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REPORT

U.S. FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

Annual  
Report  
of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1985

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LETTER OF TRANSMITTAL

May 8, 1987

The Honorable George Bush  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Jim Wright  
The Speaker of the House of Representatives  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-first Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1985.

By direction of the Commission.

DANIEL OLIVER  
Chairman

FEDERAL TRADE COMMISSION  
1985 ANNUAL REPORT

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## SUMMARY

The Commission's major focus in Fiscal Year 1985 was on its efforts to be efficient and effective in promoting the welfare of consumers. Continuing initiatives included employing careful case selection, integrating economic expertise into enforcement proceedings, and educating consumers and business. Efforts in pursuing these goals and fulfilling statutory responsibilities included:

### TARGETING ENFORCEMENT INITIATIVES

The Commission continued its strategy of focusing on remedies for specific market failures, rather than pursuing broad regulatory proceedings. Antitrust resources were devoted to merger evaluation and enforcement initiatives involving anticompetitive business conduct such as agreements by competitors to fix prices, restrict output, divide markets, or limit entry. Consumer protection resources were directed toward the areas of deceptive practices, and investment fraud. In addition to its administrative complaints, consent agreements, and civil penalty actions, the Commission obtained injunctions to prohibit illegal conduct and also approved six consumer redress orders totaling more than seven and a half million dollars.

### INTEGRATION OF ECONOMIC CONSIDERATIONS

A careful process of case selection was employed, using early consideration of economic issues in the Commission's law enforcement program. The integration of economic analysis into antitrust and consumer protection enforcement efforts allowed the Commission to focus on the injury resulting from different practices and to weigh whether its initiatives resulted in a net benefit to consumers.

### MANAGING RULEMAKING INITIATIVES

The FTC also continued to use its resources in its rulemaking proceedings carefully. This involved analysis of whether individual cases or industry-wide enforcement were the most appropriate remedies for conduct harmful to consumers. During the year the Commission gave final approval to the Used Car Rule. Other proceedings, such as the Hearing Aid Rule, were terminated because they lacked legal basis or the practices were not prevalent.

### WORKING WITH CONSUMERS AND BUSINESS

The Commission continued to meet and work with consumer and business groups to educate them on their rights and responsibilities. One example was a campaign to implement the Used Car Rule by informing business groups about its provisions and assisting to ensure compliance as the Rule became effective. Similarly, three new consumer publications were prepared and circulated through joint efforts with associations and business groups. These efforts, and other similar ones, resulted in approximately one million consumer and business publications being distributed during Fiscal Year 1985.

### ADVOCATING CONSUMER INTERESTS BEFORE OTHER BODIES

The Commission has continued its program to advocate consumer welfare considerations to the Congress, in the courts, and before a variety of federal, state, and local government bodies. Each of the Commission's three bureaus made its expertise in different areas available in efforts to identify and analyze critical antitrust and consumer protection issues and provide appropriate comments.

### IMPROVING MANAGEMENT

The Commission expended approximately 1,201 workyears and \$65.7 million (the appropriated amount) in Fiscal Year 1985. This level of resources required careful planning and control to ensure that mission objectives were met with available funds.

Central administrative and management functions were streamlined to provide more efficient service with lower resources. Emphasis was on the elimination of redundant or unnecessary procedures and increased operating efficiencies through capital improvements and organizational changes. Additional efforts were made to ensure close coordination between Headquarters and Regional Offices and to strengthen economic input in Regional Office enforcement efforts.

### MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is charged with preventing unfair methods of competition and promoting competition. Activities are grouped into ten program areas: mergers; energy and natural resources; health care; transportation; horizontal restraints; compliance; international antitrust; market power; distributional restraints; and food. In addition, the Mission has evaluation and planning and development units.

## MERGERS

During fiscal year 1985, 1604 transactions were filed with the Commission pursuant to the Hart-Scott-Rodino Premerger Notification Program, an increase of approximately 20 percent over fiscal year 1984. The Commission issued requests for additional information relating to 32 of those transactions. The Commission has the authority to seek to enjoin mergers preliminarily under Section 13(b) of the FTC Act when the Commission deems such action appropriate to prevent violations of the antitrust laws. In fiscal year 1985, the Commission obtained an injunction against the proposed acquisition of PolyGram Records Inc. by Warner Communications Inc. and authorized Commission staff to seek injunction actions in three other matters: the proposed acquisition by N.L. Industries, Inc. of the titanium dioxide assets of American Cyanamid Company; Baker International's proposed acquisition of the underground mining equipment assets of PACCAR Inc.; and SmithKline Corporation's proposed acquisition of American Optical Corporation. In each instance, the parties subsequently withdrew from the proposed transactions. The Commission allowed Allied Corporation's proposed acquisition of King Radio Corporation to proceed unchallenged after Allied consented to an order requiring it to divest certain weather radar assets. The Commission issued an administrative complaint challenging Olin Corporation's acquisition of certain swimming pool chemical manufacturing assets from FMC Corporation and entered into an agreement with Olin that requires that during litigation the acquired assets be maintained in a condition that will allow them to be divested. The Commission accepted for public comment a consent agreement requiring Columbian Enterprises, Inc., a carbon black producer, to obtain prior Commission approval before making significant acquisitions in the carbon black industry. In addition, the Commission dismissed its challenge to Weyerhaeuser Company's acquisition of Menasha Corporation's corrugating-medium mill, affirming the Administrative Law Judge's earlier dismissal of the complaint. Litigation also continued in other matters.

The Commission published several proposed amendments to the premerger notification rules in the Federal Register for the purpose of receiving public comments. Certain of the amendments are designed to reduce the reporting burden by narrowing the types of acquisitions that must be reported through the notification process, reducing the documentation and information that must accompany notification, and clarifying the meaning of the notification rule. In addition, the amendments would add a new rule to cover a form of transaction that has become increasingly prevalent, namely, acquisitions made indirectly through entities formed for that purpose, and would eliminate a little-used exemption pertaining to acquisitions subject to a Commission or court order requiring prior approval.

## ENERGY AND NATURAL RESOURCES

The Commission continued its active involvement in maintaining competition in both petroleum and non-petroleum energy industries. During this fiscal year, several investigations were initiated or continued. In addition, the Commission authorized the Bureaus of Competition and Economics to respond to a number of Congressional requests for analysis and advice on energy competition issues.

The Commission also reviewed several significant proposed energy acquisitions under its statutory responsibilities pursuant to the Hart-Scott-Rodino amendments to the Clayton Antitrust Act, 15 U.S.C. 18A. In one of these investigations, InterNorth/Houston Natural Gas, alleged likely anticompetitive effects in certain natural gas pipeline markets led to a Commission consent order requiring divestiture of certain assets. In another, MidCon/United Resources, allegations of overlaps in two separate gas pipeline markets led to a Commission administrative complaint alleging a violation of Section 7. One of the counts of the complaint was removed from adjudication for entry of a consent order for divestiture of gas pipeline assets. The remaining portion of the complaint has been assigned to an Administrative Law Judge for trial. In addition, the Texaco/Getty and Chevron/Gulf divestitures, were completed within the deadlines imposed by the Commission.

The Commission continued its program of examining the regulatory activities of other federal and state agencies in energy markets, and examining proposed federal and state legislation in such markets. The Commission offered competitive impact advice when requested, and intervened in regulatory proceedings, when it believed necessary or appropriate, to advocate market solutions as superior to command and control regulatory activities.

Finally, the Commission continued to discharge its responsibilities under the Energy Policy and Conservation Act with regard to the International Energy Program by monitoring industry meetings, providing antitrust advice to other agencies of the United States Government, and preparing and issuing reports on the competitive impact of the International Energy Program to the President and Congress. The Commission also continued to fulfill its obligations under the Deep Seabed Hard Mineral Resources Act, the National Energy Conservation Policy Act and the Power Plant and Industrial Fuel Use Act. The Commission also conducted several investigations of alleged predatory and other anticompetitive behavior in various resource industries and examined competitive issues involving utility participation in non-regulated markets. In an investigation of the lithium industry, one of the two firms involved has agreed to enter into a consent decree. The Commission completed a major investigation of a merger of two gas and electric utilities with overlapping service areas.

## HEALTH CARE

During fiscal year 1985 the Commission continued its efforts to promote competition in the health care sector of our economy. The Commission issued a complaint charging a conspiracy by competing physicians to extract higher prices from third-party payors by threatening to, and actually, jointly boycotting the plans. The Commission also issued several consent orders settling charges of anticompetitive activity. The Commission entered a final consent order against a state optometric association, requiring it to cease restricting certain forms of commercial practices by optometrists such as affiliating with franchise eye wear retail centers. The Commission issued a final consent order preventing a hospital's staff from threatening to boycott the hospital to prevent its operation of an urgent care center. It also entered a final consent order requiring divestitures to remedy the alleged anticompetitive effects of an acquisition of hospitals in Texas and Virginia. The Commission and its staff also have pursued ongoing investigations involving allegations of boycotts, restraints on truthful advertising by health care professionals, anticompetitive mergers, and other anticompetitive conduct.

In addition to traditional law enforcement activity, the Commission has provided advice and informal guidance to health care professionals seeking to ensure that their proposed activities, including new forms of health care marketing and delivery and dispute resolution services, conform to requirements of the antitrust laws. The Commission also filed an amicus brief in the Seventh Circuit urging the court not to apply the state action exemption to anticompetitive conduct that occurs in connection with hospital privilege decisions.

## TRANSPORTATION

During fiscal year 1985, the Commission made substantial progress on a program aimed at eliminating suspected anticompetitive municipal regulation of taxicabs unauthorized by state law through litigation and advocacy. A complaint issued against the City of Minneapolis was withdrawn after the City revised its ordinance to permit more competition, and one against New Orleans was withdrawn after the state authorized the conduct by a new law. Staff testimony advocating more procompetitive regulation was given in Colorado, Anchorage, Alaska, Seattle, Washington, and the District of Columbia in response to invitations. Numerous requests for the Commission's economic report on taxicabs show that the program is having a more subtle influence as well. In response to the Supreme Court's Southern Motor Carriers decision, the First Circuit remanded the Massachusetts Movers decision to the Commission for further findings. In addition, for similar reasons some pending motor carrier rate bureau matters

were withdrawn. Adjudication of others continued. The Commission issued a complaint against U-Haul involving sham litigation allegations.

#### HORIZONTAL RESTRAINTS

During fiscal year 1985, the Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially among professionals. The Commission has focused its efforts on state boards" and private professional and trade associations" regulations that may have the purpose, or the effect, of fixing or stabilizing prices or reducing output, or causing substantial injury to consumers. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means: intervention, advocacy, cooperative efforts resulting in voluntary compliance, consent orders, and litigation. This year, the Commission has issued administrative complaints against trade associations or other groups of competitors in three cases: National Decorating Products Association involved allegations that NDPA and certain of its local affiliates conspired to restrain competition in the sale of wallpaper and other "wall coverings"; Ticor Insurance involved several title insurance companies" alleged conspiracies to fix prices on title search and examination services; Detroit Motor Vehicle Dealers. involved allegations that competing motor vehicle dealers in Detroit conspired to close their businesses during certain week nights and weekends.

The Commission also completed litigation in several other alleged horizontal restraint cases initiated in the previous fiscal year. The Commission accepted consent agreements in five cases: National Association of Temporary Services, involved rules restricting members from soliciting competitors' employees or customers and from sending employees to the site of a labor dispute; National Customs Brokers and Forwarders Association, involved rules restricting its members from making autonomous pricing decisions; Orange County Board of Realtors and Multiple Listing Service of the Greater Michigan Area Inc., involved restrictions on the publishing of members" exclusive agency listings; and Decorating Products Association of Central Florida, a case involving alleged horizontal restraints in the wall covering industry. Additionally, without resort to litigation or order, the Commission acted to eliminate a number of other restrictions on commercial activities of state-licensed professionals through cooperation with state boards and state attorneys general.

#### INTERNATIONAL ANTITRUST

During fiscal year 1985, the international antitrust program was active in a total of 25 full phase and initial phase investigations involving such matters as: possible horizontal price fixing in imported motorcycle batteries,

imported sausage casing, fine art, wallcoverings, and imported radial tires; possible attempted monopolization of the markets for potassium permanganate, indomethacin, and melamine; and potential anticompetitive restraints resulting from transnational joint ventures involving gas and electric ranges, and polycrystal silicon (for computer integrated circuits).

Through a total of 17 projects, the international program has been active in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues impacting upon the domestic economy. For example, the Commission intervened in several trade law proceedings and provided legal and economic analysis that sought to identify and quantify the economic costs to consumers and the national economy of remedies requested. Through its international liaison activities, the Commission's staff maintained full compliance with the notification provisions of bilateral and multilateral, international antitrust cooperation agreements and understandings with foreign nations, which serve to minimize international law and policy conflicts, as well as to facilitate United States' antitrust law enforcement efforts involving international commercial transactions and/or the acquisition of evidence located abroad. The total number of international notifications and cooperative contacts and requests for assistance with foreign antitrust officials continued to increase in fiscal 1985. For example, during fiscal year 1985, the International Division had 144 such bilateral exchanges with foreign governments regarding antitrust investigations and proceedings that might affect foreign sovereign interests. In addition, the Commission, in cooperation with DOJ and the State Department, continued its participation on the OECD Committee of Experts on Restrictive Trade Practices, the Council on Foreign Investment in the United States (CFIUS), and, at the request of the United States Trade Representative, the interagency MOSS initiative.

## MARKET POWER

The Commission's staff continued to receive complaints alleging the abuse of market power by various public utilities. During the year, a large amount of resources were committed to studying alleged problems in the industry and to in-depth reviews of selected companies. The staff is currently completing analysis of the facts developed during the course of these reviews.

During fiscal year 1985, the staffs of the Bureaus of Competition, Consumer Protection, and Economics filed comments with the Federal Communications Commission to encourage it to permit more competition for granting of Intelsat satellite communication slots.

## DISTRIBUTIONAL RESTRAINTS

The Commission's decision in *Boise Cascade Corp.*, involving the alleged receipt of discriminatory prices by a distributor of office supplies, is pending. The Commission continued a number of investigations involving possible distributional restraints.

## FOOD

During fiscal year 1985, the Commission concluded the first stage of its retail pricing survey, including investigational hearings in five major cities across the United States. The study focuses upon the impact of new store formats on price competition in the retail grocery industry. The Commission is now evaluating the results of the investigational hearings and supplemental industry data. In addition, several investigations of possible anticompetitive acquisitions in the manufacturing and processing segments of the industry were initiated.

The Commission also continued to monitor practices by retailers that may inhibit the free flow of comparative price information to consumers, practices which have resulted in the Commission issuing complaints in the past. The Commission continued to investigate acquisitions in the soft drink industry for possible anticompetitive effects. The Commission also initiated several investigations of alleged anticompetitive practices, including abuse of governmental process designed to injure competition and collusion among competitors. The program also completed a number of other investigations that did not disclose sufficient evidence of law violations.

## EVALUATION, PLANNING AND DEVELOPMENT

During fiscal year 1985, this program included several innovative projects. The Commission consistently filed several amicus briefs in an expanded program designed to encourage and foster competition wherever the Commission's expertise might be persuasive. Briefs were filed in federal district courts and in the Supreme Court.

Work also continued on a variety of ongoing responsibilities, including evaluation of current Bureau investigations, management of the Bureau's efforts in competition advocacy, providing guidance to the public regarding Commission policies, research and analysis of significant antitrust issues, and providing management information on Maintaining Competition Mission activities.

## COMPLIANCE

During fiscal year 1985, the Commission instituted civil penalties litigation in two instances: against American Hospital Supply Corp. for making



numerous acquisitions in the urinary catheter market without prior Commission approval, and against Bell Resources Ltd. and Weeks Petroleum Ltd. for acquiring stock in Asarco Inc. without filing the premerger notification and observing the statutory waiting period required by Section 7A of the Clayton Act and the premerger rules. The staff also made recommendations to the Commission concerning numerous petitions to modify orders and applications for approval of divestitures and acquisitions, including the Commission-ordered divestitures in Texaco/Getty and Chevron/Gulf. In addition, the staff advised Bureau attorneys on the effectiveness of proposed remedies, and conducted investigations of possible order violations and possible violations of the premerger reporting statute and rules.

### CONSUMER PROTECTION MISSION

The Consumer Protection Mission is charged with the elimination of unfair or deceptive acts or practices in or affecting commerce, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise of consumer choice. The Mission emphasizes market-oriented remedies for law violations. Its activities can be grouped into five program areas: Advertising Practices; Marketing Practices; Credit Practices; Service Industry Practices; and Enforcement. In addition, the Mission has a Policy and Evaluation Unit, and an Office of Consumer and Business Education.

### ADVERTISING PRACTICES

The Commission accepted a number of consent agreements in the area of advertising practices. Thomas A. Dardas, president of Acu-Form Weight Control Centers, Inc., agreed not to claim that the "Acu-Form" plastic molded earpiece or any other diet product is effective in helping consumers lose weight unless he has competent and reliable substantiation. Biopractic Group, Inc., maker of "Therapeutic Mineral Ice" arthritis pain remedy, agreed not to make unsubstantiated claims about the product's effectiveness and acceptance by the scientific community or news media. Commodore Business Machines, Inc. agreed not to advertise that its computers have or will have in the future particular equipment or capabilities unless the claim is true, or there is a reasonable basis for the claim. Young & Rubicam/Zemp, Inc., an advertising agency, agreed not to misrepresent the ability of the "Ecologizer CA/90 Series 2000 Air Treatment System" or any other indoor air cleaner made to remove formaldehyde gas or tobacco smoke from household air, without competent and reliable substantiation. John Treadwell, doing business as Trans-Continental Industries (TCI), agreed not to claim that "20% Plus Organic Fuel Catalyst" gasoline additive could

increase gas mileage and reduce fuel costs by 20 to 25 percent without competent and reliable evidence. Misrepresentations of test results, or of the profits or marketing assistance provided to distributors, also is prohibited under the agreement.

The Commission issued two administrative complaints in the advertising practices area. Buckingham Productions, Inc. was charged with making false, misleading, and unsubstantiated advertising claims for its "Rotation Diet" and several other related weight reduction plans. Removatron International Corporation, the maker of the Removatron brand hair removal device, was charged with deceptively advertising that the product can permanently remove hair and falsely claiming the device has been approved by the Federal Communications Commission.

Several matters in adjudication were resolved with consent agreements that were accepted by the Commission. Rush-Hampton Industries, Inc. and Associated Mills, Inc. agreed not to make performance or efficacy claims about indoor air cleaning devices without competent and reliable substantiation. A final consent order prohibits the P. Leiner Nutritional Products Corp. from claiming that its nutritional supplement "Octacol 4" can improve physical fitness or athletic performance unless it has competent and reliable substantiation. The company also agreed not to misrepresent test results in its advertisements. An agreement settling charges related to the Buckingham Productions, Inc. complaint prohibits Dr. Barry Bricklin, an expert in the psychology of dieting, from providing false and misleading endorsements for diet plans. In a consent agreement accepted and placed on the public record, Weider Health and Fitness, Inc. and Joseph Weider agreed to pay a minimum of \$400,000 in refunds and research grants to settle charges they misrepresented two nutrient supplements. Weider advertised and sold the supplements as substitutes for anabolic steroids, used by bodybuilders and weight trainers to increase muscularity and strength.

In a suit filed in federal district court, the Commission sought and obtained an asset freeze against all but one of the defendants in the case against Phillippe LaFrance/USA, Ltd. The complaint seeks permanent injunction actions, consumer redress, and civil penalties from nine companies and four individuals who allegedly misrepresent the nationally advertised mail order products they sell. The Commission also filed a complaint seeking a permanent injunction and consumer redress against William Jones, doing business as Liquid Assets, challenging as false and deceptive the company's advertising claim that its mouthwash, "Breath Fresh 502" will have a sobering effect on people who have consumed large amounts of alcohol and will allow them to pass breath analyzer tests. The Commission charged Intra-Medic Formulations, Inc. and three of its subsidiaries with making false and deceptive claims about its weight-control and baldness-cure products. The Commission's complaint seeks permanent injunction actions and consumer redress.

The Commission issued a final order upholding an Administrative Law Judge's decision that Thompson Medical Company may not deceptively convey to consumers that its "Aspercreme" arthritis rub is an effective remedy against pain, is a new scientific discovery, or that the product contains aspirin.

The Commission terminated the Protein Supplements Rulemaking proceeding. The lack of sufficient evidence that unfair or deceptive representations were ever widespread, coupled with the absence of any evidence that manufacturers had made such representations in the last decade, led the Commission to believe that problems were not prevalent enough to warrant an industry-wide rule. The Commission stated that case-by-case enforcement is a more appropriate and efficient strategy. Comments were solicited on proposed amendments to the Guide Concerning Fuel Economy Advertising for New Automobiles. The changes are intended to make the guide consistent with the Environmental Protection Agency's revised fuel economy labeling rules for new automobiles.

The Commission approved revised industry plans for the quarterly rotation of health warnings on cigarette packages and in advertisements. Under the Comprehensive Smoking Education Act, enacted in 1984, the Commission must approve the companies' plans for rotating the warnings. In the annual report to Congress on smoking data for 1982 and 1983, the Commission reported that cigarette sales decreased in 1982 for the first time since 1969 and declined again in 1983. The advertising expenditures of the cigarette companies continued to increase in both years, reaching a new high of nearly \$2.0 billion in 1983. In response to a petition regarding advertising for smokeless tobacco products, the Commission requested a comprehensive review of the existing scientific evidence on the health effects of smokeless tobacco from the U.S. Surgeon General.

The Commission denied a petition asking it to begin industry wide rulemaking proceedings restricting alcoholic beverage advertising. The Commission found no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse.

## MARKETING PRACTICES

The Commission obtained several final consent agreements in the warranty performance area. Sun Refining and Marketing Company agreed to honor lifetime warranty obligations for automobile batteries it sold with such a warranty and to notify eligible consumers. A Philadelphia-area home builder, The Korman Corporation, agreed to repair defects in houses it has built or reimburse eligible homeowners for repairs they have already made. Homeowners of houses sold with a written warranty will be given the opportunity to arbitrate warranty disputes through an informal dispute settlement program. Craftmatic Comfort Mfg. Corp. and Craftmatic/Con-

tour Organization, Inc., two sellers of electric adjustable beds, agreed to honor their warranties fully and promptly, and to tell consumers, in advance, that they are responsible for returning the bed or any part of it at their own expense in order to obtain warranty service. In a final consent agreement Ward Corporation, a major Washington, D.C. area home builder, agreed to make repairs or pay homeowners for valid new-home construction defects covered under the written warranty and costing \$500 or more to fix. Ward also agreed to set up an arbitration mechanism for future home buyers, and not to misrepresent its warranty obligations.

Several consent agreements were also obtained in the deceptive sales area. Sentronic Controls Corporation and Wein Products, Inc. agreed not to claim that ultrasonic pest control devices eliminate insects and rodents, or to make any other efficacy or performance claims, without competent and reliable scientific substantiation. Porter Realty, a real-estate brokerage company, and Irvin Porter, an officer of the company, agreed not to misrepresent the value and potential use of land, settling charges as to those respondents in the Commission's complaint against Southwest Sunsites. In a consent subject to final approval, Larry Brog, former chief executive of Meadow Fresh Farms, Inc., a nationwide company that marketed Meadow Fresh White, a dry milk substitute, agreed to have scientific evidence for any future claims he makes about the product or other food products.

The Commission also issued an administrative complaint against Roy Brog, President of Meadow Fresh Farms, Inc. Roy Brog is charged with making unsubstantiated claims about the shelf life of Meadow Fresh White and its ability to reduce cardiovascular disease.

In the product information area, a final consent agreement was obtained with the manufacturer and seller of "Sky Genie Descent Systems," safety devices used by individuals working on or descending from tall buildings or other heights. Descent Control, Inc. agreed to substantiate its advertising claims, revise its operating instructions, and inform users of previously undisclosed safety information.

The Commission obtained a settlement of contempt charges from Theodore Weiswasser for violating a 1981 preliminary injunction issued in the Paradise Palms Vacation Club proceeding. Weiswasser was ordered to pay \$250,000 into a consumer restitution fund for making misrepresentations in the sale of timesharing in a vacation resort. Three principals of Kitco of Nevada, Inc., Duane F. Snelling, John E. Farkas, and Craig A. Jesinoski, were permanently enjoined from misrepresenting business opportunities and ordered to pay \$531,949 in restitution to purchasers of their "work at home" business opportunity.

The Commission filed a complaint in federal district court seeking a permanent injunction action and consumer redress against three individuals, Rebecca L. Kelley, Debbie Tanner, and Bryan M. Hall, for allegedly making false claims that they could help couples adopt children from Mexico.

The complaint charges that they misrepresented the status of "pending" adoptions and the procedures they would follow, such as placing fees in escrow and working through a Mexican attorney. The Commission also filed a complaint in federal district court seeking preliminary and permanent injunctive relief and consumer redress against four individuals for alleged violations of the FTC Act in the sale of business opportunities. Michael Kaplan, Jerome Kaplan, Robert MacKenzie Davis, Jr., and Richard Wiley have employed a series of corporations including Certified Security Systems, to sell distributorships for high-tech products such as energy savings devices and home burglar alarms systems.

An Administrative Law Judge ruled that Figgie International, Inc. made false performance claims for its "Vanguard" heat detectors which, contrary to its ads, did not give sufficient warning to enable occupants to escape residential fires safely. In the Orkin Exterminating Co., Inc. proceeding, an Administrative Law Judge ruled that the company must roll back annual renewal fees for customers whose original termite-control agreements called for fixed annual fees. Both decisions are on appeal to the Commission.

The Commission issued a final order reversing a 1982 ruling of an Administrative Law Judge who had dismissed the charges against Southwest Sunsites, Inc. The Commission ordered the company to stop misrepresenting the value and potential use of its land. In another final order, the Commission ruled that International Harvester Company had failed to adequately disclose to consumers that its gasoline-powered tractors were subject to a safety hazard known as "fuel geysering" even though the company knew of the potential danger. The Commission found that the failure to disclose was an unfair practice that violated the law.

The Commission approved the final Used Car Rule requiring dealers to make specified disclosures, including who must pay for repairs after a sale, in a Buyers Guide placed in the side window of each used car offered for sale.

A Notice of Proposed Rulemaking was published by the Commission proposing modifications to the Pre-Sale Availability of Written Warranty Terms Rule. The current rule requires retailers to make warranty texts available to customers prior to purchase using one of four specified methods. The proposed amendment would reduce the costs of complying with the Rule by providing retailers with a choice of displaying the warranty text near the product or making it readily available to any customer upon request. In another warranty-related matter, the Commission announced final revisions to its Guides Against Deceptive Advertising of Guarantees. The guides were revised to simplify the advertising of warranty coverages.

The Commission voted to terminate the Hearing Aid rulemaking proceeding after considering evidence that the overwhelming majority of hearing aid buyers are satisfied with their purchases. According to a survey submitted with the staff recommendation, most hearing aid sellers are offering buyers trial periods of warranties to deal with problems that might occur, as would have been required by the rule.

The Ford Motor Company's Consumer Appeals Board and the Residential Warranty Corporation were granted two-year limited exemptions to the Commission's Informal Dispute Settlement Procedures Rule. These exemptions allow the companies to use mediation prior to arbitration as part of their dispute resolution procedure.

#### CREDIT PRACTICES

The Commission obtained several consent agreements for alleged violations of the Fair Credit Reporting Act (FCRA). The Hospital and Health Services Credit Union and Associated Dry Goods Corp. have agreed to notify former credit applicants that they were denied credit on the basis of information from a credit bureau or third party, and to provide the applicant with the name and address of the bureau, or the nature of third party information, upon request. Under a proposed consent order, the Wright-Patt Credit Union agreed to tell credit applicants that they were denied credit because of insufficient information in their credit reports, and to give consumers the name and address of any credit bureau that provided the reports used as the basis for denying credit. In a consent agreement accepted and placed on the public record, Federated Department Stores, Inc., one of the nation's largest retailers, agreed to tell credit applicants when it uses information from credit reporting agencies as a basis for denying credit and to tell rejected applicants the name and address of the credit reporting agencies it contacted. The agreement settles charges that Foley's, a Federated division operating 14 department stores in Texas, repeatedly violated the FCRA when denying credit applications.

Winkelman Stores, Inc., a Detroit-based retailer of women's clothing, agreed to pay \$65,000 in civil penalties to settle charges it violated certain provisions of the ECOA and the FCRA when denying credit applications. The corporation has agreed to comply with the Acts in the future, and to review credit applications it has rejected in the past two years and send appropriate ECOA and FCRA notices to all consumers who have not received them.

The Commission also accepted a consent agreement for alleged violations of Section 5 of the FTC Act. Service One International Corp., a national credit-counseling service doing business as First Credit Services, agreed not to misrepresent its ability to assist consumers in obtaining MasterCard or Visa credit cards. The company also agreed not to misrepresent the terms or amounts of refunds it offers, and to give previous customers denied credit the option of receiving full refunds or participating in the new credit-counseling service without additional charges.

Nash Phillips/Copus, Inc., one of the nation's largest home builders, agreed to a \$300,000 civil penalty consent decree to settle charges it violated the Truth-In-Lending Act (TILA). The company agreed to provide the

annual percentage rate in any of its credit advertisements that state an interest rate, and comply with all requirements of the TILA. The Commission took this action as part of its real estate credit advertising project designed to increase compliance with credit advertising laws.

Two consumer loan companies agreed to civil penalty consent decrees to settle charges that they discriminated against elderly credit applicants on the basis of their age and reliance on retirement income, in violation of certain provisions of the ECOA and FCRA. Fidelity Acceptance Corp. and Allied Finance Co. will pay civil penalties of \$235,000 and \$125,000 respectively, and have agreed not to discriminate against the elderly in the future, to comply with federal credit laws, and to provide previously rejected applicants with the notices these laws require.

The Commission filed two actions in federal district court under Section 13(b) of the FTC Act. Evans Products Company and its finance subsidiary, Evans Financial Corp., were charged with falsely and deceptively representing that they would provide buyers of thousands of homes sold through two of their housing divisions with guaranteed, long-term mortgage loans, often at low interest rates. The Commission alleged that this misrepresentation caused buyers severe economic and other injury, and resulted in many of them losing their homes. The matter is pending appeal of a court decision denying the request for a preliminary injunction. The complaint filed against Nationwide Mortgage Corporation charges three companies and nine individuals with allegedly misrepresenting the terms and the duration of the loans they offered. Two of the companies and two individuals were also charged with violating the TILA. The defendants allegedly collected fees in excess of 30 percent of the loan, and are charged with causing more than 100 Washington D.C. area homeowners to lose their homes, file for bankruptcy, or seek refinancing at additional cost.

The Credit Practices Rule, designed to protect consumers from unfair or deceptive practices by creditors regulated by the FTC, went into effect in March 1985. The Rule covers any agreement by which consumers get credit for any personal purpose, except to buy real estate. In May 1985, the Commission published staff guidelines explaining the procedures staff will follow in handling state exemptions from the Rule.

#### SERVICE INDUSTRY PRACTICES

Several actions were taken in matters involving misrepresentations in the sale of oil and gas leases. Charles E. Weller, a former officer of Alaska Land Leasing, Inc., agreed to a consent order requiring him to contribute \$60,000 to a consumer redress fund. In an order issued by the district court, J&R Marketing Corp, and its principal officers, Ray Belitsky and James Bianco, are required to pay \$700,000 into a consumer redress fund. Settlements were also reached with two defendants in the Commission's suit against U.S. Oil

and Gas Corp. The settlements require Martin Rotberg to pay \$85,000 and Milton Sand to pay \$225,000 in consumer redress. The Commission filed contempt charges against David J. Swain and Michael Peter Nissen, principal officers of the Trans-Alaska Energy Corp., for allegedly transferring or selling assets after a temporary injunction containing an asset freeze was ordered by the district court.

A federal district court ordered defendants in the Kimberly International Gem Corp. suit to pay \$280,000 in consumer redress to settle charges they misrepresented the value of colored gemstones sold as investments. Gemstone purchases by individual consumers ranged from a few thousand dollars to tens of thousands of dollars. The court also issued stipulated permanent injunctions and default judgments prohibiting the defendants from making false or deceptive claims about gemstones or other investments.

In a final consent agreement, the Montana Board of Optometrists agreed not to prohibit optometrists in that state from disseminating truthful, nondeceptive advertisements, including price-related terms or claims of professional superiority. In a judgment entered in federal court, A & A Laboratories, Inc. was permanently enjoined from misrepresenting to consumers its ability, based on a hair analysis, to measure accurately the element content of a person's body or to recommend vitamin, mineral, or other dietary supplements to correct chemical excesses and deficiencies.

The Commission terminated its Standards and Certification rulemaking proceeding. The rule would have imposed industry wide procedures on standards developers and certifiers for dealing with restraint-of-trade complaints. The Commission determined that a recent Supreme Court decision has prompted the industry to make reforms and lessened the need for a rule.

The Commission began its Ophthalmic Practice (Eyeglasses II) rulemaking proceeding to determine whether total bans on certain forms of commercial ophthalmic practice should be removed. Such restraints may increase prices without providing offsetting benefits in the form of improved quality of service. The Commission released the staff report on Alternative Legal Delivery Systems. The report, which examined the impact of "state regulations on lawyers" marketing practices, found that restrictions that prevent lawyers from advertising their services may limit access and increase legal costs for consumers. No rule is planned in this area. The staff report on the Health Spas Rule was published and comments were solicited on the staff's recommendation to terminate the rulemaking.

## ENFORCEMENT

As required by a 1984 FTC consent order, a nationwide mediation/arbitration program was established by General Motors Corp. to allow consumers with engine or transmission problems the opportunity to obtain reimbursement for repair expenses. During the first ten months of the program,



GM paid 9,529 consumers in five geographic areas more than \$3.3 million, with the average consumer complaint being resolved in 40 days. This data represents a sample of only five of 130 areas where the program is operating and covers reimbursements made for only three specific types of problems.

As part of its review of the Octane Rule under the Regulatory Flexibility Act, the Commission solicited comments on the economic impact of the requirement that retailers post octane ratings on gasoline pumps. The review of the Home Insulation (R-Value) Rule under this Act was concluded with no modifications to the rule required. The Regulatory Flexibility Act requires the Commission to conduct a periodic review of its rules to determine whether they have a significant economic impact on small businesses.

The Commission has adopted final regulations implementing amendments to the Textile Fibers Products Identification Act and the Wool Products Labeling Act, to reflect the requirements of new legislation governing country-of-origin labeling. All textile and wool products covered by these regulations will now be required to have labels to help consumers identify the country of origin of products at the time of purchase.

The Commission voted to begin a rulemaking proceeding to amend the rule on Retail Food Store Advertising and Marketing Practices. The proposed amendments would allow grocers to comply with the rule by offering rain checks or substitutes of comparable value when they run out of advertised items. Grocers also would be able to advertise special purchases or other items that are available only in limited quantities, if they clearly disclose the fact to shoppers.

Final staff compliance guidelines were published to help funeral providers comply with the Funeral Rule. Final staff guidelines to aid states in submitting exemption petitions from the rule were also published.

The Commission issued an enforcement protocol for the Franchise Rule, outlining some of the factors it will consider in deciding whether to initiate law enforcement actions for violations of the rule.

Several suits brought by the Commission involved violations of the Franchise Rule. A federal court ordered Royco Automobile Parts, Inc. and its president, Robert Sowerby, to pay \$567,000 in consumer redress and \$400,000 in civil penalties for allegedly misrepresenting facts involving distributorships for the sale of automotive tune-up parts. According to the Commission, consumers who invested in Royco franchises lost an average of \$14,000 each - some more than \$50,000 - because of the company's false statements. Federal Energy Systems and one of its officers were ordered to pay more than \$3 million in consumer redress and over \$1.6 million in civil penalties to settle charges that the company violated the rule's disclosure requirements and made false and deceptive claims about its franchises. The company sells franchises for the sale and installation of equipment that automatically controls the heating and air conditioning of commercial buildings. Enamelcraft, Inc. agreed to pay a \$15,000 civil penalty for

allegedly misrepresenting the services and merchandise it offered. The Commission filed a complaint against Tuff-Tire Industries, Inc., charging the company with misrepresenting the effectiveness of its "Mr. Tuff-Tire" automotive tire sealant and the profitability of its franchises. The Commission also filed suit against Control Technology, Inc. for allegedly making misrepresentations concerning its franchises for energy-management systems.

Civil penalties were ordered in three suits involving alleged violations of the Mail Order Rule. The two officers of Me-Books Publishing Company, Jerry Klein and James Maher, agreed to pay \$20,000 in civil penalties, and JS&A Group, Inc. and its president, Joseph Sugarman, agreed to a \$115,000 civil penalty consent judgment. Two mail order marketers, Norman Chanes and Monroe Caine, agreed to pay \$175,000 each in civil penalties and consumer redress to settle charges they repeatedly violated the rule and misrepresented their merchandise. The marketers allegedly controlled five mail order companies, including Encore House, Inc. The Commission filed a complaint in federal district court charging Del Monte Corporation with violations of the rule in the sale of its "Country Yumkin Dolls." The company is charged with failing to ship merchandise in a timely manner and failing to meet the notification provisions of the rule.

The Commission modified an order against Grolier, Inc. to change the wording and presentation required in advertisements and sales material, and the timing of required disclosures to prospective employees. A 1982 consent order against American Motors Corp. and Jeep Corp. requiring safety-warning stickers on Jeep CJ utility vehicles was set aside. The National Highway Transportation Safety Administration now requires similar warning stickers on all utility vehicles. Brooks-Rent-A-Car was ordered to pay civil penalties for violating a 1973 Commission cease and desist order.

## POLICY AND EVALUATION

In addition to its cases, rulemakings, and other activities to remedy problems in the market, the Commission traditionally has been active in providing analytical support and expert opinion to other government agencies. Some fiscal 1985 filings and testimony in which the Bureau of Consumer Protection played a major role, are represented below.

Staff comments concerning practices in various professional fields were submitted to several states. For example, comments were presented to the Massachusetts Board of Registration in Medicine indicating opposition to proposed restrictions on mid-level health professionals such as physician assistants and nurse practitioners. Comments were filed with the North Dakota State Board of Optometry supporting a proposal to broaden the

scope of permissible advertising by optometrists. The Commission staff also addressed regulatory changes that have been proposed by the Virginia Boards of Dentistry, Medicine, Optometry, and Veterinary Medicine involving restraints on nondeceptive advertising and restrictions on commercial practice. A report was presented to the Legislative Council of Delaware concerning proposed legislation that would affect the ability of optometrists to use trade names, engage in direct solicitation, and operate as a corporate practice.

Commission comments were filed with the Federal Reserve Board on its proposed amendments to Regulation Z, which implements the Truth-In-Lending Act. The amendments would require lenders to provide more information about adjustable rate mortgages.

The Commission approved the filing of an amicus brief in *Indian Head, Inc. v. Allied Tube & Conduit Corp.*, in federal court in the Southern District of New York, arguing that Noerr immunity should not apply to a manufacturer's actions to influence the standards development process of a private standards-setting organization.

#### OFFICE OF CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education coordinates an education program aimed at providing information to consumers and industry on major Commission decisions, programs, statutes, and rules. This allows informed choices and competitive business practices to function freely in the marketplace. Thus, the consumer and business education program is a cost-effective way of obtaining compliance with the law.

In fiscal year 1985, the Office developed and distributed, via satellite, two television video features on the Commission's Used Car Rule. This campaign informed consumers about the new rule and the availability of brochures on the subject in both English and Spanish. To encourage compliance with the rule, 89,000 copies of the "Dealer's Guide to the FTC Used Car Rule" were distributed nationally to all dealers prior to the rule's effective date.

Three major publications were developed and distributed as joint efforts. Two print campaigns were produced with the American Association of Retired Persons (AARP) and one with American Express. The AARP publication, *Your Home, Your Choice*, explained housing options for the elderly, and *Healthy Questions* explained how to select and talk to physicians, pharmacists, dentists, and vision care specialists. The American Express joint publication effort, *Who's Got Your Number*, concerned credit and charge card fraud.

In addition, several new and updated fact sheets were distributed. They include such titles as *Solving Credit Problems*, *Buying Time for Watches*, *Emergency Escape Masks*, *What's Going on at the FTC*, and *Holiday Shopp-*

ing. In total, over one million consumer and business publications were distributed by the FTC in fiscal 1985. The Commission also won three communication awards in fiscal 1985 for its consumer education campaigns in television (Funeral Rule PSA, 1984), radio (Used Car Buying PSA, 1983), and print (Healthy Questions, 1985).

## ECONOMIC ACTIVITIES

During fiscal 1985 the FTC's Bureau of Economics continued to provide economic support to the agency's antitrust and consumer protection activities, to advise the Commission about the impact of government regulation on competition, and to gather and analyze information on the American economy.

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In 1985, the Bureau of Economics continued to provide guidance and support to those activities. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding and to devise remedies that would improve consumer well-being.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer-run effects on price, product variety, and consumer welfare.

Although the FTC is primarily a law enforcement agency, it also is charged with collecting, analyzing, and publishing information about the nation's business firms. Much of this work is undertaken by the Bureau of Economics. In 1985, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation. Research economists also were available to provide Commissioners with economic advice.

## ANTITRUST

In the antitrust area, economists participated in all investigations of potential antitrust violations and in the presentation of cases in support of complaints. Economists also advised the Commission on informal antitrust matters. These activities absorbed the bulk of the Bureau's resources assigned directly to support the Commission's antitrust responsibilities.

Certain studies undertaken by the Bureau also support the Commission's antitrust responsibilities indirectly. During the year, economists begin or continued to work on resale price maintenance, international competition, and competition in hospital and grocery markets.

### CONSUMER PROTECTION

In the consumer protection area, economists prepared well over 100 memoranda evaluating requests from BCP attorneys for full phase investigations, consent negotiations, consent settlements, and complaints. In addition, economists routinely provided day-to-day guidance on individual matters and made policy recommendations directly to the Commission. Staff also worked on several consumer protection impact evaluation studies, including an analysis of the benefits and costs of extending the FTC's mail order rule to phone orders. Economists were extensively involved in preparing data generated by the GM defects settlement for release to the public, and they also prepared an analysis of the evidence on the effect of alcohol advertising on alcohol consumption and abuse in response to a petition for rulemaking.

In addition, studies were completed and sent to Congress on the role of information in the markets for auto insurance and life insurance. Work also continued on studies of the new and used car markets and were completed on a study of the generic drug market.

### REGULATORY ANALYSIS

In the regulation area, economists continued their participation in the Commission's Competition and Consumer Advocacy Program. As part of this work, comments on a variety of regulations were filed with several government agencies. Two sets of comments were filed with the Federal Energy Regulatory Commission (FERC) concerning the regulation of natural gas pipelines. These comments sought to encourage the FERC to rely on competition rather than extensive regulation to the maximum extent possible. Comments also were filed with the Interstate Commerce Commission supporting that Commission's efforts to deregulate rail traffic carried in boxcars. These comments sought to demonstrate that deregulation would not cause inefficient utilization of the nation's rail system.

Much of our regulatory activity during the year was directed toward analysis of various proposals to restrict international trade. In February, two studies relating to international trade restrictions were released. The first estimated the costs imposed on U.S. consumers and the U.S. economy because of tariff and quota restrictions on imports into the U.S. The second study examined the factors contributing to the decline in employment in the U.S. auto industry in the late 1970's and early 1980's. In addition,

economists participated in two proceedings at the International Trade Commission seeking limits on imports of specific products - potassium permanganate and shoes.

Work nearly was completed on a study of state Blue Sky regulation of securities and the role of building codes in innovation.

#### LINE OF BUSINESS

When the Commission terminated data collection in 1983, it decided to concentrate limited resources upon research using Line of Business data that already exists. During fiscal 1985, the Annual Line of Business Report for 1977, which contains industry financial aggregates and which is the last year for which data were collected, was published. Numerous research studies were initiated, including a large-scale examination of structural explanations of market performance and a study of the sources of scope economies in large manufacturing firms. A large number of papers were released, including several related to an ongoing study of merger effects.

#### EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT, REGIONAL OFFICES

The Office of the Executive Director is the central management and administrative organization of the Federal Trade Commission. The Executive Director is responsible for providing essential services and advisory functions including those related to personnel, budget and finance, automated systems, library, etc. The Executive Director is also responsible for providing management direction to the Commission's ten regional offices and its field station and works in conjunction with bureau and office heads to ensure optimal resource use and integration with headquarters activities.

In fiscal 1985, major management initiatives were directed toward maintaining service levels with lower resources. Emphasis was on finding economies in each functional area; these included increased operating efficiencies through staffing changes and capital improvements, enhanced use of contractor services, elimination of redundant or unnecessary procedures, and the strengthening of existing programs.

Functions from the Library and Division of Information Analysis were combined to form a new Information Center at headquarters. This reorganization centralized responsibility for research assistance to staff on internal and commercial information systems. The Center also provided training to employees on FTC computer systems. A new travel management program was implemented to improve control of travel advances and

reduce administrative costs. The program uses Diner's Club Charge Cards and GSA approved travel agents to handle reservations and ensure the lowest airfare costs. The conversion of automated systems to in-house computers was accelerated and resulted in savings in fiscal 1985 alone that exceeded the equipment investment.

Substantial effort was directed toward consolidation of headquarters offices from four satellite buildings to a single building. Extensive negotiations were conducted to obtain funding, secure suitable space, and coordinate the technical aspects of the move such as those related to telecommunication improvements, physical layouts of office space, etc. As part of the consolidation project, a major procurement was initiated to obtain a new, modem telephone system that would serve both headquarters and the consolidated building. Digital voice and data service would be provided through the system, as well as improved management of telephones and reductions in costs.

The agency used approximately 1201 workyears and spent \$65.7 million, full amount appropriated for the fiscal year. The workyears used were 3.1 percent fewer than fiscal 1984. Careful control of funding levels and workyears were necessary to accomplish objectives with decreased resources. A hiring limitation remained in effect for most offices in the Commission.

Regional offices continued to operate at levels established in fiscal 1984. Regional office emphasis was on case generation in priority areas and progress on existing matters, integration with headquarters legal and economic activities, outreach to state and local government, small business and consumer groups, other law enforcement agencies, and media contacts. Seventy-four percent of regional office workyears (162) were devoted to the Consumer Protection mission, with emphasis on rule and statute enforcement, deceptive sales practices, credit practices and advertising practices. Resources devoted to the Maintaining Competition Mission were primarily in horizontal restraints, health, transportation, and mergers. In addition to enforcement activities, the regional offices handled 13,954 (43 percent) of the agency's consumer complaint responses.

A number of human resource management initiatives were completed, including the development of a new performance management program that covered nearly half the agency's workforce. Improvements also were made in the agency's personnel information system that enhanced the Office of the Executive Director's ability to manage resources.

Efforts continued to streamline the EEO complaint resolution process and to integrate EEO and affirmative recruitment into management practices. The agency completed its last year under the Bachman Agreement and institutionalized a number of management initiatives developed during the term of the Agreement. These initiatives included refinements in the attorney and economist recruitment processes, guidance in developing and plann-

ing for interested staff, development of data to reflect trends and patterns in employment practices, and provisions for more frequent performance feedback to staff.



Part II (Investigative Stage)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

## COMPETITION MISSION

### Michigan Optometric Association

The Michigan Optometric Association agreed not to impose membership restrictions on or terminate any member who chooses to provide optometric services in a retail location or through optical chains or other corporate practices that are not affiliated with a hospital clinic, health maintenance organization or professional corporation. The association, based in Lansing, Michigan, represents the interests of over two-thirds of the practicing optometrists in the state. The complaint alleged that the association restrained competition in the delivery of optometric services and the sale of optical goods by depriving consumers of the potential cost savings and convenience of retail locations and corporate practices that generally charge lower prices than traditional optometrists or independent opticians operating in sole proprietorships or partnerships. Under the terms of the agreement, the association also agreed not to interfere with its members' use of truthful, non-deceptive information about optometric goods and services.

### National Association of Temporary Services, Inc.

The National Association of Temporary Services, Inc. (NATS) agreed to amend its code of ethics so that the code would not restrict its members from soliciting employees or clients of other temporary help firms. The complaint alleged that NATS, through its code of ethics, prohibited its members from recruiting personnel registered with other temporary help firms and prevented its members from soliciting customers of other competing firms. The complaint also alleged that NATS restricted its members from providing services to firms involved in a strike or a lock-out. Under terms of the order, NATS also agreed not to affiliate with any organization of temporary help firms that engages in the practices prohibited by the order. NATS, headquartered in Alexandria, Virginia, represents approximately 400 firms nationwide that provide temporary help to businesses engaged primarily in the office/clerical, technical/professional, industrial, and medical fields.

## CONSUMER PROTECTION MISSION

## Larry Brog, Individually and as a Former Officer of Meadow Fresh Farms, Inc.

Larry Brog, former chief executive officer of Meadow Fresh Farms, Inc., a nationwide company that marketed a dry milk substitute, to have scientific evidence for any future claims about the product's shelf life and its ability to reduce cardiovascular disease. The company sold its product, Meadow Fresh White, a powdered, dairy-based milk substitute, through a distributor network. Brog agreed not to exclude certain distributors in computing "average" distributor earnings unless he explains the exclusion.

## Federated Department Stores, Inc.

Federated Department Stores, Inc., one of the nation's largest retailers, agreed to tell credit applicants when it uses information from credit reporting agencies as a basis for denying credit. Under the agreement, Federated must also tell rejected applicants the name and address of the credit reporting agencies it contacted. The agreement settles charges that Foley's, a Federated division operating 14 department stores in Texas, repeatedly violated the Fair Credit Reporting Act when denying credit applications.

## Service One International Corp.

Service One International Corp., a national credit-counseling service doing business as First Credit Services (FCS), agreed not to misrepresent its ability to assist consumers in obtaining Mastercard or Visa credit cards. FCS also agreed not to misrepresent that it has developed working relationships with any creditors or that it will pay full or partial refunds to consumers. FCS must send a notice giving all customers who paid for the service, and did not receive a credit card" the option of receiving a full refund or participating in FCS' new credit-counseling service without additional charges. If consumers choose a full refund, it must be provided within 30 days.

## Wright-Patt Credit Union

Wright-Patt Credit Union, one of the nation's largest credit unions, agreed to tell consumers who are denied credit because of insufficient information in their credit reports that the adverse action was taken on the basis of such information. The company also agreed to give consumers the name and address of any credit bureau that provided the

reports used as the basis for denying credit, as required by the Fair Credit Reporting Act (FCRA). In addition to requiring future compliance with the FCRA, the agreement requires the company to provide proper FCRA notices to consumers who were denied credit based on nonderogatory information after September 1, 1983. Nonderogatory information may be information indicating that the consumer either has no credit file or an insufficient credit file, but does not indicate bad credit.

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PART II (Investigative Stage)  
CONSENT AGREEMENTS ISSUED IN FINAL FORM

COMPETITION MISSION

Allied Corporation

Allied Corporation agreed to divest King Radio Corporation's Weather Radar Line of airborne weather radar systems designed for use in general aviation aircraft. The King Weather Radar Line is a weather detection system used in general aviation aircraft to detect and display weather conditions and is designed to enable a pilot to avoid adverse weather conditions. General aviation aircraft are used for private and commercial use and do not include military aircraft. The complaint accompanying the consent agreement alleged that Allied's 1985 acquisition of King Radio could lessen competition and tend to create a monopoly in the worldwide manufacture and sale of airborne weather detection systems, unless the King Weather radar line was divested. According to the complaint, Allied's Bendix Aerospace Sector and King Radio were competitors at the time of the acquisition, both producing and selling weather radar systems in the United States and abroad. Under terms of the agreement, Allied agreed to sell the weather radar line and related assets to Narco Avionics, Inc., a purchaser approved by the Commission, within six months of the date of the order. Allied also agreed to assist Narco in the start-up and manufacturing process by providing personnel to train and educate Narco's employees in the technology of the detection system for three to six months after the divestiture. In addition, Allied is prohibited from acquiring any firm engaged in the manufacture and sale of general aviation weather detection systems in or to the United States for a period of 10 years without prior Commission approval.

Chevron Corporation

The Commission accepted a consent agreement resolving Chevron Corporation's \$13 billion acquisition of Gulf Oil Corporation. Under terms of the consent agreement, Chevron, formerly Standard Oil Company of California, was required to divest specified oil and gas assets, within six months, to acquirers approved by the Commission. An accompanying hold separate agreement required Chevron to operate Gulf's oil and gas assets independently of Chevron until the divestitures complied with the requirements of the consent order. All divestitures were completed within the deadline specified in the

order: Gulf's Cedar Bayou, Texas, polypropylene plant and related assets were divested to Amoco Chemicals Co., a subsidiary of Standard Oil Co.(Indiana), the Alliance, Louisiana, refinery and Gulf's related southeast marketing assets acquired by Standard Oil Company(SOHIO). Gulf's interest in the Colonial pipeline was sold to the Union Oil Company of California; and the co-owners of the West Texas Gulf's pipeline purchased Gulf's 51 percent interest. The hold separate agreement was terminated upon completion of the Colonial Pipeline sale. The complaint issued with the consent charged that Chevron's acquisition of Gulf would lesson competition in (1) the transportation of light petroleum products, such as gasoline, from refineries in the Southeastern United States; (2) refining and distributing of gasoline in specified areas; (3) the transportation of crude oil from producing fields in western Texas and eastern New Mexico to refineries; and (4) the production and transportation of kerosene and jet fuel in the East Coast and Gulf Coast areas.

#### Decorating Products Association of Central Florida

The Decorating Products of Central Florida, an affiliate of the National Decorating Products Association, agreed not to conspire with its members to restrict competition in the sale and distribution of wallcoverings. Members of DPACF operate retail decorating products stores where wallcoverings are sold. According to the complaint, DPACF discouraged suppliers from distributing wallcoverings in competition with its members by refusing to deal with suppliers that sold wallcoverings directly to building contractors. For purposes of the complaint, the term wallcovering did not include paint or paneling, but did include such flexible materials as wallpaper, vinyl, or foil. The complaint alleged that the trade association deprived consumers of the benefits of competition by encouraging its members to refuse to promote or take customer orders for products of a supplier who was planning to open a chain of retail stores. In addition, the { } group attempted to fix the prices retailers { }by refusing to deal with suppliers that imposed{ } packages of wallcoverings into single rolls and refusing to pay those charges. Under terms of consent, DPACF{ } fixing the price of wallcoverings and restraining{ } of suppliers to distribute their products competitively.

### Hawaii Dental Service Corporation

The Hawaii Dental Service Corporation agreed not to base its decision on whether to send dentists to certain counties in the state on the approval of member-dentists already practicing in those counties. Hawaii Dental, headquartered in Honolulu and representing approximately 82 percent of the dentists in Hawaii, offers a dental insurance program that provides dental services for a prepaid premium. More than half of the Hawaiians with dental insurance belong to Hawaii Dental. Under a provision in Hawaii Dental's bylaws, the group was prohibited from recruiting and sending dentists to the island counties of Maui, Kauai, and Hawaii without the approval of the majority of its member-dentists already practicing in those counties. The complaint alleged that the provision gave members in the three counties the power to exclude competition and deprived consumers of the benefits of competition among dentists. The complaint further alleged that members and potential members of Hawaii Dental have probably been deterred from establishing practices in the three counties. Under terms of the consent agreement, Hawaii Dental is required to remove any provision in its bylaws that restricts the free recruitment of dentists to counties of Maui, Kauai, and Hawaii and must publish a notice of its removal in two publications circulated to dentists. The group also agreed not to deny membership to a dentist licensed by the state based on other members' opposition to the proposed location of that dentist's practice.

### Hospital Corporation of America

Hospital Corporation of America (HCA), the nation's largest private hospital chain, agreed to divest, within twelve months, two psychiatric hospitals and one general acute care hospital acquired from the Forum Group, Inc. As part of the Forum acquisition, HCA acquired the Virginia Center for Psychiatry-Portsmouth in Portsmouth, Virginia, the Virginia Center for Psychiatry-Norfolk in Norfolk, Virginia, Parkview Hospital in Midland, Texas, and the stock of a planned new facility, Doctors' Hospital of the Permian Basin, which, when completed, will replace Parkview. According to the complaint, at the time of the acquisition HCA already owned a psychiatric hospital in the Norfolk area, the Peninsula Hospital in Hampton, and in addition managed the day-to-day operations of the Medical Center in Odessa, Texas, one of three general acute care hospitals in the Midland area. The complaint charged that the acquisition eliminated Forum as an independent competitor and

substantially reduced competition in the psychiatric hospital services market in the Norfolk area and in the general acute care services in the Midland, Texas area. Under terms of the consent, HCA agreed to divest the two psychiatric hospitals in Norfolk and Portsmouth and the Parkview Hospital in Midland. HCA also agreed to divest its interest in the planned new hospital in Midland intended to replace Parkview. In addition, for a period of ten years, HCA is prohibited from reacquiring the assets of any of the divested hospitals without prior Commission approval.

#### InterNorth, Inc.

The Commission accepted a consent agreement resolving antitrust charges stemming from InterNorth, Inc.'s \$2.3 billion acquisition of Houston Natural Gas Corporation after InterNorth agreed to divest four natural gas pipelines. InterNorth and Houston Natural were each engaged in the exploration for and production of oil and gas. InterNorth owns a pipeline system considered to be the largest natural gas pipeline system in the United States. Houston Natural, which had been an intrastate pipeline company, entered the interstate pipeline business with the 1984 acquisitions of Florida Gas Transmission Co. and Transwestern Pipe Line Co. The complaint alleged that the acquisition would lessen competition among pipeline companies that purchase and transport gas out of the Permian Basin in West Texas and Southeastern New Mexico, and out of the Anadarko Basin in the Texas-Oklahoma Panhandle. According to the complaint, competition would also be lessened between competitors in the transportation and sale of natural gas in the highly concentrated Texas Gulf Coast area. The acquisition would result in InterNorth becoming the largest natural gas transportation system, measured by assets, in the United States. Under terms of the consent agreement, InterNorth agreed to divest: (1) the Oasis Pipeline and the Trans Texas Pipeline, both running from the Permian Basin to New Braunfels, Texas, and servicing the Texas Gulf Coast, (2) Llano, Inc., Houston Natural's intrastate gas gathering and transmission subsidiary in southeast New Mexico; (3) the Red River Pipeline, a transmission line that runs from the Panhandle to the Permian Basin; and (4) Nor-Val Gas Company, a joint venture between Valero Transmission Company and InterNorth. Some of the natural gas pipelines at New Braunfels are owned by Valera. The order prohibits InterNorth from acquiring any assets or stock interest in any company engaged in the gathering or transportation of natural gas in the Permian Basin or Panhandle without prior Commission approval unless the value of the acquisition is less than \$15 million. In addi-



tion, the order restricts InterNorth's participation in joint ventures or other agreements involving the purchasing, gathering, transportation or marketing of natural gas in the Texas Gulf Coast area.

#### Medical Staff of John C. Lincoln Hospital & Health Center

Approximately 750 physicians and other practitioners of an acute care hospital in Phoenix agreed not to engage in boycotts to impede the development or operation of an urgent care center or other health-care facility in the Arizona counties of Maricopa, Pinal, Yavapai, or Gila. The complaint issued with the consent agreement alleged that the medical staff of John C. Lincoln Hospital & Health Center conspired to intimidate the Board of Directors of Lincoln Hospital, by threatening to transfer their patients to other hospitals, in an attempt to force Lincoln Hospital to cancel plans to operate an urgent care center approximately three miles away. The urgent care center was designed to provide treatment to patients with urgent, but not life threatening, conditions without the need for an appointment. The Medical Staff, according to the complaint, urged its member-physicians not to support the urgent care center believing the facility would draw patients away from their private practices. Under the consent agreement, the Medical Staff is prohibited from threatening or participating in any unreasonable discriminatory action against a health-care facility. The consent, however, does not prohibit the Medical Staff or its members from engaging in any peer review or hospital policymaking activities at Lincoln Hospital if such participation does not constitute, and is not part of, a boycott or refusal to deal.

#### Multiple Listing Service of the Greater Michigan City Area, Inc.

Under terms of a revised consent agreement, the Multiple Listing Service of the Greater Michigan City Area, Inc. of Michigan City, Indiana, is required to publish exclusive agency listings. The consent settled charges that the Multiple Listing Service restrained competition in LaPorte County, Indiana, by interfering with its member-real estate brokers' participation in truthful comparative advertising of commission fees and practices. After the Commission received and considered public comments, it voted to revise its proposed complaint and include new provisions in a provisional consent agreement that had previously been published for public comment; the new provision requires the Multiple Listing Service to include both exclusive right to sell and exclusive agency listings on its property listings. The revised complaint included allegations that the Multi-

pie listing Service also reduced competition among brokers and between brokers and sellers of real property in LaPorte County by continuing to publish exclusive agency listings on its multiple listing service. Exclusive right to sell contracts allow the real estate broker to receive a commission on the sale of real property regardless of who sells the property.

National Customs Brokers & Forwarders Association of America, Inc.

Pursuant to a consent order, the National Customs Brokers & Forwarders Association of America, Inc., headquartered in New York, deleted a provision in its bylaws that prohibited its members from setting independent prices or offering discounts for services. The association's member - customs brokers provide administrative services to clients involved with the importation of merchandise through the United States Customs Service. The complaint, issued as part of the consent agreement, alleged that the association restrained competition by adopting a bylaw provision requiring members to charge fees that would assure a fair return for their services. To comply with the order, the association agreed not to adopt any code of ethics provision in the future that would discourage independent pricing decisions. In addition, the association is required to discontinue its affiliation with any organization of customs brokers that discourages open price competition of services.

Orange County Board of Realtors, Inc.

The Orange County Board of Realtors, Inc. agreed to include listings in its multiple listing service that allow property owners and brokers to enter into contracts permitting owners to pay either a reduced commission or no commission at all if the owner locates the buyer independent of the appointed broker. Such contracts are called exclusive agency listings. The complaint accompanying the consent alleged that the board and its wholly-owned subsidiary, the Multiple Listing Service of the Orange County Board of Realtors, Inc., restrained competition among its members by restricting its multiple listing service to listings giving its members exclusive rights to sell the properties. Contracts accepted under the exclusive right to sell enable the broker, appointed by the property owner, to act as the exclusive agent for the sale of residential property and to receive an agreed commission from the property owner regardless of whether the property is sold by the broker, the owner, or some other person. Under terms of the order, the board and its MLS are prohibited from interfering with a broker's acceptance of any exclusive agency

listing and may not to publish the listing in their multiple listing service. In addition, the two organizations are required to publish exclusive agency listings in the same manner and category as exclusive right to sell listings.

#### CONSUMER PROTECTION MISSION

##### Associated Dry Goods Corp.

Associated Dry Goods Corp., a New York merchandise retailer, agreed to tell consumers the name and address of the credit bureau that provided information, which the company used as a basis for denying credit, as required by the Fair Credit Reporting Act (FCRA). The order also requires the company to provide proper FCRA notices to consumers who were previously denied credit based on nonderogatory information during the two-year period from January 1, 1982, to December 31, 1983. Nonderogatory information may be information indicating that the consumer either has an insufficient credit file or no credit file at all, but does not indicate bad credit.

##### Biopractic Group, Inc.

Biopractic Group, Inc., maker of Therapeutic Mineral Ice, agreed not to make claims about the product's effectiveness and acceptance by the scientific community and the news media, unless it has adequate substantiation. Therapeutic Mineral Ice is a product marketed to reduce pain and inflammation arising from muscle sprains, arthritis, rheumatism, and similar ailments.

##### Craftmatic Comfort Mfg. Corp.

Craftmatic/Contour Organization, Inc. and Craftmatic Comfort Mfg. Corp. agreed to honor their warranties fully and promptly and to tell consumers, in advance, that in order to obtain warranty service they will have to return the bed, mattress, motor, or other parts of the bed at their own expense. Under the order, consumers seeking warranty service on beds sold before the consent order became do not have to pay shipping charges. The company also must disclose all important warranty limitations and exclusions in promotional materials that describe its warranties. The company agreed to give copies of applicable warranties before or at the time of purchase to each buyer, and must include the warranty in point-of-sale materials given to distributors.

Commodore Business Machines, Inc.

Commodore Business Machines, Inc. agreed not to advertise that its computers have equipment or capabilities, such as the ability to run certain popular software programs, unless the claim is true at the time it is made. The company also is prohibited from representing that a product will have a particular capability or that it will be available in the future, unless it has a reasonable basis for the claim when it is made.

Thomas A. Dardas, Individually and as an Officer of Acu-Form Weight Control Centers, Inc.

Thomas A. Dardas, president of Acu-Form Weight Control Centers, Inc., agreed not to claim that the "Acu-Form" plastic molded earpiece, or any other product, is effective in helping consumers lose weight, without reliable and competent evidence to substantiate the claim. Dardas also agreed not to misrepresent the terms of any guarantee in connection with a weight loss or control product or service, and to clearly disclose the conditions of such a guarantee.

Descent Control, Inc.

Descent Control, Inc., manufacturer and seller of Sky Genie Descent Systems, agreed to substantiate its advertising claims and tell users previously undisclosed safety information. Sky Genie Descent Systems are safety devices used by individuals working on or descending from tall buildings or other heights. Under the order the company agreed to disclose that consumers should replace the device's nylon cord after using the system twice for rapid descents, after using the system to stop a free fall, or after exposing the system to certain chemicals. In the operating instructions, the company must state that the line should not be used as a safety line if it has ever been used as a utility line, that the system is not for use in emergencies by persons unfamiliar with the device's proper use, and that a user's safety and speed of descent depends on manual, not automatic, controls.

Hospital and Health Services Credit Union

Hospital and Health Services Credit Union agreed to tell rejected loan applicants if information from third parties, such as credit bureaus or employers, led to denial of their requests for credit. The credit union agreed to send notices required by the Fair Credit Reporting

Act informing consumers of the source of information leading to denial and their right to learn the nature of such information upon written request.

#### Korman Corporation, The

The Korman Corporation, a Philadelphia-area home builder, agreed to repair defects in houses it has built or reimburse eligible homeowners for repairs they have already made. Under the consent order, Korman will not represent that it will correct problems due to faulty materials, workmanship, or design, unless it will in fact correct these or other problems within a reasonable time. Homeowners of houses sold with a written warranty will be given the opportunity to arbitrate warranty disputes through an informal dispute settlement program. The order additionally requires the company to provide repairs or reimbursements to eligible homeowners who bought their homes since October 1, 1978, and still own those homes.

#### Montana Board of Optometrists

The Montana Board of Optometrists agreed not to prohibit optometrists in that state from disseminating truthful, nondeceptive information about ophthalmic goods and services. The board agreed not to prohibit or discourage optometrists from advertising price-related terms or claims of professional superiority, or to threaten disciplinary action against anyone making such claims. The agreement also requires the board to send a copy of the order to each licensed optometrist in the state and to each person who applies for a license to practice optometry for the next five years. The board is not prohibited from restricting advertising that it reasonably believes to be "ambiguous or misleading", or from seeking legislation concerning the practice of optometry.

#### Sentronic Controls Corporation

Sentronic Controls Corporation agreed not to claim its "Pest Sentry" ultrasonic pest control device eliminates insects and rodents, or make any other efficacy or performance claims, unless it has competent and reliable scientific evidence which substantiates the claims. The order also prohibits the company from either that the device will prevent insects and rodents from entering or remaining in an area where the product is being used or that the device is an effective alternative to the use of conventional pest control products.

#### Sun Refining and Marketing Company

Sun Refining and Marketing Company agreed to honor lifetime warranty obligations for automobile batteries it sold with such a warranty. The company also agreed to contact eligible consumers and make them aware of the reinstatement of the lifetime warranty.

#### Trans-Continental Industries (TCI)

Trans-Continental Industries (TCI), and John Treadwell, doing business as TCI, agreed not to claim that its "20% Plus Organic Fuel Catalyst" gasoline additive could increase gas mileage and reduce fuel costs by 20 to 25 percent unless it has competent and reliable evidence. The company also agreed not to misrepresent the results or conclusions of any laboratory or road tests and not to misrepresent the potential profits or marketing assistance that will be provided for distributors of its products. The agreement also requires Treadwell to notify the Commission of his involvement with any business using telephone sales for the next five years.

#### Wein Products, Inc.

Wein Products, Inc., agreed not to claim that its "Decimate" ultrasonic pest control product will eliminate rodents or insects from a home or business, or will work within a specified time period. The agreement also prohibits the company from claiming that the device will prevent rodents or insects from entering or remaining in a home or business, protect any specified square footage area, or is an effective alternative to conventional pest control products unless it has competent and reliable scientific evidence that substantiates the claims.

#### Charles E. Weller, as a Former Officer of Alaska Land Leasing, Inc.

Charles E. Weller agreed not to misrepresent the present value or potential for increased value of oil and gas leases or other investments, and will contribute \$60,000 to a consumer redress fund. Weller also agreed to disclose information about the risks and potential of oil and gas leases in sales brochures and contracts by stating on the contracts that they are not valid or complete unless the customer signs a declaration of understanding regarding the required disclosures.

Young & Rubicam/Zemp, Inc.

Young & Rubicam/Zemp, Inc. agreed not to misrepresent the ability of the Ecologizer CA/90 Series 2000 Air Treatment System or any other air cleaning appliance or equipment to remove formaldehyde gas or tobacco smoke from household air. The company also agreed to have a reasonable basis, consisting of competent and reliable evidence, to substantiate any future performance claims in the sale or promotion of any household air cleaners. Young & Rubicam/Zemp, Inc. is the advertising agency which created and disseminated the Ecologizer ads for the manufacturer, Rush-Hampton Industries, Inc.

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## PRELIMINARY AND PERMANENT INJUNCTIONS

## COMPETITION MISSION

## Baker International Company

The Commission authorized its staff to file a preliminary injunction to prohibit Baker International Company's proposed acquisition of Wagner Mining Equipment Company, Russell Bros., Ltd. and certain assets in Australia from PACCAR, Inc., headquartered in Bellevue, Washington. Baker and Wagner-Russell were alleged to be substantial competitors in the world-wide manufacture, sale and resale of certain underground mining equipment such as load-haul-dump machines, trucks and other utility vehicles used in the mining industry. The complaint charged that the acquisition of the two leading manufacturers of load-haul-dump machines would create a monopoly in a highly concentrated industry with high barriers to entry. The companies abandoned the transaction before papers were filed in court.

## NL Industries, Inc.

The Commission authorized its staff to file a preliminary injunction action in federal district court to bar NL Industries, Inc.'s proposed acquisition of American Cynamid Co.'s titanium dioxide plant located in Savannah, Georgia. NL Industries is one of the largest producers of titanium dioxide in the world; American Cynamid is the fourth largest producer in the United States. Titanium dioxide is used primarily as a pigment in paints, paper, synthetic fibers and rubber compounds. NL Industries canceled the acquisition before papers could be filed in court. American Cynamid sold its titanium dioxide assets to another buyer.

## SmithKline Beckman Corporation

The Commission authorized its staff to file a preliminary injunction action to block SmithKline Beckman Corporation's proposed acquisition of American Optical Corporation. SmithKline, through its Allergan Pharmaceuticals, Inc. subsidiary, is a leading manufacturer of soft contact lens care products and prescription ophthalmic products; American Optical manufactures, sells, and distributes soft contact lenses and soft contact lens care products. The Commission alleged that because American Optical would be eliminated as a substantial competitor, the acquisition would increase the chances of collusion among other firms

in the market for chemical disinfectant solutions for soft contact lenses. The transaction was abandoned before papers were filed in district court.

#### CONSUMER PROTECTION MISSION

##### Arthur F. Furman

A federal district court issued a permanent injunction against Arthur F. Furman, sellers of hair analysis services and vitamins, minerals, and other dietary supplements. The injunction prohibits the defendants from misrepresenting to consumers their ability, based on a hair analysis, to accurately measure the element content of a person's body or to recommend dietary supplements to correct chemical excesses and deficiencies. The defendant, Arthur Furman, also was enjoined from using titles implying that he has a medical degree.

##### Certified Security Systems

The Commission filed a complaint seeking preliminary and permanent injunction actions and consumer redress against four individuals for alleged violations of the FTC Act in the sale of business opportunities. The defendants, Michael Kaplan, Jerome Kaplan, Robert MacKenzie Davis, Jr., and Richard Wiley have employed a series of corporations to sell distributorships for high-tech products such as energy savings devices and home burglar alarm systems. The complaint alleges that the defendants have made several false and misleading representations including: 1) that the products they sell are unique and they are the sole source of the products; 2) that investors will be granted exclusive territories for distribution; 3) that substantial profits and income will be realized on the investments; 4) that substantial promotional and technical assistance would be available to distributors; 5) that investors would receive marketable products; and 6) that investors could easily find dealers to handle the products supplied. A preliminary injunction and an asset freeze were issued by the court.

##### Control Technology, Inc.

The Commission filed a complaint seeking a permanent injunction, an asset freeze, consumer redress, and civil penalties against Control Technology, Inc. and two of its officers for allegedly violating the Commission's Franchise Rule. The complaint charges that the company misrepresented the earning potential of its franchises for energy-management systems and also misrepresented the services it would pro-

vide franchisees. The court issued a temporary restraining order that prohibits the company from misrepresenting the earning potential of its franchises, making any false or deceptive claims in connection with the sale of the franchises, or further violating the Franchise Rule. The court also froze the company's assets.

#### Del Monte Corporation

The Commission filed a complaint seeking civil penalties and a permanent injunction against the Del Monte Corporation for alleged violations of the FTC's Mail Order Rule in a coupon promotion program. The complaint alleges that the company violated the rule by failing to send consumers timely and proper notices telling them of their rights under the rule when the company could not ship "Country Yumkin" dolls on time.

#### Evans Products Company

The Commission filed a complaint seeking preliminary and permanent injunctions and consumer redress from Evans Products Co. and its finance subsidiary, Evans Financial Corp. The complaint charges that Evans falsely and deceptively represented that it would provide buyers of thousands of homes sold through its Capp Homes and Ridge Homes divisions with guaranteed long-term mortgage loans, often at specified low interest rates. The Commission alleges that this misrepresentation caused buyers severe economic and other injury, and resulted in many of them losing their homes. A temporary restraining order was issued, enjoining defendants from pursuing any foreclosure activities and requiring 30 days notice in advance of any proposed sale of assets by Evans exceeding \$10 million. The court's subsequent decision to deny a request for a preliminary injunction was affirmed on appeal.

#### Intra-Medic Formulations, Inc.

The Commission filed a complaint seeking a permanent injunction and consumer redress against Intra-Medic Formulations, Inc., its president, and three wholly owned subsidiaries. The Commission has charged the four mail order companies with making false and deceptive claims about their weight-control and baldness-cure products. A federal district court has issued a temporary restraining order against the defendants.

#### J & R Marketing Corp.

The Commission obtained a settlement from J & R Marketing Corp. and its principal officers, Ray Belitsky and James Bianco, requiring them

to pay \$700,000 into a consumer redress fund and enjoining them from making future misrepresentations concerning the likelihood of obtaining valuable oil and gas leases. J & R provided filing and advisory services to clients participating in lotteries the Department of the Interior conducted for oil and gas rights on federal land parcels. The agreement is subject to the approval of the Bankruptcy Court because J & R has filed for reorganization under Chapter 11. However, the company's officers will remain personally liable for the agreement's redress provisions regardless of the court's decision on J & R.

#### William D. Jones d/b/a Liquid Assets

The Commission filed a complaint seeking a permanent injunction and consumer redress against William D. Jones, doing business as Liquid Assets. The Commission alleges that advertising claims that a mouthwash, Breath Fresh 502, will sober people who have consumed large amounts of alcohol and will allow them to pass breath analyzer tests are false and deceptive, and that Jones did not have a reasonable basis for making such claims. The Commission is seeking to: 1) enjoin Jones from making these or similar claims without competent and reliable scientific evidence; 2) order Jones to notify those who have purchased the product since January 1983 that it will not reduce the intoxicating effects of alcohol, have any effect on breath alcohol level, or help purchasers pass breath analyzer tests; and 3) order Jones to offer refunds to purchasers.

#### Kimberly International Gem Corp.

The Commission obtained a settlement in the matter of Kimberly International Gem Corp. Customers of the gem investment company will receive as much as \$280,000 in redress, settling charges the company and other defendants misrepresented the value of colored gemstones sold as investments. Gemstones purchased by individuals ranged from a few thousand dollars to tens of thousands of dollars. A federal district court also issued stipulated permanent injunctions and default judgments prohibiting the defendants from making false or deceptive claims about gemstones or other investments.

#### Kitco of Nevada, Inc.

Three principals of Kitco of Nevada, Inc., Duane F. Snelling, John E. Farkas, and Craig A. Jesinoski, were permanently enjoined from misrepresenting business opportunities and ordered to pay \$531,949 in restitution to purchasers of their "work at home" business opportun-

ity. The Commission had charged that Kitco misrepresented both the amount of profit that could be earned and the services the company would provide to purchasers of their machines, used to make small plastic items. Under the injunctions, the individuals are prohibited, when selling business opportunities, from misrepresenting: 1) the nature and extent of any service or assistance to be provided; 2) the frequency or method of payment for any products manufactured or sold as part of such opportunity; the performance, efficiency, or production capacity of any machine they sell; 3) the past, current, or likely future income or profits of any purchaser; and 4) the amount and duration of work that will be provided to purchasers.

#### Nationwide Mortgage Corporation

The Commission filed a complaint seeking preliminary and permanent injunctions and consumer redress against Nationwide Mortgage Corp., Community Mortgage Corp., Southeast Title Insurance Corp., and nine individuals for allegedly misrepresenting the terms and duration of the loans they offered. Two of the companies and two individuals also are charged with violating the Truth In Lending Act. The defendants are mortgage brokers who arrange loans, secured by deeds of trust on the borrower's home, to low and middle income homeowners who need money quickly. Fees for the loans are generally in excess of 30 percent of the loan, in addition to the market interest rate charged. The complaint charges that the defendants were misrepresenting the terms of financing to borrowers and causing more than 100 Washington, D.C., area homeowners to lose their homes, file for bankruptcy, or seek refinancing at additional cost. Temporary court orders prohibiting the alleged practices have been issued.

#### Paradise Palms Vacation Club

The Commission obtained a settlement of contempt charges against Theodore Weiswasser, a Texas timeshare promoter, for violating a 1981 preliminary injunction prohibiting misrepresentations of vacation timeshares. Weiswasser pled guilty to criminal contempt charges and the U.S. District Court for the Western District of Washington handed down a three-year sentence. The court suspended one year of the sentence, but placed Weiswasser on probation for five years and ordered him to pay \$2500.00 into a consumer redress fund. Weiswasser is also prohibited from any further connection with any type of timeshare business. Weiswasser has most recently been the owner of Sunward Developers, Inc. and an officer of Four Seasons Sales, both of which sold timeshares in four Texan vacation resorts.

**Phillipe LaFrance/USA, Ltd.**

The Commission filed a complaint in federal district court seeking permanent injunctions, consumer redress, a freeze of assets, and civil penalties from nine companies and four individuals who allegedly misrepresent the nationally advertised mail-order products they sell. The Commission also charges that the defendants, which operate under various names, including Sheldon Friedlich Marketing, Inc. and Phillipe LaFrance/USA, Ltd., violated the FTC's Mail Order Rule. In January 1985, the court issued a temporary restraining order freezing the assets of all the defendants except Sheldon Friedlich Marketing, which has been involved in bankruptcy proceedings. The complaint charges that the defendants made false and deceptive representations about eight of their products, ranging from copper cookware to ceiling fans, they sell through newspaper and magazine advertisements and direct mail. The Commission also alleges the companies violated the Mail Order Rule by failing to meet its notification, cancellation, and refund provisions.

**Trans-Alaska Energy Corporation**

The Commission filed criminal contempt charges against David J. Swain and Michael Peter Nissen for alleged violations of an asset freeze order issued by the U.S. District Court. In 1984, the Commission charged Trans-Alaska Energy Corporation, three other corporations, and five individuals (include Swain and Nissen) with making misrepresentations in the sale of oil and gas leases in Alaska and Wyoming in violation of the FTC Act. The court issued a preliminary injunction containing an asset freeze provision against all defendants. The Commission alleges that Swain and Nissen have transferred or sold assets since being notified that an order had been issued.

**Tuff-Tire Industries, Inc.**

The Commission filed a complaint seeking a permanent injunction, an asset freeze, consumer redress, and civil penalties against the sellers of "Mr. Tuff-Tire" automotive tire sealant. Tuff-Tire America, Inc., Tuff-Tire Industries, Inc., and two company officers are charged with misrepresenting the product's effectiveness, misrepresenting the profitability of their franchises, and violating the Commission's Franchise Rule. The complaint also charges that the companies misrepresented the warranty on the product, as well as falsely representing that franchisees would be provided training, and that the companies carried a multi-million-dollar product liability insurance policy. The court has issued a temporary restraining order and an asset freeze.

### Unnamed Providers of Adoption Services

The Commission filed a complaint in federal district court seeking a permanent injunction and consumer redress against three individuals, Rebecca L. Kelley, Debbie Tanner, and Bryan M. Hall, who allegedly falsely claimed they could help couples adopt children from Mexico. The complaint charges that the defendants misrepresented the status of "pending" adoptions and the procedures they would follow, such as placing fees in escrow and working through a Mexican attorney. The Commission asked the U.S. District Court to prohibit further misrepresentations by the defendants and to require them to refund fees paid for services they do not perform. A preliminary injunction and asset freeze have been issued by the court.

### U.S. Oil & Gas Corp.

The Commission obtained a settlement with two defendants in its suit against U.S. Oil & Gas Corp. Martin Rotberg, former salesman and executive director, agreed to a permanent injunction and to pay \$85,000 in consumer redress to customers who may have been injured in connection with the sale of filing services to obtain mineral rights. Milton Sand, another defendant in the proceeding, agreed to pay \$225,000 in consumer redress and signed a stipulated order prohibiting him from making false claims about his success in obtaining oil and gas leases for customers.

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## CIVIL PENALTY ACTIONS

## COMPETITION MISSION

## American Hospital Supply Corporation

The Commission charged American Hospital Supply Corporation (AHS), a major manufacturer of medical supplies, with violating a 1981 consent order by acquiring eight companies without obtaining prior Commission approval. According to the complaint, filed in the U.S. District Court for the Northern District of Illinois by the Department of Justice at the Commission's request, AHS acquired eight firms engaged in the sale of urological catheters between June 30, 1981, and May 31, 1983, in violation of a consent order that prohibited AHS from acquiring companies engaged in the manufacture and distribution of catheters. The 1981 consent settled charges that AHS's acquisition of American Cystoscope Makers, Inc. would create a monopoly in the urological industry. The consent ordered the divestiture of American Cystoscope and placed AES under a prior approval provision for a ten-year period. The complaint further alleged that AHS filed four false compliance reports between 1981 and 1983, stating that the company had not made any acquisitions for which prior approval was required. The court was asked to consider the eight acquisitions to be continuing violations of the order and to assess civil penalties of up to \$10,000 per day for each violation.

## Bell Resources, Ltd.

Bell Resources, Ltd. violated the advance notification requirements and waiting period provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, according to a suit filed by the Department of Justice in the U.S. District Court for the Southern District of New York at the request of the Commission. The complaint charged that Weeks Petroleum, Ltd., a subsidiary of Bell Resources, began acquiring stock of Asarco, Inc. on September 27, 1984, and continued its stock purchases until February 28, 1985. According to the complaint, by November 21, 1984, Weeks had acquired more than \$15 million worth of Asarco stock, but did not file an HSR notification until March 8, 1985, stating its intention to acquire at least 25 percent of Asarco stock. Asarco, based in New York, is one of the world's major copper producers. Under provisions of the HSR Act, companies of a certain size must file notification and observe a waiting period prior to the acquisition of certain amounts of assets or stock. The complaint alleged that either Bell Resources or Weeks Petroleum was required by the HSR

Act to file notification and observe the waiting period requirements before acquiring more than \$15 million of Asarco stock. In addition, the complaint charged that Weeks Petroleum's acquisitions were not made solely for the purpose of investment and did not qualify for the ten percent exemptions under the Act. According to the complaint, Weeks Petroleum acquired the stock at the direction of Bell Resources and its chairman of the board, M.R.H. Holmes a Court. Bell Resources is based in Melbourne, Australia; Holmes a Court is an Australian citizen. The complaint seeks maximum civil penalties and an injunction prohibiting future violations of the premerger reporting requirements under the HSR Act.

## CONSUMER PROTECTION MISSION

### Allied Finance Company

Allied Finance Company agreed to a \$125,000 civil penalty consent decree to settle charges it discriminated against elderly credit applicants on the basis of their age and reliance on retirement income in violation of the Equal Credit Opportunity Act (ECOA). The company also allegedly violated the ECOA by requiring married people applying for individual credit to have their spouses sign loans, and by requesting information on the marital status of consumers applying for individual, unsecured credit in certain states. Allied Finance also allegedly violated the Fair Credit Reporting Act by failing to inform consumers who were denied credit based on information received from a credit reporting agency of that fact. In addition, the company allegedly did not provide such consumers with the agency's name and address, as required by the FCRA. Under the consent decree, the consumer loan company agreed not to discriminate against the elderly, to comply with federal credit laws, and to provide all applicants it rejected last year with the notices these laws require.

### Enamelcraft, Inc.

Enamelcraft, Inc., its two wholly-owned-subsidiaries, and the president of the three companies agreed to a \$15,000 civil penalty consent judgment for allegedly misrepresenting the services and merchandise they offered, and violating the FTC's Franchise Rule. The alleged violations of this franchiser of women's clothing and enamel jewelry and giftware included: misrepresenting the minimum annual earnings of franchisees; misrepresenting the quality of the goods offered; and falsely claiming that retail locations would be found, training would be provided, unsold merchandise would be bought back at the original price, and that the first year's profit was guaranteed.

**Encore House, Inc.**

Norman Chanes and Monroe Caine, mail order marketers, agreed to a consent decree requiring them to pay \$250,000 in consumer redress and \$100,000 in civil penalties to settle charges they repeatedly violated the FTC's Mail Order Rule and misrepresented their merchandise. The charges included: promising high-quality goods but delivering low-quality, poorly-constructed goods; failing to deliver merchandise within the required timeframes; failing to notify consumers of their rights under the rule, and failing to make prompt refunds. The consent decree also prohibits the marketers from making false or deceptive claims about their mail-order products and from failing to honor their guarantees.

**Federal Energy Systems, Inc.**

Federal Energy Systems, Inc., a California franchise seller, and one of its officers, George L. Yost, agreed to a consent decree requiring them to pay \$3 million in consumer redress and \$1.62 million in civil penalties to settle charges they violated the FTC's Franchise Rule. The alleged violations included making false and deceptive claims that their franchises were highly successful, that they arranged for financing, that their equipment was easy to sell, that their franchisees would have exclusive geographic sales territories, and that they would perform extensive advertising. Other alleged violations included failing to make required disclosures to potential buyers; and failing to provide disclosures within the time period the rule specifies. The company sells franchises for the sale and installation of equipment that automatically controls the heating and air conditioning of commercial buildings. Under a second decree filed at the same time, another officer, Vernon Williams, charged with the same violations, consented to the same future prohibitions and agreed to pay \$10,000 in civil penalties.

**Fidelity Acceptance Corp.**

Fidelity Acceptance Corp. agreed to a \$235,000 civil penalty that includes a consent decree to settle charges it repeatedly turned down elderly loan applicants on the basis of their age and reliance on retirement income. The civil penalties are the largest the Commission has ever obtained in a case involving alleged violations of the Equal Credit Opportunity Act, which prohibits discrimination in the granting of credit. Under the consent decree, the consumer-loan company agreed not to discriminate against the elderly, to comply with federal credit laws, and to send the notices these laws require to approximately 15,000 previously rejected applicants.

**JS&A Group, Inc.**

JS&A Group, Inc. and its president, Joseph Sugarman, agreed to a \$115,000 civil penalty consent judgment settling charges that they violated the FTC's Mail Order Rule and prohibiting future violations of the rule. The alleged violations included: failure to mail more than 22,000 orders within the required time period, solicitation of orders for products when there was no reasonable basis to expect that shipments could be made within the required time; failure to inform customers of their rights to cancel and receive a refund; failure to provide customers with legally adequate means to notify JS&A, at its expense, of their desire to cancel; and failure to make prompt refunds. The judgment requires the defendants to meet the rule's notification, cancellation, and refund provisions.

**Me-Books Publishing Company**

The two officers of Me-Books Publishing Company, Jerry Klein and James Maher, agreed to a \$20,000 civil penalty consent decree to settle charges they violated the FTC's Mail Order Rule. The alleged violations included: solicitation or receipts of orders when the company did not have the merchandise available to ship; failure to promptly refund customers' money; failure to ship ordered merchandise; and failure to meet the rule's notification and cancellation requirements.

**Nash Phillips/Copus, Inc.**

Nash Phillips/Copus, Inc., one of the nation's largest home builders, agreed to a \$300,000 civil penalty consent decree to settle charges it violated the Truth In Lending Act (TILA). The complaint charged that Nash Phillips' advertisements offering credit for its houses violated the TILA by using specific credit terms without also including other required disclosures. The company agreed to provide the annual percentage rate in any of its credit advertisements that state an interest rate, and comply with all requirements of the Truth In Lending Act. The Commission took this action as part of its real estate credit advertising project designed to increase compliance with credit advertising laws.

**Orin G. Grossman, Individually and as the Former President of Brooks Rent-A-Car, Inc.**

Orin G. Grossman, former president of Brooks Rent-A-Car, Inc., agreed to a \$4,300 civil penalty consent decree to settle charges he violated a Commission cease and desist order in a series of advertisements. The

order prohibits certain claims about rent-a-car mileage rates. The consent decree rejoins Grossman from violating the order or going back into the rental car business without first notifying the Commission. Brooks Rent-A-Car, Inc. has gone bankrupt and has been dissolved.

#### Royco Automobile Parts, Inc.

A federal court ordered Royco Automobile Parts, Inc., and its president, Robert Sowerby, to pay \$567,000 in consumer redress and \$400,000 in civil penalties, and also permanently enjoined them from violating the FTC Act and the Commission's Franchise Rule. The Commission's complaint charged Royco with violating the FTC Act and the Franchise Rule by failing to provide required documents, misrepresenting facts, and making false earning claims. According to the complaint, consumers who invested in a Royco distributorship for the sale of automotive tune-up parts lost an average of \$14,000 each because of false promises of high profits from a risk-free investment.

#### Winkelman Stores, Inc.

Winkelman Stores, Inc. agreed to a \$65,000 civil penalty consent decree to settle charges that it violated federal statutory credit reporting requirements when denying credit applicants. The Commission's complaint charged that Winkelman Stores repeatedly violated certain provisions of the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA). Winkelman Stores, a Detroit-based corporation that owns and operates more than 90 stores, has annual sales of approximately \$100 million, a substantial portion being credit sales. The consent decree also requires Winkelman to review all the credit applications it has rejected since January 1, 1983, and send appropriate ECOA and FCRA notices to all consumers who have not received them.

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## ADMINISTRATIVE COMPLAINTS

## COMPETITION MISSION

## Amerco

The Commission's complaint charged that U-Haul International, Inc., a subsidiary of AMERCO, used "sham litigation" during Jartran, Inc.'s Chapter 11 reorganization proceedings in an attempt to delay or prevent Jartran from competing in the one-way moving equipment market. This is the Commission's first case to test alleged "sham litigation", charging a company with deliberate use of the judicial process for an anticompetitive purpose, rather than that for which the litigation was ostensibly brought. According to the complaint, the bankruptcy and reorganization proceeding contained numerous U-Haul motions, challenges, and requests for review that were inconsistent with U-Haul's participation to protect its rights as a legitimate creditor desiring a prompt determination of assets in the debtor's estate and the rapid confirmation of an acceptable reorganization plan. The complaint alleged that one month after Jartran filed its petition in federal bankruptcy court, U-Haul filed a claim in Jartran's proceedings based on damages U-Haul sought in a 1980 suit for false and misleading advertising. Later in the Chapter 11 proceedings, U-Haul opposed a settlement between Jartran and certain creditors that allegedly would have increased the amount of money U-Haul would have received. The complaint also alleges that on more than one occasion U-Haul proposed that AMERCO acquire Jartran despite knowledge that such an acquisition could not be confirmed by the bankruptcy court, but needed, instead, the approval of the federal antitrust agencies, which U-Haul refused to contact. Finally, the complaint charged that U-Haul's actions in the Chapter 11 proceedings violated the antitrust laws because they were deliberate attempts by a dominant firm in the market to eliminate Jartran's ability to come out of bankruptcy court as a competitor in the one-way moving equipment market.

## Detroit Motor Vehicle Dealers

The Commission's complaint charged that more than 200 motor vehicle dealers and dealer associations illegally conspired to limit the hours of operation for the sale and lease of motor vehicles, which unlawfully limited consumers' ability to shop and compare the prices of a number of dealers. According to the complaint, the dealers and associations adopted and attempted to enforce a schedule to close dealerships on Tuesday, Wednesday, and Friday evenings and maintain no Saturday

hours except for occasional special sales. The "group" allegedly enforced the limited hours schedule through threats of physical harm to owners, employees, and family members, actual property damage, and threats of property damage against individual dealers who attempted to stay open during the restricted hours. The complaint further alleged that the "group" conspired to restrict the advertising or publishing of motor vehicle prices, and prohibited dealers from advertising in the classified section of Detroit area newspapers, in an attempt to fix the prices of new and used vehicles. The complaint named approximately 220 motor vehicle dealerships, dealers, dealer employees and officers, and ten dealer associations, including the Detroit Auto Dealers Association, comprised of dealers selling a particular line of car in the Detroit, Michigan, area covering Macomb, Wayne, and Oakland counties.

#### Massachusetts Board of Registration in Optometry

The Commission's complaint alleged that the Massachusetts Board of Registration in Optometry conspired with its members to restrict optometrists from the truthful advertising of eye care and services. The board, comprised of four optometrists and one public member appointed by the Governor of Massachusetts, is the sole licensing authority for individuals who practice optometry in the State. According to the complaint, the board adopted and implemented regulations that prohibited its members from soliciting private patients through the use of advertisements offering discounts or rebates, prohibited optical establishments or other commercial practices from advertising optometrists' names or the availability of their services, and prohibited its members from using ads that contained testimonials or that were deemed to be "sensational" or "flamboyant." The complaint also charged that the board informed members that the use of the advertisements violated Massachusetts State law and threatened to bring disciplinary actions against members who continued to engage in the advertising practices. According to the complaint, the Commonwealth of Massachusetts bans claims that eyes are examined free, but does not have a statute or any policy that bans truthful advertising by optometrists regarding their goods and services. The complaint further alleged that the board's advertising restrictions deprived consumers of the benefits of price and service competition among optometrists, which may have caused some consumers to either pay higher prices for optometric services or delay or cancel needed optometric care.

#### MidCon Corp.

The Commission charged that MidCon Corp.'s proposed acquisition of United Energy Resources, Inc. would substantially lessen competi-



tion in the natural gas markets in the offshore area of the Gulf of Mexico and in the Baton Rouge- New Orleans corridor. According to the complaint, the acquisition may tend to create a monopoly in the transportation of natural gas out of producing fields in the Gulf of Mexico off the State of Louisiana since both MidCon and United Resources are competing owners or part-owners of several natural gas pipeline systems serving the Gulf and other areas in the United States. The acquisition, if consummated, could result in MidCon becoming the third largest natural gas transportation company in the U.S. If the Commission finds that the acquisition violated the antitrust laws, MidCon may be required to divest some of its offshore pipeline interests or other appropriate relief may be pursued. In a related action, the Commission accepted a proposed consent agreement with MidCon resolving the FTC's concerns in the sale of natural gas in the area between Baton Rouge and New Orleans.

#### National Decorating Products Association, Inc.

The Commission issued a complaint alleging that a national wall covering trade association and two of its affiliates engaged in a conspiracy in an attempt to stabilize wall covering prices at both the supplier and consumer levels. Named in the complaint were the National Decorating Products Association, Inc. (NDPA), the national association representing over 7,000 operators of retail businesses engaged in the promotion and sale of wall coverings; the Eastern Decorating Products Association, the New England/Middle Atlantic states NDPA affiliate; and the Decorating Products Dealers Association of Greater New York, Inc., NDPA's local affiliate. The complaint charged that the trade associations illegally conspired with their members to suppress discounting from the manufacturer's suggested retail prices published in wall covering sample books, by removing or concealing the prices, and by pressuring suppliers to publish books without suggested prices. In addition, the trade associations allegedly restrained competition by attempting to fix prices paid to wall covering suppliers by threatening to refuse to deal with suppliers that imposed a charge for cutting double rolls of wall coverings into single rolls and refusing to pay cutting charges. During the year, the Commission accepted a final consent agreement, for similar alleged antitrust violations, with the Orlando, Florida, affiliate of the NDPA, the Decorating Products Association of Central Florida.

#### Olin Corporation

The Commission charged that Olin Corporation's acquisition of FMC Corporation's chlorinated isocyanurate and cyanuric acid assets would

substantially lessen competition in the manufacture and sale of chlorinated isocyanurate and calcium hypochlorite dry swimming pool sanitizers. Under a separate agreement accompanying the complaint, the Commission allowed Olin to consummate the acquisition and Olin agreed to maintain or improve the production capabilities of the acquired isocyanurate assets, allowing the Commission the opportunity to complete its administrative proceedings while preserving the Commission's ability to obtain effective divestiture or other appropriate relief that might be found necessary. In addition, under the separate agreement, Olin terminated a 1984 agreement with Monsanto Company under which Monsanto provided Olin with chlorinated isocyanurates for resale. The separate agreement will remain in effect until the Commission issues its final order.

#### Rochester, N. Y. Anesthesiologists

The Commission charged that 35 anesthesiologists engaged in a price fixing conspiracy in an attempt to raise their fees and restrain competition by participating in a group boycott against Blue Shield. The complaint alleged that in 1980 anesthesiologists who have practiced at the three largest hospitals in the Rochester, N.Y., area threatened to withdraw from Blue Shield if the insurance company did not meet their demands for higher payments. When the collective negotiations failed to yield a higher fee schedule, the doctors withdrew from Blue Shield and significantly increased their fees for services rendered to subscribers of Blue Shield, according to the complaint. The complaint further alleged that some anesthesiologists used similar threats in negotiations for higher fees with Preferred Care, a health maintenance organization operating in Rochester. Preferred Care, according to the complaint, met the doctors' demands and paid the higher costs of anesthesia services, but increased the insurance premiums paid by Preferred's subscribers. The Commission's complaint charged that the doctors' conspiracy to obtain higher fees for their services would affect patients through higher premiums, lessen competition among anesthesiologists, and may have limited the ability of health insurance companies to compete in the Rochester area. If the Commission finds that the anesthesiologists violated the law, it could prohibit them from engaging in group negotiations that affect the amount or terms of reimbursement from third-party payors.

#### Ticor Insurance

Six title insurance companies have allegedly restrained competition by conspiring to set the prices charged for title search and examination

services or settlement services through rating bureaus in Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin, and Wyoming. According to the complaint, Ticor Title Insurance Co., Los Angeles; Chicago Title Insurance Co., Chicago; Safeco Title Insurance Co., Los Angeles; First American Title Insurance Co., Santa Ana, California; Lawyers Title Insurance Co., Richmond, Virginia; and Stewart Title Guaranty Co., Galveston, Texas, perform services designed to identify and describe the ownership of real property, prior to the issuance of title insurance to confirm the seller's clear title to the property. In addition, the companies provide settlement services related to the closing of a real estate transaction including the execution, delivery, and recording of transfer and lien documents. The rating bureaus, which are not state agencies, file joint rates on behalf of their member insurance companies with state insurance commissions. The complaint further alleged that these examination and settlement services do not constitute the "business of insurance" under the McCarran-Ferguson Act, which exempts the state-regulated "business of insurance" from the federal antitrust laws.

#### CONSUMER PROTECTION MISSION

##### Buckingham Productions, Inc.

The Commission's complaint alleges that Buckingham Productions, Inc., made false, misleading, and unsubstantiated advertising claims for its "Rotation Diet" and several other related weight-reduction plans. The plan rotated dieters between days with no caloric restrictions and calorically controlled days. Advertisements for the diet plans claimed that women would safely lose 8 to 20 pounds per month and men would safely lose 12 to 25 pounds per month under the plan. The complaint charges that the company did not have a reasonable basis for these claims. In addition, the complaint charges that testimonials by users of the Rotation Diet were misleading because some were not genuine and the photographs accompanying other testimonials were of Buckingham employees.

##### Roy Brog, Individually and as a Former Officer and Director of Meadow Fresh Farms, Inc.

The Commission's complaint alleges that Roy Brog, president of Meadow Fresh Farms, Inc., a nationwide company that marketed a dry milk substitute, made unsubstantiated claims about the product's shelf life and its ability to reduce cardiovascular disease. The company sold its product, Meadow Fresh White, a powdered, dairy-based milk

substitute, through a distributor network. The complaint also charges Brog with making false claims about the average earnings of distributors by substantially overstating the income they could reasonably expect to earn.

**Removatron International Corp.**

The Commission's complaint charges Removatron International Corp., the maker of the Removatron brand hair-removal device, with deceptively advertising that the product can permanently remove hair and falsely claiming the device has been approved by the Federal Communications Commission. The complaint alleges the company lacked substantiation for its claims that Removatron treatments remove hair permanently and are an effective alternative to electrolysis.

PART III (Adjudicative Stage)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR COMMENT

COMPETITION MISSION

Columbian Enterprises, Inc.

Columbian Enterprises, Inc., agreed to limit its acquisition of firms engaged in the production of carbon black. The consent settled a 1984 complaint which alleged that Columbian's acquisition of the Continental Carbon Co., a subsidiary of Conoco, Inc., could lessen competition by creating the nation's second largest producer of carbon black, a petroleum feedstock used to strengthen natural and synthetic rubber in the manufacture of tires, inner tubes, and other rubber products. Under terms of the agreement; for a period of five years, Columbian is required to obtain prior Commission approval if an acquisition of the stock or assets of a competitor would increase its annual domestic carbon black production capacity by more than 130 million pounds.

MidCon Corp.

MidCon Corp. agreed to sell its interest in the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas, to settle charges that its acquisition of United Energy Resources, Inc. would increase concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans corridor of Louisiana. According to the complaint, MidCon and United Resources are competitors; MidCon, through its 50 percent interest in the Acadian system, transports natural gas to users in the Baton Rouge-New Orleans corridor; United Resources owns an extensive gas transmission system serving the same area. In addition to the required divestiture, the order would prohibit MidCon from acquiring, without prior Commission approval, any interest in additional pipelines that sell a substantial volume of natural gas in the Baton Rouge area for a period of ten years.

Oklahoma Optometric Association

The 300 member Oklahoma Optometric Association agreed to allow its members to operate franchises and branch offices and to advertise truthfully their products and services. The agreement settled charges that the association restrained competition among its members and deprived consumers of the convenience and potential cost savings benefits of retail optical franchises and branch offices in their purchases

of optometric services, optical goods and services. The association represents the interests of approximately 90 percent of the practicing optometrists in Oklahoma. Optometrists provide eye examinations and diagnosis of eye conditions, including prescribing corrective lenses, contact lenses, and eyeglasses. The complaint, issued in March, alleged that the association prohibited its members from selling optical goods through retail optical stores and branch offices and suspended members who engaged in a franchise arrangement, declaring such practices as unethical. According to the complaint, the association adopted rules that prohibited members from establishing a practice close to a retail optical store, affiliating their name with a franchised operation, operating a separate or branch office, and promoting their skills, training, or care through the use of truthful advertising. The association agreed not to interfere with its members' participation in franchises for the sale of optical goods and devices, establishing branch offices, or using truthful comparative advertising about optometric services and skills.

#### CONSUMER PROTECTION MISSION

Weider Health and Fitness, Inc.

Weider Health and Fitness, Inc. and Joseph Weider agreed to pay a minimum of \$400,000 in refunds to consumers and research grants to settle charges that they misrepresented two nutrient supplements. Weider also agreed not to falsely claim that the supplements, "Anabolic Mega-Pak" and "Dynamic Life Essence," are effective substitutes for anabolic steroids or help build muscles. If refunds to purchasers of these products total less than \$400,000, Weider is required to donate the difference to fund research on the relationship of nutrition to muscle development.

PART III (Adjudicative State)  
CONSENT AGREEMENTS ISSUED IN FINAL FORM

COMPETITION MISSION

Louisiana State Board of Dentistry

The Louisiana State Board of Dentistry agreed not to prohibit dentists from advertising or offering discounts for dental services. The board, based in New Orleans, is licensed by the state and is authorized by the state to take disciplinary action against any dentist who engages in unprofessional conduct as defined by Louisiana statute. The Commission charged that the board restrained competition among dentists in the state by prohibiting truthful advertising of discounts and intimidating dentists who advertised such discounts. According to the complaint, the board forced a group of dentists to stop advertising their "Back to School Special," which offered cleaning, examination, fluoride treatment, and X-rays for a specified price. In another instance cited in the complaint, the board allegedly imposed a fine and publicly reprimanded one dentist, who advertised a discounted price, on grounds that advertising the discount constituted unprofessional behavior. In addition, the complaint alleged that the board enforced the advertising restrictions with full knowledge that in 1978 a U.S. District Court in Louisiana had already ruled that it was unconstitutional for the board to restrict truthful advertisements of the cost or availability of routine dental care. The agreement, which settled charges brought in an administrative complaint earlier in the year, prohibited the board from taking any disciplinary action against dentists who advertise or offer discounts for dental services.

CONSUMER PROTECTION MISSION

Associated Mills, Inc.

The agreement prohibits Associated Mills, Inc. from misrepresenting the performance capabilities of the Pollenex Pure Air "99" Air Cleaner/ Deodorizer, a portable indoor air cleaning device. The agreement prohibits the company from misrepresenting that the cleaner removes most tobacco smoke, ragweed pollen, or dust from household air or claiming that the appliance effectively filters all the air in a 14-by-18-foot room in less than an hour. The company agreed to have competent and reliable substantiation for any future performance claims.

**Dr. Barry Bricklin**

The agreement prohibits Dr. Barry Bricklin, an expert in the psychology of dieting, from providing false or misleading endorsements for diet plans marketed by Buckingham Productions. Dr. Bricklin agreed not to represent that consumers can eat as much food as they want and still lose weight without giving specified disclosures about weight reduction. Dr. Bricklin is also prohibited from making claims about "usual" or "average" weight loss, or about the efficacy or performance of weight control products or programs, unless he relies on competent and reliable substantiation. The agreement with Dr. Bricklin is the Commission's first expert-endorser case where the endorser was not a celebrity and was not a principal in the company. It therefore sets a precedent for expert endorsers and advertisers who use expert endorsers.

**P. Leiner Nutritional Products Corp.**

The agreement prohibits P. Leiner Nutritional Products Corp. from claiming that its nutritional supplement "Octacol 4" can improve physical fitness or athletic performance unless it has reliable and competent data to back up such claims. Under the agreement, the company cannot claim that any ingredient in "Octacol 4" improves a person's endurance, stamina, vigor, overall athletic performance, or physical fitness. The company also agreed not to misrepresent the conclusions, data, or results of scientific tests or research in its advertisements.

**Porter Realty, Inc.**

The agreement prohibits Porter Realty, Inc., a real-estate brokerage company, and Irvin Porter, an officer of the firm, from misrepresenting the value and potential use of land. The agreement also requires the company to disclose material facts about the land in its sales and promotional activities. The consent agreement settles charges that Porter Realty, Inc., along with three Texas land-sales companies, made false and deceptive claims in selling rural, undeveloped land in west Texas. In January 1985 the Commission issued a final decision and order prohibiting the land-sales companies from making claims similar to those covered by the Porter agreement.

**Rush-Hampton Industries, Inc.**

The agreement prohibits Rush-Hampton Industries, Inc. from misrepresenting the performance capabilities of the Ecologizer CA/90 Series 2000 Air Treatment System, a portable household indoor air



cleaning device developed for air contaminant problems. The consent order prohibits the company from representing that the Ecologizer removes formaldehyde gas, tobacco smoke, household dust, or pollen from household air. The company agreed to have a reasonable basis, consisting of competent and reliable evidence, substantiating any future performance claims for the Ecologizer Series 2000 or any other air cleaning appliance or equipment.

#### Ward Corporation

The agreement requires Ward Corporation, a major Washington, D.C. area home builder, to make repairs or pay homeowners for valid new home construction defects that cost \$500 or more to fix and are covered by its written warranty. The company and its president, Richard E. Ward, agreed to offer consumer redress to persons who bought their homes between March 1978 and early 1984 and still own the homes. The company is required to set up an arbitration mechanism for future home buyers, provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order, and is prohibited from misrepresenting its warranty obligations.

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## INITIAL DECISIONS

## COMPETITION MISSION

## B. F. Goodrich Company

An Administrative Law Judge dismissed a complaint challenging B.F. Goodrich Company's acquisition of the assets of Diamond Shamrock Plastics Corporation. The 1982 complaint charged that the acquisition would substantially lessen competition and increase concentration in the production of polyvinyl chloride (PVC) and vinyl chloride monomer (VCM), materials used to make plastics. The judge found that although the acquisition slightly increased concentration in the PVC and VCM markets, both showed strong, vigorous competition among producers evidenced by extensive discounts similar production costs, decreased rate of growth in demand, efforts to keep pace with changing technology and the active monitoring of competitors' prices and meeting of competitive offers. The judge concluded that suppliers in both markets are engaged in a "spirited head-to-head contest for market share."

## District of Columbia Superior Court Trial Lawyers Association

An Administrative Law Judge dismissed charges that the District of Columbia Superior Court Trial Lawyers Association illegally conspired to conduct a group boycott in order to demand higher legal fees for the lawyers' services. The association is a group of private attorneys on assignment from the Superior Court of the District of Columbia who primarily handle criminal cases involving indigent defendants under the Criminal Justice Act. According to the 1983 complaint, the association's members withheld their services from the indigent defendant program for 15 days, and made its member lawyers unavailable to accept new case assignments, in order to coerce higher payments from the city government. The boycott was allegedly successful by creating an emergency situation and placing pressure on the District government to pass the required legislation giving the lawyers their first rate increase in over ten years. The judge concluded that the rate increase did no actual harm, since city officials and other viewed the boycott as the only way of securing the higher payments for the attorneys. The judge's decision was appealed by the staff to the Commission.

### Hospital Corp. of America

An Administrative Law Judge ruled that Hospital Corp. of America must divest two acute care hospitals in the Chattanooga, Tennessee, area in one year. The judge upheld, in part, a 1982 complaint alleging that Hospital Corp.'s 1981 acquisitions of Hospital Affiliates International, Inc., and Health Care Corp., may have eliminated competition and increased market concentration in both the acute care and psychiatric markets in Chattanooga. The Hospital Affiliates transaction included Chattanooga's Diagnostic Center Hospital and management contracts for two other hospitals; the Health Care deal included two hospitals in Chattanooga, a psychiatric facility and North Park Hospital (formerly Medical Park Hospital). Hospital Corp. owned three hospitals in the area prior to the acquisitions. The judge ruled that the acquisitions increased the risk of collusion in a highly concentrated market by eliminating two independent competitors. At the staffs request, the judge dismissed the charge that Hospital Corp.'s acquisitions would lessen competition for psychiatric services. In addition to the divestiture, for a period of ten years, the order would require Hospital Corp. to notify the Commission 30 days before acquiring any hospital costing \$1 million or more, when the hospital is within a certain distance of other hospitals owned by Hospital Corp. and meets other specified conditions.

### CONSUMER PROTECTION MISSION

#### Figgie International, Inc.

An Administrative Law Judge upheld in part the charges of a Commission complaint against Figgie International, Inc. The judge found that the company made false performance claims for its "Vanguard" heat detectors and understated the importance of smoke detectors. Under the judge's order, the company is prohibited from representing that its heat detector provides sufficient warning to enable occupants to escape fires safely, without also making an affirmative disclosure that "in most residential fires dangerous levels of smoke, heat, or carbon monoxide gas will build up before a heat detector alarm goes off." The company also is prohibited from representing that a combination heat and smoke detector system will provide significantly better protection than smoke detectors alone unless it also says such a system must include a smoke detector outside each sleeping area and on each additional level of the house. The order requires the company to notify people who bought Vanguard heat detectors since January 1979 about the limitations of the devices and to make the affirmative disclosures. The decision was appealed to the Commission by both Figgie and complaint counsel.

**Orkin Exterminating Co., Inc.**

An Administrative Law Judge ruled that the Orkin Exterminating Co., Inc. must roll back annual renewal fees for customers whose original termite-control agreements called for fixed annual fees. The judge found that in its contracts entered into before September 1974 Orkin agreed to provide annual reinspection for the life of the house if the consumer paid a specified, fixed annual renewal fee. Orkin also agreed to retreat and, in certain cases, repair any termite damage if consumers paid those fees. However, the judge found that the company had unfairly raised the annual renewal fees, giving the consumers no choice other than to pay the increased fee or lose the guaranteed protection. The decision requires Orkin to notify all pre-1975 customers of the Commission's roll back order. The company was not ordered to make refunds to the pre-1975 customers. Orkin and complaint counsel have appealed the decision.

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## FINAL COMMISSION ORDERS

## COMPETITION MISSION

## B.A.T. Industries, Ltd.

The Commission upheld a 1983 Administrative Law Judge's decision that dismissed charges challenging B.A.T. Industries, Ltd.'s acquisition of the Appleton Papers Division of NCR Corp. The complaint had alleged that B.A.T.'s 1978 acquisition of the largest producer of carbonless paper in the United States would lessen competition or tend to create a monopoly in the manufacture and sale of chemical carbonless paper in the U.S. At the time of the acquisition, B.A.T. did not manufacture or market paper in the U.S., but was the largest producer in the United Kingdom and Europe. The Commission affirmed dismissal on grounds that there was insufficient evidence and no clear proof to show that B.A.T. would have independently entered the U.S. chemical carbonless paper market, in the near future, without the acquisition of Appleton.

City of New Orleans, The  
City of Minneapolis, The

The Commission withdrew the two separate complaints issued last year that charged both the City of New Orleans and the City of Minneapolis with eliminating competition in taxicab service by entering into contracts or agreements to increase fares and limit the number of taxicab licenses or operators in each respective city. The Commission withdrew its complaint against New Orleans after the State of Louisiana adopted a statute that has the effect of exempting municipalities or their officers from any liabilities under the federal antitrust laws for such activities. The complaint against Minneapolis was withdrawn after the city amended its code to raise the number of taxicab licenses granted yearly to operators. The Commission concluded that this increase would prevent the anticompetitive conduct alleged in the complaint by lowering barriers to entry in the Minneapolis taxicab industry.

## Echlin, Inc.

The Commission upheld the 1984 decision of an Administrative Law Judge that found Echlin, Inc.'s (formerly Echlin Manufacturing Co.) acquisition of the automotive-aftermarket operations of Borg-Warner Corp. did not violate the antitrust laws. The 1981 complaint alleged that the acquisition could substantially lessen competition in the assembly and sale of carburetor kits. Carburetor kits, used mainly by

professional mechanics, are prepackaged sets of the most frequently used parts needed to repair carburetors that do not require complete replacement. The Commission affirmed dismissal on grounds that there were no barriers to entry in the market since a new entrant could become an assembler of the kits in less than one year. The Commission ruled that in the absence of barriers to entry, firms cannot exercise market power regardless of the concentration in the market.

#### Kaiser Aluminum & Chemical Corporation

The Commission dismissed a 1976 complaint that alleged that Kaiser Aluminum & Chemical Corporation's acquisition of two basic refractories plants from the Lavino Division of International Mineral & Chemical Corporation lessened competition in the industry. In 1981, the court of appeals vacated the Commission's 1979 order requiring Kaiser's divestiture of the Lavino plants, on grounds that the Commission did not define the relevant markets properly, and remanded the case to the Commission for further proceedings. The Commission began settlement discussions with Kaiser, and in April 1985 accepted a proposed consent agreement that would have prohibited Kaiser from acquiring any manufacturer of basic refractories for ten years without prior Commission approval. The Commission subsequently rejected the proposed consent and dismissed the complaint after Kaiser assured the Commission that all its basic refractories facilities had been sold to other companies and stated it had no intention of remaining in the refractories business.

#### Tristate Household Goods Tariff Conference, Inc. Middle Atlantic Conference

The Commission withdrew the two 1984 administrative complaints issued against Tristate Household Goods Tariff Conference, Inc., based in Lester, Pennsylvania, and Middle Atlantic Conference, based in Riverdale, Maryland. The two motor carrier bureaus were charged with fixing the intrastate transportation prices for property shipped by motor common carriers. The two cases were dismissed after the Supreme Court's decision in *Southern Motor Carriers Rate Conference v. United States* provided the two associations with a state action defense, granting them immunity from the federal antitrust laws.

#### Weyerhaeuser Company

The Commission upheld an Administrative Law Judge's 1983 decision that dismissed a complaint against Weyerhaeuser Company. The com-



plaint, issued in 1981, charged that Weyerhaeuser's acquisition of Menasha Corporation's North Bend, Oregon, corrugating-medium mill would substantially lessen competition in the eleven-state region west of the Rocky Mountains. The Commission examined the effects of the acquisition on the West Coast region and found that because of low barriers to entry the acquisition did not threaten competition in the corrugating-medium market. The Commission determined that if prices in the Western region increased substantially, firms in the Eastern United States would enter the area and existing firms would increase production, thus defeating any possible attempts to control the market.

## CONSUMER PROTECTION MISSION

### International Harvester Company

The Commission upheld in part the Administrative Law Judge's decision that International Harvester, a manufacturer of farm machinery, had failed to adequately disclose to consumers that its gasoline-powered tractors were subject to a safety hazard known as "fuel geyser," even though the company knew of the potential danger for many years. The Commission found that the company's failure to notify consumers adequately of the hazard from 1963-1980 was an unfair practice that violated the law. However, because International Harvester had voluntarily notified customers of the problem in 1980, and because the company no longer makes gasoline-powered tractors, a specific corrective order was unnecessary.

### Southwest Sunsites, Inc.

The Commission reversed the ruling of an Administrative Law Judge who had dismissed the charges against Southwest Sunsites, Inc., in 1982 saying he found no evidence of a law violation. The Commission decision upholds a 1980 complaint against three Texas land-development companies, Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, and Sydney Gross and Edwin Kritzler, principals of the companies. The complaint charged the defendants with misrepresenting the value and potential use of land they sold, and failing to disclose material facts about the land. The Commission ordered the companies to have a reasonable basis for future claims about land they offer for sale and to notify current owners about their land's actual value. The order also requires the companies to warn customers that investing in land is risky and to provide purchasers with a seven-day cooling-off period after a sale.

Thompson Medical Company, Inc.

The Commission upheld the Administrative Law Judge's decision and ordered that Thompson Medical Company not represent to consumers that aspirin is an active ingredient of its "Aspercreme" arthritis rub, and must clearly disclose that the product does not contain aspirin. In addition, the company may not represent that any over-the-counter drug product involves a new scientific principle when such a product, or one with the same principle, has been available for purchase in the United States for more than one year. The company also is prohibited from misrepresenting any test or study, or misrepresenting the active ingredient in any over-the-counter drug. The company must have competent and reliable scientific or medical evidence before claiming that any over-the-counter drug product is effective for the relief of minor pain and other symptoms of any arthritis-like disorder.

## ORDER MODIFICATIONS

## COMPETITION MISSION

American Academy of Orthopaedic Surgeons  
American College of Radiology

The American Academy of Orthopaedic Surgeons (AAOS) and the American College of Radiology (ACOR) separately petitioned the Commission to modify their respective consent agreements, which settled charges that both groups developed and circulated relative value scales that had the effect of influencing and fixing fees for services in their respective medical professions. Relative value scales are lists of medical services that provide comparative numerical values for services in non-monetary terms. The Commission modified the 1976 order issued to AAOS and the 1977 order issued to ACOR to allow both groups to participate in discussions concerning other organizations' development of new or alternative types of health care financing, including those using relative value scales.

## BATUS, Inc.

The Commission modified a 1982 order with BATUS, Inc., accepting as full compliance BATUS' divestiture of two Gimbel Brothers Inc. department stores. The order settled charges that "BATUS" acquisition of Marshall Field & Co. could reduce competition among department stores in the Milwaukee area. The order required BATUS to reduce Milwaukee-area department store space by at least 200,000 square feet and its sales by at least \$20 million, measured by 1981 sales. The two Gimbel stores had a combined floor space of 492,000 square feet and 1981 sales of \$17.93 million. The modified order allows BATUS to keep its remaining stores in the Milwaukee area without further divestitures.

## California Medical Association

The Commission granted in part, and denied in part, the California Medical Association's request to delete a provision in a 1979 order that prohibited the association from developing, circulating, or entering into discussions concerning any relative value study developed by third parties. The Commission modified the order to allow the group to participate in discussions with government agencies and third-party payors about health care financing, but denied the association's request that it be allowed to prepare and distribute relative value scales to its physician members. In the Commission's view, relative value scales developed

by medical associations or groups could cause serious antitrust concerns if the groups were to negotiate agreements with health insurance companies that in effect fixed the fees physicians charged for services.

#### Chevron Corporation

The Commission terminated a hold-separate agreement requiring Chevron Corporation (formerly Standard Oil Company of California) to operate all of Gulf Oil Corporation's United States oil and gas assets independent of its own until divestitures required by the October 1984, order were completed. The order settled antitrust concerns over Chevron's acquisition of Gulf. Chevron filed a motion to dissolve the hold-separate agreement, which the Commission treated as a petition to modify the order. Upon completion of Chevron's required divestitures the Commission modified the order by terminating the hold-separate agreement.

#### Great Lakes Carbon Corp.

A 1973 consent agreement against eight producers of industrial quality petroleum coke, a source of carbon for industrial purposes, was set aside at their request. The producers, Great Lakes Carbon Corp., Standard Oil Co. (Indiana), Conoco, Inc., Derby Refining Co., Farmland Industries, Inc., Texaco, Inc., Sun Refining and Marketing Co. and Mobil Corp., were required to limit their contracts for the purchase and sale of industrial quality petroleum coke to terms of three years. The 1969 complaint charged that Great Lakes, then the nation's largest processor and reseller of petroleum coke, and the seven other companies restrained competition through the use of exclusive contracts. The Commission found that competition in the industry had substantially increased since 1969 and that the order was no longer necessary.

#### Interco Inc.

At the request of Interco, Inc., formerly International Shoe Company, the Commission vacated a 1958 consent order that prohibited, in perpetuity, exclusive dealing practices. The order settled charges that Interco loaned money and furnished or provided other special assistance to retail shoe dealers in return for their agreement not to sell shoes supplied by INTERCO's competitors.

#### Luria Brothers & Co. Inc.

The Commission set aside a 1963 order against Luria Brothers & Co., Inc. at the company's request. The order prohibited Luria from entering

into exclusive dealing arrangements with any steel mill and from receiving preferential treatment as an iron and scrap metal supplier. The Commission terminated the order against Luria because the company could no longer dominate the market through the use of exclusive dealing arrangements due to the significant changes that have occurred in the iron and steel scrap metal industry. The provisions prohibiting the steel mills from using Luria as their iron and steel metal supplier were also terminated when none of the mills objected, following issuance of the Commission's show-cause orders. Earlier in the year, the Commission set aside the provision prohibiting Luria from entering into exclusive dealing arrangements with the mills.

#### Salomon/North America, Inc.

At the request of Salomon/North America, Inc., the Commission modified a 1977 consent order to permit Salomon to ban the transshipping of its ski products and limit the retail locations from which dealers may sell its ski products. Salomon is the sole United States distributor for ski boots, bindings, and related equipment made by its French parent, Francais Salomon et Fils S.A. The order settled charges that the company fixed the retail prices of its ski products and prohibited its dealers from selling or supplying its products to anyone who was not an authorized dealer of the Salomon line of products.

#### The Sperry & Hutchinson Company, Inc.

The Commission modified a 1973 consent order with The Sperry & Hutchinson Company, Inc. to delete a requirement that the company redeem its S&H Green Stamps for cash as well as merchandise. The order was modified to allow Sperry & Hutchinson to compete against other forms of retail promotions and other trading stamp companies not subject to the order's restrictions. The 1973 consent agreement settled charges that Sperry & Hutchinson conspired with other companies to prevent retailers from distributing more than one trading stamp per ten cents of merchandise purchased.

#### TEAC Corporation of America

The Commission modified a 1975 consent order that prohibited TEAC Corporation of America, an audio components manufacturer, from engaging in resale price maintenance and from restricting transshipments, which are sales between retailers. At the company's request, the Commission deleted the transshipment provision to allow TEAC to specify the customers to whom its dealers may sell its products.

## CONSUMER PROTECTION MISSION

## American Motors Corporation

The Commission set aside a consent order against American Motors Corp. and Jeep Corp. that required safety-warning stickers on Jeep CJ utility vehicles. The Commission noted that the National Highway Transportation Safety Administration (NHTSA) now requires similar warning stickers on all utility vehicles. AMC and Jeep pointed out in their petition to set aside the order that without the change they would have to comply with both the FTC order and the NHTSA regulation, each of which requires different language on the warning stickers and in the owner's manuals.

## Grolier, Inc.

The Commission modified an order requiring Grolier, Inc., et al. to make certain disclosures in its sales and employment ads, and prohibiting it from making certain misrepresentations to potential employees and consumers. The modifications concern changes in the wording and presentation required in advertisements and sales material, and the timing of required disclosures to prospective employees. The changes reflect terms similar to those in an order modification granted Encyclopaedia Britannica in October 1982.

APPELLATE COURT REVIEW  
OF COMMISSION ORDERS  
AND TRADE REGULATION RULES

American Financial Services Association

Petition for review of Commission trade regulation rule. On July 12, 1985, the United States Court of Appeals for the District of Columbia Circuit issued its decision in this matter, denying a petition for review of the Commission's Trade Regulation Rule on Credit Practices.

Amrep Corp.

Petition for review of a Commission order prohibiting deceptive land sales practices. On July 25, 1985, the United States Court of Appeals for the Tenth Circuit unanimously affirmed and enforced in all respects the Commission's order to cease and desist against Amrep Corp.

Borg Warner Corp.

Petition for review of Commission order. On October 3, 1984, the United States Court of Appeals for the Second Circuit reversed and vacated the Commission's order to cease and desist against Borg Warner.

Indiana Federation of Dentists

Petition for review of Commission order to cease and desist. On October 12, 1984, the United States Court of Appeals for the Seventh Circuit vacated the Commission's decision prohibiting a conspiracy by competing Indiana dentists to withhold x-rays sought by insurers for cost containment purposes.

Koven

Petition for review of Commission order. By order of October 2, 1984, the United States Court of Appeals for the Eleventh Circuit dismissed, for failure to file a timely brief, petitioner's challenge to the Commission's order in Cliffdale Associates, Inc. The Cliffdale order prohibits deceptive practices in the sale of gasoline conservation devices.

Massachusetts Furniture & Piano Movers Association, Inc.

Petition for review of Commission order. On September 30, 1985, the United States Court of Appeals for the First Circuit reversed in part, vacated in part, and remanded for further proceedings the Commission's order that prohibits joint rate setting activities.



## SUPREME COURT REVIEW

## Bristol Myers Corp.

Petition for review of a Commission order prohibiting deceptive practices in analgesics advertising. On January 21, 1985, the Supreme Court denied Bristol Myers Corp.'s petition for certiorari to review a decision of the United States Court of Appeals for the Second Circuit, upholding the Commission's decision in its entirety.

## Harry &amp; Bryant Co.

Petition for review of Commission trade regulation rule. On October 2, 1984, the Supreme Court denied Harry & Bryant Co.'s petition for certiorari to review a decision of the United States Court of Appeals for the Fourth Circuit, affirming in its entirety the Commission's Trade Regulation Rule on Funeral Industry Practices.

## Sterling Drug Co.

Petition for review of order to cease and desist. On March 29, 1985, the Supreme Court denied Sterling Drug Co.'s petition for certiorari to review a decision of the United States Court of Appeals for the Ninth Circuit, affirming and enforcing a Commission order to cease and desist deceptive advertising for analgesic products.

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## ECONOMIC REPORTS COMPLETED

Economic Reports are major published reports, usually entailing a substantial commitment of resources and original research, concerning a matter or issue of topical interest or of long term impact on Federal Trade Commission action in a particular area of concern.

"Aggregated Costs to the United States of Tariffs and Quotas on Imports: General Tariff Cuts and Removal of Quotas on Automobiles, Steel, Sugar, and Textiles, " by David G. Tarr and Morris E. Morkre, December 1984. This report assesses the losses to U.S. consumers and producers from tariffs and quotas in four U.S. industries and estimates the total losses from the trade restrictions in these industries to be nearly \$13 billion annually.

"A Time-Series Investigation into Factors Influencing U.S. Auto Assembly Employment," by Michael C. Munger, February 1985. This report provides an analysis of the recent rise in unemployment in the automobile industry. The report finds that the 1980-82 recession and high wages paid U.S. auto workers are largely responsible for the unemployment rise and that the U.S. import of automobiles is not a major factor.

"Generic Substitution and Prescription Drug Prices: Economic Effects of State Drug Product Selection Laws," by Allison Masson and Robert L. Steiner, September 1985. This report provides an analysis of the effects of state drug product selection laws and the growth of generic drugs. The report examines earlier recommendations in the FTC/FDA model statute.

"U.S. Federal Trade Commission, Bureau of Economics, Annual Line of Business Report 1977: A Statistical Report," September 1985. This report is the last in a series of five Annual Line of Business Reports to be published by the Commission for the years 1973-1977. The report contains industry aggregates and financial ratios compiled from line of business financial data submitted by approximately 470 large diversified U.S. manufacturing companies.

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## ECONOMIC WORKING PAPERS

Economic Working Papers are preliminary, published work products of the Bureau of Economics, resulting from original research by Bureau staff either in connection with ongoing agency activities or independent analyses. The papers usually entail relatively minor allocations of official time.

Application of the Sherman Act, The: to the Smog and Aircraft Patent Agreements, George Bittlingmayer, February 1985.

Cooperation Versus Rivalry: Price-Cost Margins by Line of Business, John E. Kwoka and David Ravenscraft, June 1985.

Determinants of the Merger Accounting Choice, David Ravenscraft and F.M. Scherer, February 1985.

Enforcing Government Policy: The Evolution of Efficient Regulations, Mark A. Cohen and Paul H. Rubin, November 1985.

Equilibria in the Laboratory: Experiments with Oligopoly. Markets Where Goods are Made to Order, Dan Alger, December 1984.

Factors Affecting Steel Employment Besides Steel Imports, Douglas W. Web-bink, July 1985.

Geographic Market Definition Under the DOJ Guidelines, David T. Scheffman and Pablo T. Spiller, August 1985.

Incentives to Comply with Uncertain Legal Standards, John C. Calfee and Richard Craswell, April 1985.

Marketable Landing Rights and Economic Efficiency, Donald W. Koran and Jonathan D. Ogur, April 1985.

Mergers, Market Power, and Property Rights: When Will, Efficiencies Prevent Price Increases? Alan A. Fisher, Frederick I. Johnson, and Robert H. Lande, September 1985.

Specialized Assets and Taxi Regulation: An Inquiry into the Possible Efficiency Motivation of Regulation, Edward C. Gallick and David E. Sisk, October 1984.

Tips and Commissions: A Study in Economic Contracting, David E. Sisk and Edward C. Gallick, May 1985.

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## MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Study papers are papers that result from basic research and generally entail small amounts of agency resources. These papers may be prepared by FTC economists or by outside individuals who have been granted access to economic data compiled by the FTC. The papers usually explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission.

A Model of Differentiated Oligopoly: Some Empirical Results, Ioannis Vessides, October 1984.

Beyond Firm and Industry Effects on Profitability in Imperfect Markets, John T. Scott and George A. Pascoe, Jr., October 1984

Concentration, X-Inefficiency, and Mr. Peltzman's Superior Firms, Leonard W. Weiss and George A. Pascoe, Jr., October 1984.

Determinants of the Merger Accounting Choice, David Ravenscraft and F.M. Scherer, December 1984.

Industrial Organization Econometrics Research: Models, Variables and Data Problems, William F. Long, July 1985

Measuring Technology-based Business Relatedness: A Conceptual Framework and Empirical Findings, Richard Klavans, August 1985.

Mergers and Managerial Performance, David Ravenscraft and F.M. Scherer, September 1985.

On the Sources of Scope Economies in U. S. Manufacturing Firms, Len A. Nichols, August 1985.

Testing the Theory of Competition in R&D of Large U.S. Companies, John T. Scott and George A. Pascoe, Jr., September 1985.

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## COMPETITION AND CONSUMER ADVOCACY

The Commission considers it vital that antitrust analysis be brought to bear upon legislative and regulatory restrictions imposed on competition at the federal, state, and local levels. The following are procompetitive analyses and comments provided in government proceedings in fiscal 1985.

## FEDERAL AGENCIES

## DOC

Commission letter to the International Trade Administration of the Department of Commerce in response to a request for comments on regulatory revisions to implement the provisions of Title VI of the Trade and Tariff Act of 1984, regarding the imposition of antidumping and countervailing duties.

## DOE

Commission letters to Mr. Pat Collins, Under Secretary of the Department of Energy, and to Mr. Richard Saudek, Commissioner, Vermont Department of Public Service, recommending that DOE waive certain provisions of the National Energy Conservation Policy Act so that Vermont's Green Mountain Power Corp. may continue to sell insulating jackets for water heaters, at a subsidized price, to its residential consumers.

Commission comments to the Department of Energy and the Connecticut Department of Public Utility Control regarding the petition by United Illuminating Company for a waiver of certain prohibitions of the National Energy Conservation Policy Act.

## DOJ

FTC authorized the General Counsel to request that the Solicitor General add the Federal Trade Commission to the parties submitting amicus brief before the Supreme Court in *State of North Carolina v. P.L.A. Ashville, Inc.* The FTC and the DOJ had submitted an amicus brief before the Court of Appeals for the Fourth Circuit, arguing (among other things) that the district court erred in finding that the National Health Planning Act implicitly repealed the Sherman and Clayton Acts with respect to hospital acquisitions approved under certificate of need programs, and that the hospital acquisition is not immune from antitrust challenge as "state action."

## FCC

Staff comments to the Federal Communications Commission on its proposed rulemaking concerning the construction and operation of satellite systems providing international communication services.

Staff comments to the Federal Communications Commission on its proposal to allocate the radio frequency spectrum remaining in the 800-900 Megahertz "reserve pool." The comments support the FCC's "Alternative Regulatory Approach" of allocating licenses for blocks of frequencies by lottery and permitting lottery winners to resell their licenses.

## FDA

Staff comments to the Food and Drug Administration on its proposal to change its "exclusivity" policy for the labeling of over-the-counter drug products.

Staff comments to the Food and Drug Administration suggesting the need for modification of its proposal to facilitate distribution of bulk new animal drug substances.

## FERC

Staff comments to Federal Energy Regulatory Commission in its proceeding on Interstate Transportation of Gas for Nonowner Shippers and Rate Structures and Design. The comments discuss the removal of regulatory entry barriers in the gas pipeline industry and the modification of rate regulation to facilitate competition.

Staff comments in response to the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking regarding the regulation of natural gas pipelines after partial wellhead decontrol. The comments generally supported FERC's proposal to increase reliance on competitive forces, instead of regulation, in the gas purchase segments of the industry.

## FRB

Commission comments to the Federal Reserve Board on its proposed revision of Regulation B, its regulation implementing the Equal Credit Opportunity Act (ECOA).

Commission comments to the Federal Reserve Board on its proposed amendments to Regulation Z, which implements the Truth-in-Lending

Act. The amendments would require lenders to provide more information about adjustable rate mortgages.

#### ICC

Staff comments to the Interstate Commerce Commission on its reconsideration of its decision to exempt joint rates for boxcar service from regulation.

#### ITC

Commission letter to the International Trade Commission requesting permission to appear in a Section 201 (escape clause) case involving the Carus Chemical Company, which petitioned for relief against imports of potassium permanganate.

Commission preheating brief to the International Trade Commission on the escape clause petition for potassium permanganate. The brief recommended that the ITC consider the decision of the petitioner's largest customer to stop using the chemical as a more important cause of injury than an increase in imports. The brief also suggested that the ITC evaluate whether the import injury suffered has been remedied by other recently imposed import restrictions.

Commission preheating relief brief to the International Trade Commission on the nonrubber footwear escape clause investigation. The brief argues that if the ITC finds injury resulting from rising imports, then it should recommend adjustment assistance to firms and workers instead of tariffs or quotas.

#### SEC

Staff comments to the Security and Exchange Commission addressing proposed rules relating to third party tender offers and tender offers by issuers. Staff comments supported the proposed amendments to prohibit exclusionary tender offers and suggested the SEC shorten the waiting periods applicable to third party offers in order for these periods to conform with those of issuer tender offers.

#### USTR

Staff comments to the U.S. Trade Representative summarizing the results of a recent BE report on textile import restrictions. The letter

was written in response to the USTR's request for comments relevant to negotiations on the Multifiber Arrangement.

Commission brief to the U.S. Trade Representative regarding the Section 201 investigation on imports of nonrubber footwear. The brief commented on, and provided estimates of the cost to consumers and the economy, of both the import restriction program recommended by the International Trade Commission and alternative relief measures.

## CONGRESS

### House

Commission letter to the House Committee on Government Operations on H.R. 2, the "Sunset Act of 1985," which would require the inventory and "Sunset" review of federal agency programs at least once every ten years. The letter, which endorses the sunset concept, suggests that review of a program should include an evaluation of alternative methods of accomplishing the program's goals as well as a determination of its competitive impact.

Staff letter to Congressman Bruce A. Morrison, commenting on H.R. 2730, legislation to amend the Consumer Credit Protection Act regarding consumer leases and rental purchase agreements.

### Senate

Commission testimony by Walter Winslow before the Senate Committee on the Judiciary. The testimony opposes the Malt Beverage Interbrand Competition Act, which concerns exclusive sales territories for wholesalers.

Commission comments to Senator Strom Thurmond, Chairman, Senate Committee on the Judiciary, regarding "Railroad Anti-Monopolization Act of 1985" (S. 447).

Commission letter to Senator Strom Thurmond, Chairman, Senate Committee on the Judiciary, opposing S.379, a bill which would exempt from antitrust laws and the Federal Trade Commission Act certain actions undertaken by insurers and third-party payers of health care services for the purpose of health care cost control.

Commission comments to the Senate Committee on the Judiciary in opposition to S.743, a bill to "Temporarily Prohibit Hostile Corporate Takeovers of domestic Petroleum Corporations."

Commission comments to the Subcommittee on Business, Trade, and Tourism of the Senate Committee on Commerce, Science, and Transportation. The comments oppose passage S. 700, the "Office Products User Protection Act" and S. 701, the "Office Machine and Equipment Dealers' Equity Act," bills which seek to protect office product dealers from being cut off or terminated by their suppliers.

Commission letter to the Senate Committee on the judiciary opposing S. 236, the "Unfair Foreign Competition Act of 1985." The letter cautioned that the proposed bill, which would amend both the Anti-dumping Act of 1916 and the Clayton Act, could encourage the formation of cartels, stimulate other anticompetitive behavior, and produce confusion in the application of the Clayton Act as well as in the operation of the antidumping and countervailing duty laws.

Commission answers to questions from Senator Thurmond and Senator I'm concerning the Malt Beverage Interbrand Competition Act. The Senators' questions were in response to Commission testimony delivered by Walter T. Winslow before the Senate Committee on the Judiciary on May 14, 1985.

Commission comments to the Senate Commission on the Judiciary on S.397, the "Foreign Trade Antitrust Improvements Act of 1985," a bill to amend the Sherman and Clayton Acts to modify the application of such Acts to international commerce.

Commission comments to the Senate Commission on the Judiciary in opposition to S. 1140, the "Motor Fuel Sales Competition Improvements Act of 1985." The proposed bill would amend the antitrust laws "in order to preserve and promote wholesale and retail competition in retail gasoline markets and to protect the motoring safety of the American public."

Commission comments to the Senate Commission on the Judiciary in opposition to S.1299, the "Domestic Petroleum Company Acquisition Act of 1985." The proposed bill is intended "to prevent certain acquisitions of domestic petroleum companies by major international energy concerns."

Commission comments to the Senate Commission on Banking, Housing, and Urban Affairs on S. 951, a bill that would classify an attorney collecting a debt as a debt collector.

## STATES

## Alaska

Staff letter to the Anchorage Assembly concerning a proposal to issue more taxicab permits in the City of Anchorage. The staff letter supported the proposal, noting that in entry in the taxicab business, consistent with maintenance of safe and competent service, would benefit Anchorage residents and visitors.

## California

Staff testimony before the San Francisco Police Commission concerning issuance of additional taxicab medallions in the city of San Francisco. The staff testimony delivered by Jeffrey Klurfeld, Assistant Director of the San Francisco Regional Office, supported issuance of more taxicab medallions.

Commission amicus briefing the matter of *Bahn v. NME Hospital*, in support of a private plaintiff who is appealing to the Ninth Circuit from a judgment of the U.S. District Court for the Eastern District of California dismissing his antitrust action. Plaintiff, a certified registered nurse anesthetist in California, alleged in his complaint that defendants sought to eliminate competition in the provision of anesthesia services by excluding nurse anesthetists from the operating rooms of Manteca Hospital.

Commission motion for leave to file an amicus brief in the case of *People v. Penta Investment Corp.* in California Superior Court. The case was brought by the California Board of Optometry through the California Attorney General and included charges that certain contractual relationships between Penta Investment Corp. and individual optometrists violate state statutes. The amicus brief discussed the federal interest in promoting competition among providers of ophthalmic services.

Staff comments to the California legislature on Assembly Bill 1217, a bill to repeal restrictions on the practice of optometry.

Staff comments in opposition to California bill that would protect beer wholesalers by establishing exclusive sales territories and requiring "good cause" for the termination or non-renewal of distribution agreements. Comments are for the California Assembly's Government Operations Committee.

Staff comments to the California State Senate Committee on Insurance Claims and Corporations, opposing Assembly Bill 783, which would amend the California Vehicle Code to establish new regulations governing motorcycle dealer franchises.

Staff letter to the California Senate in support of Assembly Bill 183, a proposed bill which would eliminate the State Board of Fabric Care that licenses dry cleaners.

Staff letter to the California Attorney General opposing Assembly Bill 707, a bill designed to grant special antitrust status to health care providers, insurers, and purchasers in connection with joint activities relating to contracts for health care delivery.

#### Colorado

Staff letter to the Colorado State Legislature's House of Representatives an "A Bill for an Act Concerning the Regulatory Reform of Taxicabs and Taxicab Service." The staff letter supported the proposed bill, which would basically deregulate the Colorado taxicab industry by lowering entry barriers and allowing fare competition through discounting.

#### Delaware

Staff report to the Legislative Council of Delaware Sunset Review Committee concerning proposed legislation that would affect the ability of optometrists to use trade names, engage in direct solicitation, and operate as a corporate practice.

#### Florida

Staff request to reserve option to appear before the Florida Environmental Regulation Commission on its proposed rule to allow imports of sulfur into Florida.

#### Illinois

Chicago Regional Office staff testimony before the Committee on Registration and Regulation of the Illinois House of Representatives on the Illinois Sunday Automobile Closing Law. The testimony addresses the costs to consumers of the law that prohibits automobile dealers from selling cars on Sunday.

Staff comments to the Illinois State Senate Insurance and License Activities Committee an Senate Bill S. 293, which deals with restrictions on the ownership of funeral homes by nonlicensees and limits sales of preneed funerals.

#### Maryland

Staff letter to Maryland State Senator Leo Green in response to his letter of December 26, 1984. The letter states that if the State of Maryland believes that state regulation of the funeral industry is merited, then adopting the funeral rule by reference as proposed in the draft legislation is appropriate.

Staff letter to the Maryland Board of Examiners in Optometry commenting on its proposed advertising rules.

#### Massachusetts

Staff comments presented to the Massachusetts Board of Registration in Medicine opposing proposed restrictions an mid-level health professionals such as physician assistants and nurse practitioners.

Boston Regional Office staff letter to the Massachusetts Board of Registration in Medicine in response to the board's proposed regulations concerning who should receive investigative medical information.

#### Minnesota

Staff letter to the Minnesota Dentistry Board generally supporting proposed amendments to its rules dealing with advertising.

#### New Jersey

Staff testimony on the FTC's staff study of contact lens fitting before the New Jersey Senate Labor, Industry, and Professions Committee.

Staff comments to New Jersey Board of Dentistry opposing proposed regulations that severely restrict advertising by dentists.

Staff comments to New Jersey Senate Bill S.2035. This bill would prohibit discrimination against credit applicants who receive income from part-time employment, from pension, annuity, or other retirement benefits, from any public assistance program, or from alimony,



child support, or separate maintenance payments where this income is reliably received.

#### New York

Commission motion for leave to file an amicus brief in *Indian Head, Inc. v. Allied Tube & Conduit Corp.*, 81 Civ. 6250 (S.D.N.Y.), arguing that Noerr immunity should not apply to a manufacturer's action to influence the standards development process of a private standards-setting organization.

Staff letter to the Office of New York Governor Cuomo opposing New York State AB 6971-A, "An Act to amend the business corporation law, in relation to the registration of corporate takeover offers, requirements for disclosure regarding corporate takeover offers and control share acquisitions and shareholder combinations."

#### North Carolina

Staff comments to the North Carolina Senate Commerce Committee on the proposed "North Carolina Motor Fuel Marketing Act," which would make it unlawful to sell motor fuel below cost. The comments argue that the bill would demonstrably injure competition and result in higher prices for consumers for all grades of gasoline and motor fuel.

#### North Dakota

Staff comments to the North Dakota State Board of Optometry on its proposed amended rules and regulations. The comments support proposals to broaden the scope of permissible advertising by optometrists. The comments suggest modifications to the amendment's provisions on affirmative disclosure obligations; advertising of "free examinations," prohibition of "professional relationships" with persons or firms that advertise falsely or fraudulently, the ban on guarantees of cures, and the prohibition against the practice of optometry under a trade name.

#### Oklahoma

Commission amicus brief in the matter of *John E. Snider v. Wal-Mart Stores, Inc.*, are that the Oklahoma Unfair Sales Act, which establishes a prima facie criminal violation for a retailer to sell merchandise without at least a 6 percent mark up above actual

costs, conflicts with the federal antitrust laws and should be preempted on that basis.

#### Rhode Island

Staff comments for the Rhode Island Legislature on the proposed "Distilled Spirits and Venous Beverages Fair Dealing Law," a bill setting forth regulations governing agreements between suppliers and wholesalers of distilled spirits and vinous beverages. The comments conclude that the proposed law has the potential to increase consumer prices by encouraging distributional arrangements that increase costs and reduce interbrand competition.

#### South Carolina

Staff comments to the Chairman of the Labor, Commerce, and Industry Committee of the South Carolina House of Representatives. The comments argue that a South Carolina Bill providing for Motor Fuel Marketing Divorcement and the Prohibition of Certain Below-cost Motor Fuel Sales would injure competition and result in higher prices to consumers.

#### Tennessee

Staff testimony on the FTC's Funeral Rule before the Tennessee State Senate Committee to Study Future Funeral Contacts and Services. The testimony summarizes the Rule's provisions on price disclosure, misrepresentations, tying arrangements, and embalming.

#### Texas

Staff comments on a bill that would partially repeal a Texas prohibition on the sale of certain items on both the Saturday and Sunday on the same weekend. Comments urge that ban be repealed for sale of automobiles as well as for other goods.

#### Virginia

Staff comments to the Virginia Senate Committee on Rehabilitation and Social Services. The comments argue that the proposed Virginia Wine Franchise Act could increase consumer prices by adding costs to the distribution of wine and lessening competition among wine wholesalers.

Staff comments addressing regulatory changes that have been proposed by the Virginia Boards of Dentistry, Medicine, Optometry, and Veterinary Medicine. The major issues included in the comments are restraints on nondeceptive advertising and restrictions on commercial practice.

#### Washington

Staff comments address issues such as the need for lawyer advertising raised by the Washington Bar Association's proposed "Plan of Legal Specialization," which would establish rules and standards for the certification of attorney specification in the State of Washington.

#### Washington

Staff analysis of alternative taxicab regulations provided to the Transportation Committee, Seattle City Council. The analysis estimated that the cost of eliminating district fares and fixing all fares at \$1.20 per mile would be \$225,000 per year.

#### Washington

Staff testimony to the Senate Commerce and Labor Committee of the Washington State Legislature concerning Senate Bill 3333, the "Motorcycle Dealers' Franchise Act." The staff testimony, delivered by Dennis McFeely of the Seattle Regional Office, cautioned that if the bill were enacted, it would result in higher prices for consumers while also inhibiting motorcycle manufacturers from instituting pro-competitive and cost-justified changes in their pricing and distribution systems.

Staff statement to the House and Senate Transportation Committee of the Washington State Legislature on trucking deregulation. Citing the experiences of other states, the testimony argued that trucking deregulation could result in reductions in the rates charged to consumers.

Staff comments to the State of Washington on "An Act relating to Retail Practices in the Sale of Motor Vehicle Fuels." The comments argue that the proposed bill would restrict the ability of gasoline refiners to distribute their product efficiently and would harm both competition and consumers.

## LOCAL

## District of Columbia

Staff letter to the D.C. City Council's Public Works Committee opposing the "Hacker's License Requirements Act of 1984," (Bill 5-453) a proposed bill to limit the number of licensed taxicab drivers and tighten license requirements.

Staff comments to the D.C. City Council in general support of Bill 6-88, the proposed "District of Columbia Rental Housing Act of 1985," which would extend rent controls for six years in the District but phase out controls on units as they become vacant.

## REPORTS &amp; PAPERS

## OECD

Staff paper for presentation by Carol T. Crawford, Director of the Bureau of Consumer Protection, (delivered by James McCarty) before the Organization for Economic Cooperation and Development, Committee on Consumer Policy, during the Symposium on Consumer Policy and International Trade. The paper describes the FTC's role in several international trade proceedings.

Bureau of Economics reports on issues related to restrictions of U.S. imports. One report, by David Tarr and Morris Morkre, entitled "Aggregate Costs to the United States of Tariffs and Quotas on Imports: General Tariff Cuts and Removal of Quotas on Automobiles, Steel, Sugar and Textiles," estimates the cost on the U.S. economy caused by import barriers in four major U.S. industries and the adjustment costs that would be incurred if these restrictions were removed. The second report, by Michael Munger, entitled "A Time Series Investigation into Factors Influencing U.S. Auto Assembly Employment," examines the relative importance of different factors that may have contributed to the problems facing the automobile industry.