to the facts of the Union Carbide complaint.

Appearances

For the Commission: *Joan Z. Bernstein.*

For the respondent: *Kirkland, Ellis & Rowe, Wash., D.C.* and *Richard H. Gregory, Jr., New York City.*

ORDER REOPENING AND MODIFYING CEASE AND DESIST
ORDER

Upon consideration of respondent's petition to reopen and modify the cease and desist order entered by consent against respondent in this matter on Oct. 4, 1974 [84 F.T.C. 591], to afford respondent the benefits of the terms of the consent order afforded to FMC Corporation in Dkt. 8961 [86 F.T.C. 897], and the Acting Director of the Bureau of Consumer Protection having recommended that the requested modifications be granted, and the Commission having concluded on the basis of the foregoing that the petition should be granted.

It is ordered, That this matter be reopened and the following modified final order be substituted and issued in lieu of the order entered herein on Oct. 4, 1974:

MODIFIED FINAL ORDER

I

It is ordered, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of any insecticide product with precautionary labeling which contains any active insecticidal ingredient(s) presently marketed by respondent or currently being field tested by respondent and which is intended for use by custom applicators and commercial growers to protect animals or food, forage, field or fiber crops by virtue of the capacity of its active ingredient(s) to kill insects (sometimes referred to hereinafter as "such products"), do forthwith cease and desist from:

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A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely or unqualifiedly safe, nontoxic or free of hazard for any use registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (hereinafter FIFRA) or any other approved use based upon evidence filed in connection with registration under FIFRA.

II

With respect to representations not covered by the provisions of Section I of this order; *It is ordered*, That Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products, do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely safe, nontoxic or free of hazard to human beings, warmblooded animals, birds, fish, beneficial insects, or the environment.

III

It is further ordered, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from making any representations, directly or by implication, or omitting any representations, by print or broadcast advertising or by other promotional material, which contradict, are inconsistent with, or detract from the effectiveness of any warning, caution or direction for use required to be set forth on the label of such product. *Provided*, That if any representations, directly or by implication, made by respondent, or the omission of representations by respondent, are in accord with the provisions of sections I, II and IV of this order, they shall be considered as being in compliance with this section of the order.

IV

It is further ordered, That respondent, Union Carbide Corporation, a corporation, its successors and assigns and respondent's officers,

representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes in such print advertising or print promotional material the following statement:

STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

B. Any broadcast advertisement more than 30 seconds in length which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

C. Any broadcast advertisement of 30 seconds or less in length which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.

Provided, That in television advertisements not more than 10 seconds in length which contain no direct representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

V

Nothing in this order shall be construed to apply to scientific articles published in recognized scientific or agricultural journals or government publications, or reprints thereof, or representations (other than print advertising or other promotional material) before public or governmental forums such as public hearings, scientific meetings, or to governmental agencies, agents, or employees responsible for the regulation or dissemination of information concerning insecticide products covered by this order.

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VI

It is further ordered, That nothing in this order shall prohibit the dissemination of product labels (as defined by Section 2(p)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended), or reproductions thereof.

VII

It is further ordered, That should the Federal Trade Commission promulgate a trade regulation rule or industry guide governing the advertising or promotion of products subject to this order, then any pertinent less comprehensive or less restrictive provisions of such rule or guide shall automatically replace any comparable provisions set forth herein which are effective on the date that such rule or guide becomes effective.

VIII

It is further ordered, That the respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, advertising, promotion or distribution of products subject to this order, and to all present and future employees of respondent responsible for the advertising, promotion, distribution or sale of such products.

IX

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

X

It is further ordered, That the compliance report heretofore filed by respondent shall be considered by the Commission as if it had been filed under this order.

XI

It is further ordered, That this order shall become effective upon service.

Modifying Order

86 F.T.C.

IN THE MATTER OF

HERCULES INCORPORATED

MODIFIED ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2558. Decision, Oct. 4, 1974—Modifying Order, Dec. 2, 1975*

Order modifying an earlier order dated Oct. 4, 1974, 40 F.R. 3974, 84 F.T.C. 605, by eliminating order Paragraphs I.B., I.C., II.B., II.C. and III and including two provisos: (1) that simple efficacy claims will not be considered absolute safety claims under Paragraph I.A., and (2) that primarily institutional advertising will not require the "STOP" clause. This is to provide for a uniformity of treatment among competitors against whom the F.T.C. proceeded simultaneously issuing complaints involving the same practices. The modified order affords respondent the benefits of the terms of the consent order afforded to FMC Corporation in Docket No. 8961, 40 F.R. 53552, 86 F.T.C. 897, but leaves intact those provisions which are peculiar to the facts of the Hercules complaint.

*Appearances*For the Commission: *Joan Z. Bernstein.*For the respondent: *Charles S. Maddock, Wilmington, Del., Burton Caine, Wolff, Block, Schorr & Solis-Cohen, Philadelphia, Pa.*ORDER REOPENING AND MODIFYING CEASE AND DESIST
ORDER

Upon consideration of respondent's petition to reopen and modify the cease and desist order entered by consent against respondent in this matter on Oct. 4, 1974 [84 F.T.C. 605], to afford respondent the benefits of the terms of the consent order afforded to FMC Corporation in Dkt. 8961 [86 F.T.C. 897], but leaving intact those provisions which are peculiar to the facts of the Hercules complaint, and the Acting Director of the Bureau of Consumer Protection having recommended that the requested modifications be granted, and the Commission having concluded on the basis of the foregoing that the petition should be granted,

It is ordered, That this matter be reopened and the following modified final order be substituted and issued in lieu of the order entered herein on Oct. 4, 1974:

MODIFIED FINAL ORDER

I

It is ordered, That respondent, Hercules Incorporated, a corporation,

its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or distribution of any insecticide product with precautionary labeling which contains any active insecticidal ingredient(s) presently marketed by respondent or currently being field tested by respondent and which is intended for use by custom applicators and commercial growers to protect animals or food, forage, field or fiber crops by virtue of the capacity of its active ingredient(s) to kill insects (sometimes referred to hereinafter as "such products"), do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely or unqualifiedly safe, nontoxic or free of hazard for any use registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (hereinafter FIFRA) or any other approved use based upon evidence filed in connection with registration under FIFRA.

Provided however, That for purposes of enforcing Paragraph I.A. of this order any advertisement, statement, claim or representation that such products may be employed for a crop or plant use registered under FIFRA or any other approved use based upon evidence filed in connection with registration under FIFRA shall not be deemed a violation of this order; *Provided, further*, That this exception shall be effective only until such time as a trade regulation rule covering the advertising and promotion of such products subject to this order and containing terms at least as onerous as Paragraph I.A. of this order becomes final and effective.

II

With respect to representations not covered by the provisions of Section I. of this order; *It is ordered*, That Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products, do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely safe, nontoxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment.

B. Representing, directly or by implication, by print or broadcast

advertising or by other promotional material, that Toxaphene insecticide, or any product containing Toxaphene insecticide:

(1) is "soft;" or

(2) is "nonpersistent," "nonmobile" and/or will "not magnify biologically;" *Provided, however,* That the use of such terms shall not be prohibited if:

(a) accompanied by statements, which clearly and conspicuously and in close conjunction with such terms, fully and accurately explain such terms and the specific context within which such terms are used, and that context reflects normal circumstances or conditions in which the product could be expected to be used; and

(b) accompanied by statements which set forth all relevant and material adverse effects on the environment known to result from the uses of such product which are suggested claims for the product; and

(c) statements concerning such terms are substantiated by competent scientific tests or other objective material which provide a reasonable basis for the representations made, and the substantiation materials are either (i) available for public inspection, or (ii) otherwise available to the Federal Trade Commission to determine compliance with this order; and

(d) statements concerning such terms include no conclusory representations, either directly or indirectly or by implication, suggesting that the product is unqualifiedly safe, nontoxic or free of hazard.

III

It is further ordered, That respondent, Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes in such print advertisement or print promotional material the following statement:

STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

B. Any broadcast advertisement more than 30 seconds in length which contains for any such products any use or efficacy claim or any

environmental or safety claim unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED.
READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

C. Any broadcast advertisement not more than 30 seconds in length which contains for any such products any use or efficacy claim or any environmental or safety claim unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.

Provided, That in television advertisements not more than 10 seconds in length for any such products which contain no direct representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

Provided however, That for purposes of enforcing Paragraph III of this order any advertisement, statement, claim or representation that such products may be employed for a crop or plant use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA shall not be deemed sufficient to require the disclosure of any statement otherwise required under the provisions of Paragraph III; *Provided further*, That this exception shall be limited to advertisements which promote the respondent's corporate image and which only incidentally promote the sale or distribution of such products.

IV

It is further ordered, That the provisions of this order shall apply to all advertising (or advertising claims) prepared by respondent, whether or not such advertising is placed or paid for by respondent alone, or by respondent in conjunction with another under a cooperative advertising plan, or otherwise; *Provided, however*, That Sections I, II, and III of this order shall not apply to any advertising prepared by the customers of respondent, whether or not respondent makes payment in whole or in part for such advertising under any cooperative advertising plan, or otherwise. Nothing in this Section IV shall be construed to extend any provision of this order beyond the specific terms thereof.

Respondent shall, *nevertheless*, condition all future payments to customers of insecticide products covered by this order, made in connection with any cooperative advertising plan in which respondent participates, upon said customer's certification to respondent that they have complied with the standards set forth in Section III of this order.

Modifying Order

86 F.T.C.

V

Nothing in this order shall be construed to apply to scientific articles published in recognized scientific or agricultural journals or government publications, or reprints thereof, or representations (other than print advertising or other promotional material) before public or governmental forums such as public hearings, scientific meetings, or to governmental agencies, agents, or employees responsible for the regulation, testing, or dissemination of information concerning pesticide products covered by this order.

VI

It is further ordered, That nothing in this order shall prohibit the dissemination of product labels (as defined by Section 2(p)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended), or reproductions thereof.

VII

It is further ordered, That should the Federal Trade Commission promulgate a trade regulation rule or industry guide governing the advertising or promotion of products subject to this order, then any pertinent less comprehensive or less restrictive provisions of such rule or guide shall automatically replace any comparable provisions set forth herein which are effective on the date that such rule or guide becomes final and effective.

VIII

It is further ordered, That the respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, advertising, promotion or distribution of products subject to this order, and to all present and future employees of respondent responsible for the advertising, promotion, distribution or sale of such products, and to all parties participating in respondent's cooperative advertising programs for such products; *Provided however,* That distribution by respondent of the order issued in this matter on Oct. 4, 1974 shall be considered as if such distribution had been made under this Section VIII and respondent shall not be required to make distribution of this order to persons to whom such previous order has been distributed.

IX

It is further ordered, That the respondent notify the Commission at

least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of this order.

X

It is further ordered, That the compliance report heretofore filed by respondent shall be considered by the Commission as if it had been filed under this order.

XI

It is further ordered, That this order shall become effective upon service.

IN THE MATTER OF

BRITISH OXYGEN COMPANY LIMITED, ET AL.

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

Docket 8955. Complaint, Feb. 26, 1974—Final Order, Dec. 8, 1975

Order requiring a London, England, manufacturer of industrial gases, among other things to divest itself of all the stocks and assets of Airco, Inc., a Montvale, N.J., producer of industrial gases and medical products, within one (1) year of the issuance of the order. Respondent is further prohibited from acquiring any corporate stocks or assets in any field related to production of industrial gases or medical products for a period of 10 years without prior F.T.C. approval. British Oxygen and Airco, Inc. must also cease any representation on each other's respective boards of directors.

COMPLAINT

The Federal Trade Commission, having reason to believe that British Oxygen Company Ltd. (hereinafter "BOC"), BOC Financial Corporation (hereinafter "BOC Financial"), BOC Holdings Ltd. (hereinafter "BOC Holdings"), and British Oxygen Investments Ltd. (hereinafter "BO Investments"), respondents herein, have violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. §18), and that the above named respondents and Airco, Inc. (hereinafter "Airco"), respondent herein, have further violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), through the