

FEDERAL
TRADE
COMMISSION

For the Fiscal Year Ended
June 30, 1972

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Letter of Transmittal

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the fifty-eight Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended June 30, 1972.

By direction of the Commission.

MILES W. KIRKPATRICK.
Chairman.

THE PRESIDENT OF THE SENATE

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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THE YEAR IN SUMMARY

Fiscal year 1972 saw a marked strengthening and a consolidation of Commission efforts to carry out its Congressional mandate to protect the American public, both consumers and businessmen, against unfairness and deception in the marketplace.

This concerted effort to ensure maximum utilization and benefit from its limited resources of dollars and manpower has become increasingly urgent in the face of a continued rise in the number of consumer protection matters requiring the Commission's attention under the multiple statutes it administers.

During fiscal year 1972, for example, the Commission issued a sharply increased number of consumer protection complaints and cease and desist orders. Consumer protection complaints were up from 208 in 1971, to 281 in 1972; cease and desist orders, from 199 in 1971, to 273 in 1972.

Complaints specifically involving deceptive advertising under Section 5 of the FTC Act increased. During 1972, the total number of Section 5 cases was 118, compared with 73 in the previous year.

In addition, Flammable Fabrics Act complaints rose from 51 in 1971 to 56 in 1972. Truth-in-Lending complaints reached a high of 89, compared with 29 for the year before.

Under the Commission's reorganization plan of 1970, the twelve Regional Offices were given added authority and responsibility. In fiscal year 1972, the Regional Offices handled 189 cases, compared with 89 in 1971, a sharp rise.

Consumer Protection

In the general area of consumer protection activity, the Commission in fiscal year 1972 concentrated on consolidating the gains of the year before, while at the same time making further major advances.

First, the overall planning and priority process was both enlarged and refined. Planning and priorities are mandatory, since the Commission must closely monitor its activities to achieve the greatest benefits from the expenditures of its limited resources.

During the year, the Commission developed a number of detailed program planning guides. More are in progress.

Each guide is designed to identify and analyze a specific major consumer problem area concerning which effective corrective action can be taken by the Commission and its staff.

The guides evaluate the major impact and consequences of the unfairness or deception under examination. Attention is given, among other things, to the numbers and kinds of consumers affected, the potential economic and social loss resulting from the malpractice, its geographical dispersion, and the probable effectiveness of a Commission order.

Development of the guides permits the Commission to make rational choices among the many competing demands on its resources. Maximum return for each invested tax dollar can be thus assured.

Second, the Commission pressed forward with its exploration of ways in which Commission orders can be made more meaningful with regard to maximum consumer protection. In selected cases, proposed cease and desist orders were expanded to include the ordering of corrective advertising, the making of refunds, disclosing of product limitations or hazards, door-to-door sales "cooling-off" requirements, and the preserving of defenses for buyers signing negotiable instruments covering contracts for consumer goods and services.

Third, the Commission devoted a major effort toward extending and developing its power to deal effectively with widespread commercial abuses by means of Trade Regulation Rules. The effort was thwarted, at least temporarily, by an adverse court decision. In the absence of this power, the Commission must depend on voluntary cooperation with its Rules by industry members, supplemented by formal complaints against those considered to be the most flagrant offenders.

Therefore, the Commission at year's end is continuing to explore ways of making its Trade Regulation Rule proceedings effective pending appeal from the court's decision.

Fourth, during the year the Commission gave increasing attention to enforcement of its specialized statutes. Particular emphasis was placed on the Flammable Fabrics Act. The Commission has proceeded to enforce the recently established carpet and rug flammability standard, and the groundwork was laid for strict enforcement of the new standard for the flammability of children's sleepwear. Where the public safety is in issue, the Commission has used, and will continue to use, its powers to the utmost.

Large strides were made in publicizing and enforcing the requirements of the Truth In Lending Act. Very substantial compliance with the Act has been obtained. This has permitted a shift in enforcement emphasis to the Fair Credit Reporting Act, which became effective near the beginning of the fiscal year. The consumer now has a right to know of adverse credit information in the hands of credit reporting agencies, as well as a right to have erroneous information corrected.

Fiscal year 1972 saw the development of the Commission's advertising substantiation program. Advertisers in selected industries were required to provide whatever information they might have to support verifiable claims. Information thus obtained was placed in the public record for challenge by competitors or use by consumers. While the results thus far have been in a measure valu-

able, refinement and modification of the program is expected to result in increased usefulness to consumers and competitors. At a minimum, advertisers have been encouraged to examine factual claims carefully prior to their dissemination.

The Commission has also continued to work on planning procedures designed to allocate as rationally as possible the resources it devotes to antitrust litigation. To aid in this task, the Office of Policy Planning and Evaluation, with assistance from the Bureau of Economics, constructed a prototype model which can measure the benefits relative to the costs of alternate antitrust activities. When the model becomes fully developed, it promises to provide a universe of various antitrust problems across a large number of industries so that the Commission can weigh the advantages and disadvantages of pursuing its investigations in certain areas and not in others. Since this is the first major attempt within the Federal government to apply benefit-cost analysis to decision-making in the antitrust area, it represents an important innovation which, if successful, should substantially aid the policy deliberations and actions of the Commission.

Work on the effects of high market concentration continued during the year through both studies and investigations. The emphasis on this structural feature arises from the proposition of economic theory, which has been empirically confirmed, that high concentration can be a serious impediment to price competition. Analysis of the circumstances in which dominance of the market by the few can lead to a deterioration in overall industrial performance, not simply just in price behavior, is very complex. The Commission's efforts in the past year have increasingly sought to develop knowledge about those areas where the FTC may be able to enhance the vitality of competition.

The increase in the workload of the Commission was achieved with about 2.1 percent more employees than in 1971. In fiscal year 1972, the total FTC employees averaged 1,386, compared with 1,354 for the previous year.

CONSUMER PROTECTION

The Commission's activities directly relating to consumer oriented problems are entrusted to its Bureau of Consumer Protection. The Federal Trade Commission Act is the principal source of authority for the Bureau's work. Additional authority is found in the more specialized textile and fur statutes, and statutes specifically governing various aspects of consumer credit, and fair packaging and labeling of consumer goods.

Each of the Bureau's nine divisions specialize in a particular aspect of the overall consumer protection effort. Each Division, however, supports and closely coordinates its work with the work of each of the others in accordance with the policy objectives of the Commission. A unified effort on behalf of consumer interests is thus ensured.

Compliance

This Division enforces more than 7,500 Commission cease and desist orders issued to prevent false, misleading and deceptive trade practices under the Federal Trade Commission Act; Truth In Lending Act; Wool Products Labeling Act; Fur Products Labeling Act; Textile Fiber Products Identification Act; and Flammable Fabrics Act as amended.

Investigations by the Division to determine whether respondents are complying with the mandates of an order start in many different ways. The Commission may have been dissatisfied with a respondent's initial effort to demonstrate compliance, or a

respondent may not have submitted a compliance report as required by the Commission's orders.

Alleged violations are also brought to the Division's attention by consumer complaints, Congressional inquiries, or the respondent's competitors.

During the past year, the Division initiated 147 investigations to determine the effects of orders issued during the 1960's. One hundred investigative reports have been received and are under review. Additional survey work has been planned for the coming year.

The Federal Trade Commission Act provides for a civil penalty of up to \$5,000 for each violation of a Commission order. When investigation of a respondent's practices discloses violations, the Division prepares the necessary pleadings for certification to the Attorney General, who is requested to bring suit for the recovery of penalties. Nine cases are currently in various stages of litigation in United States courts around the Nation, and five more are pending with the Justice Department. In the past year the courts awarded \$158,000 in civil penalty proceedings initiated by this Division.

Consumer Education

This Division developed and supervised a consumer education program designed to increase consumer competence in the marketplace and to increase consumer understanding of marketplace problems. Carried out primarily through the Commission's Regional Offices, the program content was limited to subjects related to FTC jurisdiction.

FTC's consumer education program complemented its enforcement activities, with resulting variety of emphases among the various Regional Offices. Major stress was given to the following topics: truth in lending terms and other credit practices, common-

Place market deceptions, unordered and undelivered merchandise, and unavailable supermarket specials. The three primary objectives of the program were:

- Preventive education; such as, how to identify and avoid deceptive business practices and misleading ads; how to take advantage of rights afforded by the truth in lending legislation or FTC actions, etc.
- Remedial education; such as, how and when to speak up to the retailer or to the manufacturer; when and how to report suspected violations of Commission orders or statutes enforced by the FTC.
- Education to increase participation of consumers in FTC Trade Regulation Rule hearings; such as those on holder-in-due-course, and undelivered merchandise.

Seeking consumer viewpoints, several Regional Offices conducted public hearings either on marketplace problems in general, or on specific problems, including talent and modeling agencies, debt collection, and used-car purchasing. Not only were consumer concerns and problems identified but widespread mass media exposure served to warn consumers of pitfalls and to provide them with information on how to seek redress, if necessary.

More traditional approaches used both by the Division and by Regional Office staff included distribution of public service announcements to radio and TV stations; publication of fact sheets, leaflets, bulletins, and a monthly newsletter; and, occasionally, the providing of teaching aids or curriculum ideas to school systems, Cooperative Extension Services, community action, labor union, or manpower training programs. Program ideas also were conveyed through talks made before large conferences and workshops for professional leaders in such organizations.

Direct contact efforts with consumers were minimal. Instead, most FTC program ideas and materials were channeled through

other governmental and community agencies or groups regularly conducting education programs.

Evaluation

The Division of Evaluation is, in many ways, the "nerve center" of the Bureau. Its task, in large part, is to develop the Bureau's policy planning. It is thus responsible for carrying out the Commission's directive that the work of the Bureau proceed in a rational, orderly and efficient manner. The "shotgun" approach to consumer problems is thus avoided, and the Bureau is enabled, on a cost/benefit basis, to obtain the maximum amount of consumer protection for each dollar spent.

Analytic Program Guides were developed last year for a number of fields of possible interest to the Commission. Each of the Guides analyzes, among other things, the classes of consumers affected, the economic impact of the practices considered, the effectiveness of available remedies, and the relative value to the consumer of a particular action which might be taken under a specific Guide against other avenues of action open to the Commission.

Seven such detailed Guides were prepared and recommendations made. Further action awaits the Commission's integration of these Guides into its overall policy planning program. Meanwhile additional Guides are being developed.

Another major project during 1972 was the development of a blueprint for the Commission's advertising substantiation program, i.e., the selection of target industries, planning of the use and analysis of material received in each round, and initiation of evaluation procedures for each step in the program. In 1973, this Division will spend considerable time evaluating the results of the first full year of the substantiation program and will make recommendations for improving its effectiveness.

National Advertising

This Division directs its law enforcement efforts toward national advertising practices, with an emphasis on radio and television advertising.

During fiscal year 1972, the Division continued to attack misleading and deceptive national advertising and to use, where appropriate, innovative remedies that go beyond the once traditional cease and desist order.

One of these new remedies, so-called "corrective advertising, is required in two consent orders which became final during the year. The order obtained in ITT Continental Baking Company, Inc., requires that 25 percent of one year's advertising expenditures for Profile Bread be devoted to advertisements containing a corrective message. Ocean Spray Cranberry, Inc., must do the same for its Ocean Spray Cranberry Juice Cocktail. Both companies were charged with false and misleading claims concerning the nutritional value of their products.

Similar corrective advertising is also sought in a number of cases in litigation at year's end.

Probably the most significant complaints issued during the past fiscal year are those resulting from an extensive investigation of analgesics advertising. The complaints challenged various claims of therapeutic efficacy and superiority made by the three major analgesics manufacturers. In these cases, the proposed complaints provide, in addition to corrective advertising, the affirmative disclosure of common ingredients, such as caffeine and aspirin, in many analgesics products.

Affirmative disclosure, while not an entirely new remedy, has been far more extensively employed by this Division over the past two years than was the case in the past. Generally speaking, it is sought when consumers would not receive all information material to their purchasing decisions, absent such a disclosure.

Another important application of the affirmative disclosure has been its use to inform consumers of safety hazards resulting

from use of an advertised product. For example, consent orders negotiated last year with the six major domestic manufacturers of cigarettes, require that all advertisements of their cigarettes include a clear and conspicuous disclosure of the health hazards of cigarette smoking.

The beginning of fiscal year 1972 also marked the start of the Commission's Advertising Substantiation Program, implemented primarily by this Division. Under this program, advertisers, upon Commission demand, are required to substantiate objectively measurable claims of safety, performance, efficacy, and comparative price. By year's end, the Division sent "Orders to File Special Reports" to major advertisers in the following industries: domestic and foreign automobiles, television sets, air conditioners, electric shavers, cough and cold remedies, toothpastes and denture cleaners, soaps and detergents, and tires. Upon receiving answers to the requests from the industries involved, the Commission places the data on the public record so the consumer may be able to evaluate the support for certain claims. Complaint action has been recommended in several cases in which the substantiation submitted appears to be inaccurate or inadequate. Additional substantiation requests are currently in preparation for issuance to other industry groups.

The effect on the environment of commercial products continued to be a major concern, and advertising based on claims of beneficial product effect was scrutinized carefully throughout the year. In two cases currently in litigation, anti-pollution claims for gasoline were challenged as false. Another company was cited for misrepresentation of the hazards involved in the use of its detergent product and for misrepresentations of government approval and endorsement of the product as safe and non-polluting. Other matters involving representations of environmental impact of a company's practices or products were under consideration at the close of the fiscal year.

The Division in the past fiscal year also organized informational hearings to explore modern advertising practices and the

impact of advertising - particularly television advertising. The hearings, held in the fall of 1971, provided a forum for the presentation and discussion before the Commissioners of existing relevant information in this area and helped to identify areas where additional research would prove useful. The participants included experts in the behavioral and social sciences, in marketing and business administration, in consumer research and advertising, as well as advertising practitioners and consumers. The tremendous volume of information gathered for and during these hearings is now being analyzed. The ultimate goal will be to provide the Commission with a better understanding of advertising and marketing practices so that its charge to protect the public interest by regulating unfair or deceptive advertising can be carried out more effectively.

The Division has continued its close scrutiny of food products advertising. A joint proceeding of the Bureaus of Competition and Consumer Protection challenged, among other things, alleged false and misleading nutritional, health, and weight reducing advertising claims by four major manufacturers of cereals. Another food case concerned false nutritional and health food claims made in advertising of so-called "organic" products.

Product demonstrations on television also continued to be of interest to the Division last year. The advertising of four different products was challenged on the grounds that rigged television demonstrations falsely asserted non-existent differences between the advertised products and competing products. Another case alleged misrepresentations in television demonstrations of the superior drying qualities of an antiperspirant spray.

Final orders were obtained in several sweepstakes cases in which the Commission challenged various deceptive practices in the conduct of sweepstakes and contracts, including misrepresentation of the methods used in awarding prizes and the quantity and value of the prizes awarded.

In addition to its other activities, the Division, under the mandate of the Public Health Cigarette Smoking Act, prepared the

Commission's annual report to Congress on the labeling and advertising of cigarettes. The Commission also twice reported to Congress during the last fiscal year the results of its tests to determine the tar and nicotine content in cigarettes. Tests for the tar and nicotine content of so-called "little cigars" were conducted and will be published early in fiscal year 1973.

General Litigation

This Division is charged with major responsibility for coping with those unfair or deceptive acts or practices which are outside the purview of the Division of National Advertising.

Door-to-door sales of magazines and encyclopedias were of special concern to the Division during the past year.

Complaints were issued against the nation's first, second, and fourth largest sellers of encyclopedias, door-to-door and by mail.

Two types of door-to-door magazine sales practices were also dealt with by the Division: "paid-during-service" and cash subscriptions.

"Paid-during-service" describes subscription sales made on an installment basis. Typical complaints alleged that through misleading and deceptive sales tactics used, subscribers often found that they had unwittingly contracted to pay substantial sums over a long period of time for magazines they might not otherwise have purchased.

As a result of FTC action, two consent orders involving "paid-during-service" subscriptions were accepted.

Cash subscription sales are usually paid for on an immediate basis. It was alleged that subscribers frequently had to wait months for delivery, got no delivery at all, or were provided with a subscription to a magazine in which they had little or no interest and for which they were unable to effect an acceptable substitution.

Again, as a result of Commission action last year, four consent orders involving cash subscriptions were accepted.

In another area of the Division's concern, so-called multilevel distributorship plans made considerable demands on the Division's enforcement resources. Characteristically, such plans offer two profit possibilities to a participant: first, the sales of the promotor's goods; second, the sale of redistributorship with an override on the redistributor's sales. Typical complaints alleged that contrary to the representation of virtually limitless profit possibilities in the sale of redistributorships, late participants find redistributors hard to come by, and many participants are faced with serious economic loss.

Complaints were issued against two related multi-level operations.

The Division also had "career" schools under close scrutiny. These schools offer career training in any number of specialized fields. They are unusually attractive to people seeking upward job mobility; for example, minority groups, school drop-outs, and veterans.

Following investigation of these and other career school problems, the Commission issued complaints against the three largest operators of private vocational schools offering computer training.

Other major Division investigations during fiscal year 1972 resulted in action against income tax preparation services, and against deceptive free trial offers which are subject to certain credit limitations.

Rides and Guides

This Division is charged with carrying out a frontal attack on deceptive practices found to exist not merely among one or a few companies, but throughout an entire industry or across industry

lines. The Commission has frequently noted the expedience and economy of dealing at once with all firms engaged in a questionable practice, rather than singling out one violator for corrective action while his competitors continue unfettered in the same practices for which he is being held liable.

The work of the Division falls primarily into two major categories: Industry Guides and Trade Regulation Rules.

Industry Guides are interpretations by the Commission of the laws it administers. They represent advance statements to business as to the position likely to be taken by the Commission in the event of litigation over the subject matter covered. Generally, Guides constitute an attempt to head off such litigation in advance by laying down ground rules relating to practices which may result in corrective action by the Commission. Where such action is undertaken, however, it remains the staff's obligation to prove that the specific practice engaged in by the charged company was unfair or deceptive, since a Guide does not constitute an advance finding of the fact but is merely an advisory interpretation.

Trade Regulation Rules, on the other hand, are legally binding upon all parties within the intended scope of the stated principles. Issued only after full open hearings at which all interested parties are given an opportunity to participate, a Rule is always based on a finding by the Commission that the practices in question are inherently unfair or deceptive when engaged in contrary to the Rule's provision.

During fiscal year 1972, the Commission adopted two new Trade Regulation Rules and three new Industry Guides. It also amended an existing Trade Regulation Rule as well as a previously adopted Industry Guide. At the same time, staff effort was invested in five new proceedings relating to proposed Trade Regulation Rules.

The two newly adopted Trade Regulation Rules are concerned with Posting of Octane Numbers on Gasoline Dispensing

Pumps* and Care Labeling of Textile Wearing Apparel. The first Rule requires that a minimum octane number derived from a formula set forth in the Rule be posted in a conspicuous and permanent manner on gasoline pumps.

The second new Rule requires that a tag or label be affixed or attached to any article of textile wearing apparel, disclosing instructions for the care and maintenance of such article or apparel.

In addition, the Commission amended an existing Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets so as to clarify rule provisions relating to the disclosure of picture size measurements.

Three new Industry Guides adopted by the Commission during the year were:

Guides for Private Vocational and Home Study Schools, which proscribe the use of unfair and deceptive acts and practices to obtain enrollments.

Guides for Use of the Word "Free" and Similar Representations which require certain necessary disclosures, and apply to all "free" and similar offers, however made, which are conditional upon the purchase of merchandise or services.

Guides for the Decorative Wall Paneling Industry, which deal with disclosures in advertising and labeling that relate to the construction, composition or appearance of industry products.

The Commission also issued Guides for the Feather and Down Industry, which supersede the Trade Practice Rules for this industry originally issued on April 26, 1951. The Guides deal

*(On April 4, 1972 in Civil Action No. 1180-71, National Petroleum Refiners Association v. Federal Trade Commission, the U.S. District Court for the District of Columbia ruled that the Federal Trade Commission did not have the authority to issue Trade Regulation Rules and that, therefore, the Commission's rule requiring the posting of octane ratings was null and void. This decision has been appealed and is currently pending in U.S. Court of Appeals, District of Columbia. During the year, Congress considered making a specific grant of rulemaking authority to the Commission. This proposal was framed principally in two pieces of legislation, S. 986 and H.R. 4809.)

generally with disclosures, tolerances; and other representations affecting the advertising and marketing of the industry products.

In addition to the Rules and Guides adopted by the Commission during the fiscal year, work continued at the Division level on five important new proposed Trade Regulation Rule proceedings:

Preservation of Buyers' Claims and Defenses in Consumer Installment Sales. A proposed Rule that relates to the commercial holder-in-due-course doctrine and the problem of preserving consumers' rights against sellers when the products they buy are damaged or perform unsatisfactorily.

Disclosure Requirements and Prohibitions Concerning Franchising. A proposed Rule designed to deal with problems of consumer deception in the soliciting of prospective franchisees.

Undelivered Mad Order Merchandise and Services. A proposed Rule that deals with the problem of undelivered merchandise and would require those who advertise and solicit the purchase of merchandise by mail order to deliver such merchandise within 21 days from receipt of payment or to make prompt refunds of monies received, unless adequate disclosure concerning delayed delivery is made.

Negative Option Plans by Sellers in Commerce. A Rule originally proposed in Fiscal Year 1971 concerning the use of negative option plans. Its originally proposed form would have effectively banned the further use of such Plans, but after public hearings, and through analysis of the public record developed in the proceeding, the Commission concluded that the record did not support the proposal to ban use of negative option plans. The Commission did conclude, however, that the record demonstrated a need for regulating such Plans and it, therefore, published a revised propose Rule designed to provide such regulation. At the same time, the FTC reopened the public record of that proceeding for written comment.

Power Output of Amplifiers for Home Entertainment Products. After considering the public record of written comments

and the transcript of the public hearing in connection with its original proposal in this rulemaking area, the Commission amended and revised the original proposal which had been released for written comment. The proposed Rule provides for certain disclosures to be made in advertising in connection with representations concerning power output, power band or frequency response, or distortion characteristics of sound power amplification equipment.

During the fiscal year, the Division of Rules and Guides staff conducted public hearings in connection with the following proceedings:

- Franchising
- Preservation of Buyers' Claims and Defenses in Consumer Installment Sales
- Undelivered Merchandise

Scientific Opinions

This Division provides scientific facts and opinions to all of the Commission's operating Bureaus and is responsible for the operation of its Tobacco Testing and Research Laboratory.

Since many of the matters referred to this Division require the latest opinions of the scientific community on advertising claims made for foods, over-the-counter drugs, therapeutic devices, cosmetics, automotive devices and adjuncts, and other consumer goods, the Division's staff, trained in science disciplines, conferred with experts and attended scientific and medical meetings to obtain the latest information and expert opinions. The staff assisted the Commission's legal staff in preparing for hearings involving scientific questions and secured the services of expert witnesses. The Division also made arrangements for valid scientific studies to resolve scientific issues.

During the fiscal year, the Division studied the safety of enzyme-detergents; weight-reducing products and devices; hearing aid devices; research data for mouthwashes; nutrition for breakfast cereals; "diet" foods and drinks; margarine and vegetable oils; sunscreens; psoriasis preparations; cosmetics; analgesics; disinfectants; cold and cough preparations; dentifrices and denture cleaners; antacids; smoking and health; anti-leak antifreeze products for automobiles; safety performance standards for electronic products (e.g., microwave ovens); hazards of sauna and steam baths; air and water purifiers; razor blades; anti-pollution gasoline additives; contact lenses; auto emission control devices; smoke and fire alarm systems; and swimming pool filter cords.

Keeping abreast of the activities of other government agencies whose functions bear on those of the Commission, the Division participated in the Commission's monthly liaison meeting with the Food and Drug Administration, and maintained an active liaison with the Safety Panel of the Subcommittee on Pesticides, President's Cabinet Committee on the Environment. The Division also participated in liaison between FTC and the Environmental Protection Agency. Liaison was also continued with the National Bureau of Standards, the Bureau of Radiological Health (HEW), various bureaus of USDA, the Naval Research Laboratory, and the Bureau of Mines.

The Commission's Tobacco Testing and Research Laboratory continued the testing of all domestic varieties of cigarettes for "tar" and nicotine content. This is the only government laboratory that tests cigarettes exclusively and is one of two such laboratories in this country. During the fiscal year, 142 brands and types were tested. Reports of the results of these tests are made available to the Congress and the public. The laboratory, for information purposes, also tested 25 varieties of small cigars for "tar" and total alkaloid (reported as nicotine) content. Not less than 90 of each of the varieties of cigars were involved in the tests.

Consumer Credit and Special Programs

This Division is charged with developing and coordinating the Commission's consumer protection programs in the broad areas of consumer credit and packaging. Specifically, this includes the Truth-In-Lending Act, the Fair Credit Reporting Act, and the Fair Packaging and Labeling Act.

During the year, the emphasis began to shift away from Truth-in-Lending cases, as the impact of prior enforcement actions continued to promote a high degree of overall compliance. During the three years of Truth-in-Lending compliance activity (the Act's effective date was July 1, 1969), 125 formal complaint cases have been issued by the Commission. These, coupled with staff rendered informal advice and the correction of a substantial number of relatively minor violations (over 45,000) by informal procedures, has permitted a shift in emphasis to other areas, such as the Fair Credit Reporting Act.

Effective near the beginning of fiscal year 1972, the Fair Credit Reporting Act represents the first Federal regulation of the vast "consumer reporting" industry, composed primarily of credit bureaus and investigative reporting companies. The staff responded to hundreds of industry and consumer inquiries and commenced several investigations which are expected to be culminated in the coming months.

During the year, the first Commission-issued formal Interpretations under this Act were issued. This new procedure provides a means for rendering formal legal advice by the Commission and was instituted because of the absence of statutory authority to implement the FCRA by administrative regulations. The first such Interpretations published for public comment in March 1972, prompted over 1,000 comments - enough interest to warrant a public hearing, which was scheduled for July 20 and 21, 1972.

The staff's FCRA enforcement program included several surveys during the year, including one covering all major life

insurance companies, since they are the Nation's primary users of investigative-type consumer reports. Another survey consisted of inquiries from consumers who had been notified that their application for credit had been denied because of information in their credit bureau files. These surveys proved to be extremely valuable in determining the impact of this new law and in providing a basis for the development of recommendations for legislative improvements.

In the area of credit cards, the staff surveyed a large number of major credit card issuers to determine the extent of their compliance with the new amendment to the Truth In Lending Act banning unsolicited credit cards and limiting a consumer's liability in the event of lost or stolen cards.

The Commission issued a public statement reminding all credit card issuers not to persist in stating on the back of credit cards and on billing statements that consumers are liable for unauthorized purchases until the card issuer is notified that the card was lost or stolen. The first formal complaint and order involving unsolicited credit cards was issued during the past year.

In related activities involving credit cards, the Commission challenged one of the Nation's largest credit card registration services for alleged misrepresentations as to the value of its services after the effective date of the new amendment. The company is currently appealing to the full Commission a Hearing Examiner's finding of law violations.

Other consumer credit cases involved credit billing practices; alleged false advertising of mail order loans; unsolicited loans by mail; advertising and sales practices in connection with the rental of television sets in low-income areas; door-to-door magazine sales practices; and land sales practices.

With regard to packaging, the Commission issued final regulations dealing with reduced-price claims involving "cents-off," "economy size," "introductory offers," and related claims. The staff broadened the scope of its packaging compliance program by

conducting a preliminary study in the area of toy packaging practices.

One special project was begun during the year, with a substantial amount of preliminary investigative activity and planning work accomplished. This is a study of the impact of creditors' remedies on consumers, with a special emphasis upon "standard" contractual provisions that are relied upon by creditors to the detriment of low-income consumers. The coming year should see this project develop into a full-scale program having major implications for affected segments of the marketplace.

During the year, an annual report on packaging was submitted to Congress, and on Truth in Lending to the Federal Reserve Board.

Textiles and Furs

Approximately 90 percent of the fiscal year 1972 man-hours of the Division of Textiles and Furs was spent on activities related to the Flammable Fabrics Act, including enforcement of formal cases, cooperation with the Department of Commerce in the promulgation of new standards of flammability, and investigation of burn injury cases.

Although most new cases alleging violations of the Wool Products Labeling Act, the Textile Fiber Products Identification Act, or the Fur Products Labeling Act are being assigned to the Regional Offices, approximately 10 percent of the Division's time continues to be spent on those matters. During the fiscal year 1972, rulemaking proceedings were initiated under the Textile Act upon four applications by fiber producers for generic names for textile fibers claimed not to fall within existing generic classifications.

To facilitate its enforcement of the Flammable Fabrics Act, and to answer questions being raised by respondents, the Commission published in the Federal Register on November 10, 1971, a

statement of its Policy for Enforcement of the Flammable Fabrics Act, setting forth the enforcement policy, objectives and procedures. The Commission also announced that a toll-free telephone number would be available to consumers who wished to know the names of retailers who purchased flammable goods from respondent manufacturers or importers. The toll-free number was established on November 30, 1971, and has been used by consumers not only for information about specific formal matters but also for general information concerning products subject to the Flammable Fabrics Act.

During the first month of the past fiscal year, the Division began its enforcement of the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70). The Division inspected carpet mills, and found that a substantial amount of carpet was being manufactured which did not conform to the Standard as promulgated by the Department of Commerce.

Extending the inspection program to carpet mills throughout the country, the Division's efforts resulted in over 100 formal cases involving violation of the Flammable Fabrics Act. The Division also engaged in extensive industry counseling and public education about the Standard.

In December 1971, the Division began enforcement of the Standards for the Surface Flammability of Small Carpets and Rugs, (DOC FF 2-70). Here, too, a considerable amount of industry counseling and public education was necessary. This Standard applies to carpets and rugs less than 4 ft.-by-6 ft. in size and requires that such carpets either meet the flammability standards or bear a cautionary label warning the consumer that they do not meet the minimum flammability requirements.

The Commission last year approved an alternative procedure for washing flame-retarded hide rugs before testing under the carpet flammability standard. The procedure provides a way to determine the permanency of the flame-retardant treatment. The Commission also tentatively approved an alternative washing procedure for Flokati rugs.

The Division worked closely with the Department of Commerce and private industry concerning problems associated with the enforcement of the Standard for the Flammability of Children's Sleepwear, (DOC FF 3-71 became effective on July 29, 1972). Early in 1972 the Commission had issued an enforcement policy statement relating to the Children's Sleepwear Standard.

Following publication of the Department of Commerce's Flammability Standard for Mattresses, (DOC FF 4-72) in June 1972 (to become effective in June 1973), the Division began a detailed evaluation of the Standard and met with many industry members affected by the Standard.

The Division continued its enforcement of Commercial Standard 191-53, the Flammability Standard for Wearing Apparel, including matters relating to compliance with the present flammability standard by sleepwear manufacturers and sleepwear fabric manufacturers.

The Division investigated some 79 burn injury cases brought to its attention through various sources, including fire officials, newspaper reports, Congressional inquiries, and the burn victims themselves.

The Division Was also involved in rulemaking proceedings under the Flammable Fabrics Act regulations relative to Reasonable and Representative Tests and Recordkeeping Requirements Relating to Carpet Guarantees under DOC FF 1-70.

The Textiles and Furs Laboratory, relocated during the year in larger quarters in the main Commission Building, greatly increased the number of tests performed in determining the flammability of products subject to the Flammable Fabrics Act and for which the Department of Commerce has promulgated standards. The laboratory has also continued its testing for fiber content of fibers, yarns, and fabrics subject to the labeling Acts enforced by the Commission. Fur products represented as "natural" were also analyzed to ascertain whether they were dyed or color-altered.

During fiscal year 1972, the laboratory made the following number of tests and analyses:

<u>Wool</u>	<u>Textile</u>	<u>Fur</u>	<u>Flammable Fabrics</u>	<u>Total</u>
71	81	75	3,503	3,730

A total of 1,752 Continuing Guaranties were filed with the Division under the Wool, Textile, Fur and Flammable Fabrics Acts. There are now approximately 37,200 such guaranties on file and available for inspection by the public. A confidential file, also maintained by the Division, now records over 40,000 registered identification numbers under the Wool, Fur and Textile Acts, with the addition of 1,486 numbers during the fiscal year. The Commission has published for comment a proposal to make these numbers public. In screening the importation of products subject to the Acts mentioned above, the Division has cooperated closely and effectively with the Bureau of Customs.

An operation and status report for formal investigation cases is found in Appendix 11-1.

Federal-State Cooperation

Although there is no formal Division of the Bureau of Consumer Protection that concerns itself with Federal-state cooperation, there was considerable activity last year in this type of liaison. Several major projects were instituted in fiscal year 1972.

The first involved the development of an expanded program to assist and encourage local cities and counties, as well as states, to adopt consumer protection ordinances and laws which will be effective and will benefit both business and the consumer.

This was done through cooperation with the FTC's Regional Offices in conducting an inventory of all of the laws of the various localities and states in order to aid their effectiveness, discover

conflicts, and suggest uniformity. In addition, local programs designed to prevent trade restraints, discriminatory trade practices, and anti-competitive methods were reviewed.

Second, regular liaison was established with the President's Office for Consumer Affairs, the Department of Justice, the Securities and Exchange Commission, the Postal Service, and members of the Attorneys General Committee on Consumer Affairs, on problems of general interest and methods of cooperation.

Third, work continued on the processing of a continuous flow of requests for information on consumer protection complaints and legal research matters from state and city officials throughout the Nation. Finally, there was increased cooperation with other Federal agencies in connection with their consumer protection work for cities, counties, and states that wished to establish local units of consumer protection as part of their official structure of government.

APPENDIX II-1

DIVISION OF TEXTILES AND FURS
OPERATIONS AND STATUS REPORT FOR YEAR ENDING JUNE 30,1972

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COMPETITION

The Commission's Bureau of Competition is responsible for enforcing the Federal Trade Commission Act, the Clayton Act and the Robinson-Patman Act.

During the past year, the Bureau continued to work toward its ongoing objective of maintaining competition and eliminating illegal restraints on trade in the marketplace. The Commission issued during the fiscal year 34 antitrust complaints, 5 involving charges of price discriminations (Robinson-Patman Act), 24 involving unfair practices or methods of competition ranging from monopolization to restrictive franchising provisions (Section 5, FTC Act), and 7 challenging mergers or acquisitions (Section 7 of the Clayton Act). Some of the cases involved charges under more than one statute.

During the year, the Bureau received 1,415 applications for complaint. From these and other sources, 130 preliminary investigations and 122 formal investigations resulted. Many of the practices investigated during fiscal year 1972 were of major antitrust significance.

Mergers

The Bureau continued to commit considerable resources to the merger area. A significant portion of its merger activity last year concerned acquisitions in the auto parts, food, drug-cosmetic and metals industries. The recent Ford Motor Company decision by the Supreme Court concerning Ford's acquisition of Autolite

has led the Bureau to concentrate a significant portion of its resources on developing more effective relief in unlawful mergers by requiring meaningful divestiture and by restoring competitive conditions. Currently, 18 merger cases are in adjudication.

An example of the Commission's merger program is illustrated by its effort to halt the vertical merger movement begun in the early 1960's in the cement industry. While the merger trend in this industry has been slowed, the Bureau has continued to be concerned with these mergers. During fiscal year 1972, four cement industry cases were in various stages of adjudication.

Petroleum Industry Enforcement Program and Natural Gas Reserves

The Bureau was also actively involved in studying several aspects of the petroleum industry. The staff is examining reciprocal trading practices that concern this industry, and is particularly looking into exchange agreements among large oil companies.

In the area of marketing practices, the Bureau investigated zone pricing as a form of discriminatory pricing, vertical price fixing, and unfair dual distributing practices. Coercive treatment of dealers through the use of short-term leases received special attention as possible violations of Section 5, FTC Act.

The Bureau also has been investigating the petroleum industry's credit card practices. The Commission issued two complaints involving alleged violations in tying credit card availability to branded product sales.

The Bureaus of Competition and Economics began an investigation involving possible anticompetitive effects of major oil company domination over the entire industrial process, which includes crude oil supply, refining and marketing.

During the year, the Bureau continued its investigation to determine whether certain natural gas producers have engaged in collusion to under-report their reserves.

Hearing Aids

Concern for consumer purchasing power was a motivating force behind the Bureau's investigations into the hearing aid industry. Complaints concerning the high price of hearing aids prompted investigations into various distribution practices to determine whether these practices contribute to or maintain the allegedly high prices.

Cereal Industry

Last year the Bureau, assisted by the Bureaus of Economics and Consumer Protection, devoted significant resources to an investigation of the ready-to-eat cereal industry. The investigation resulted in a complaint, now in adjudication, alleging that monopoly structure of the industry has been created and maintained through various practices, including the use of deceptive advertising. The complaint is challenging the alleged unfair and deceptive practices, as well as the resultant market structure.

Shopping Centers

Shopping centers are a relatively recent development in retail marketing and have assumed a vital role in the sale of every kind of consumer product. Their rise to economic significance has been made possible by the growth of suburban areas around the Nation's major cities and the development of beltways permitting rapid movement by automobile. The Commission issued two complaints last year alleging that restrictive provisions in shopping center cases may foreclose competition. Additional efforts are being devoted to developing a program to eliminate such restrictive agreements where they are found to affect competition adversely.

Franchising

The Bureau's concern for the independent businessman was also reflected in its activity in the franchising area. Restrictions which allegedly limit franchisees' business decisions were challenged in a complaint, and the Bureau began several investigations to learn whether franchisor restrictions upon the purchasing of materials or supplies are unlawful restraints.

Fair Trade

In keeping with its continuing interest in abuse of the fair trade exception to the antitrust law, the Bureau of Competition, during fiscal year 1972, began a comprehensive review of the fair trade programs of several national manufacturers. One such investigation resulted in a complaint.

Robinson-Patman Enforcement

Potential Robinson-Patman violations often are discovered during investigations into other complaints and industry programs. Thus, the Bureau's existing investigations into shopping centers, small and minority business programs, auto parts distribution practices, and zone pricing by the petroleum industry, all involved simultaneous Robinson-Patman analysis.

During fiscal year 1972, several important cases involved alleged Robinson-Patman violations, including store brand and national brand marketing practices. Eight cases involving Robinson-Patman matters currently are in adjudication.

Automobile Parts

The Commission has long had an interest in the auto parts industry, especially with regard to so-called "crash parts." During the past fiscal year, the Bureau worked toward completing its examination of competitive conditions in this industry. The study also involved an analysis of the effectiveness of the Commission's past efforts to eliminate manufacturers' selling practices that discriminate between franchised auto dealers and independent body shops.

The Bureau also studied mergers of large conglomerate firms with warehouse distributors and auto parts jobbers. During the past year, the Bureau continued its program to stop this merger trend while the tendency toward monopoly was still incipient.

Reciprocity Project

The Bureau also investigated the existence of alleged systematized reciprocity and the anticompetitive effects of so-called trade agreements or swaps. As noted in the review of the Bureau's Petroleum Industry Enforcement Program, much of the initial effort of the reciprocal practices studies is being devoted to that industry. Reciprocal practices are prevalent elsewhere, however, and the Bureau has been concerned not only that these practices be discovered and stopped, but, as in other enforcement areas, that there be an effective remedy. During the past year, the Commission issued a proposed reciprocity complaint - the first such complaint by the Commission since the late 1930's.

Compliance

The last step in the Bureau's litigation activity is to obtain compliance with the FTC's final orders. Initial reports of com-

pliance must first be obtained and processed, followed by investigations to see if there is order compliance.

Once the Bureau determines that an order has been violated, it starts a civil penalty action by certifying the facts to the Department of justice, which in turn files a case in an appropriate district court. Although the Bureau has been active in its compliance duties, during the past year it has also vigorously pursued civil penalty actions.

An important tool for assuring compliance is the imposition of a substantial civil penalty, and the Bureau has been seeking this remedy on the theory that failure to divest, or forbidden acquisition with subsequent holding, are continuing violations. The District Court in the Tenth Circuit ruled against the Commission in U.S. v. ITT Continental, a decision currently on appeal. The Bureau has continued its efforts in U.S. v. Beatrice Foods, a case in which over \$2 million in civil penalties is being sought.

USDA Liaison

To avoid unnecessary duplication of effort by the two agencies, the Bureau conducts and maintains liaison activities for the Commission with the Packers & Stockyards Division of the, U.S. Department of Agriculture, which has related responsibilities with respect to meat packers.

Accounting

During fiscal 1972, accountants in the Bureau furnished accounting services in connection with 16 price discrimination and discriminatory allowances cases, 23 anti-merger cases and 13 cases involving unfair methods of competition and deceptive practices. Accounting services were also furnished to the Bureau of Con-

sumer Protection in connection with hearings on trade practice rules for franchising.

The Bureau accountants also compiled and prepared for publication the Report of the Federal Trade Commission on Rates Of Return in Selected Manufacturing Industries 1961-1970, and preliminary work was done on the report for 1962-1971. This report is used by other government agencies, economists, universities and by private industry in studies of various companies and industries.

* * *

Events during fiscal year 1972 have offered the Bureau new opportunities to meet its public commitment. The Supreme Court decisions in *FTC v. Sperry & Hutchinson Co.* and *U.S. v. Ford motor Company* have offered the Bureau new flexibility in the cases it may pursue and the remedies it may seek. The major emphasis on litigation is only one indication that the Bureau has been attempting to exercise fully its enforcement powers and to do so with particular emphasis upon unlawful actions adversely affecting large segments of the consuming public.

ECONOMICS

Professionally competent research and advice on matters requiring well-reasoned economic analysis are indispensable to the Commission's efforts in the areas of consumer protection and anti-monopoly.

In creating the Federal Trade Commission, Congress intended that economic reporting and analysis would be instrumental in efforts to curb monopoly power.

Economic Studies and Reports

Since its peak in 1969, the downward trend in merger activity has continued, justifying the Bureau's increased emphasis on studies and analyses of the effects of high concentration in many industries.

Appendix IV-1, page 44, indicates that substantial proportion of manufacturing industries is concentrated; i.e., where four firms account for 50 percent or more of sales. A considerable body of economic evidence shows that pricing is likely to be less than competitive in such industries. In the future, the Bureau's principal effort will be directed towards helping the Commission determine what should be done about industries characterized by high concentration.

Statistical Reports

During the past fiscal year, the Bureau issued two annual statistical reports on merger activity. Entitled *Current Trends in Merger Activity, 1971* and *Large Mergers in Manufacturing and Mining 1948-1971*, they serve as standard statistical sources for researchers in the merger fields.

As noted earlier, mergers continued their downward movement from the peak reached in 1969. In manufacturing and mining combined, the preliminary estimate of acquisitions was 1,011 in 1971, down from 2,307 in 1969 and 1,351 in 1970 (Appendix IV-2, page 45). The preliminary estimate of the dollar value of assets acquired was \$2.5 billion in 1971, in contrast to \$11.4 billion and \$6.3 billion in 1969 and 1970, respectively.

The services sector, second only to manufacturing as the most important area of merger activity, experienced the same, though more moderate, downward trend. Therefore, services' relative contribution to overall merger activity increased to around 50 percent, up from about 33 percent in 1969.

Acquisitions involving very large firms, those with over \$100 million in assets, showed a continuation of the decline begun in 1969, when 20 were recorded. In 1970, 12 large-company acquisitions were recorded. Four of these were spin-offs from existing firms. In 1971, only five took place, two of these spin-offs from existing firms.

The Bureau of Economics also monitors changes in aggregate concentration, the share of total corporation assets in the manufacturing sector held by the largest 100 and 200 manufacturing corporations. In 1969, the respective percentages were 48.2 percent and 60.1 percent; in 1970, the respective percentages were 48.5 percent and 60.4 percent.

Economic Reports

In fiscal year 1972, one staff economic report was issued, entitled, Interfuel Substitutability in the Electric Utility Sector of the U.S. Economy. Also approved for release was a statistical report entitled Value of Shipments Data by Product Class for 1,000 Largest Manufacturing Companies of 1950. This report contains the underlying data for the Report of the Federal Trade Commission on Industrial Concentration and Product Diversification in the 1,000 Largest Manufacturing Companies: 1950, (January 1957).

The release of the backup data underlying the FTC's earlier report, referred to above, will provide valuable raw material for additional studies to be undertaken by academic scholars interested in the area of industrial organization. The Commission's willingness to make available the basic data behind a study represents a desire to broaden the participation in research, a necessary undertaking if knowledge on critical matters affecting antitrust and consumer protection policy is to be advanced.

Concentrated Industries

The Commission has approved studies of electrical machinery, autos, prescription drugs, and the energy sector. In each, a particular issue is being examined. For electrical machinery, the Bureau will make an examination of the efficacy of the antitrust litigation of 1960 in stopping the price-fixing conspiracy. Some feel that unless there is a reduction in concentration, price coordination will continue in markets like electrical equipment, even though one avenue, the overt conspiracy, is blocked.

There is also feeling in some quarters that the auto industry should be subject to an antitrust attack which will deconcentrate

the industry. The policy would, however, increase output and bring with it the attendant effects of congestion and pollution. Therefore, the study of autos will examine the impact upon the industry of the Environmental Protection Agency's efforts to reduce and eliminate these social costs. Such information is critical to an intelligent determination of appropriate antitrust policy.

In the prescription drug study, the focus will be on the impact of expiring patents on sales promotion costs. It is alleged by many students of the industry that patents are a major barrier to new entry. When patents expire, therefore, more competition should arise, unless heavy outlays on sales promotion substitute for the absence of patents.

In the energy area, one structural study is completed and the remaining one is near completion. The performance studies, the effect of oil-company acquisitions of non-oil fuel producers on research and development and pricing, are in the planning stages.

Policy Planning

In fiscal year 1972 the Bureau began intensive work to develop a model which will help the Commission plan a rational allocation of resources in its antitrust litigation. This work is well under way, and the initial results indicate a potential for considerable success.

Economic Evidence

The Bureau's Economic Evidence staff during the past fiscal year was active in over 100 investigations, most of which concerned proposed or completed acquisitions and mergers. The Bureau role in this area increased last year, an indication that the complexity of enforcement efforts requires sound economic analysis.

The Premerger Notification Program completed its third full year of operation in fiscal year 1972. Under this program all corporations subject to FTC jurisdiction and having total assets of \$250 million or more are required to file a special report whenever an acquisition of a firm with \$10 million or more in total assets is made. The acquisition itself may be either of assets or of 10 percent or more of the voting stock. At the discretion of the Commission, a special report may also be required when a firm with less than \$250 million in total assets merged with another firm, resulting in a corporation with assets of \$250 million or more. During fiscal year 1972, special reports were received concerning 90 mergers or acquisitions, of which 5 were cleared to the Department of Justice. Six, after filing, were subsequently called off. Of the remaining 79, FTC investigated further into approximately 25 mergers. Fifteen of these resulted in the opening of a formal investigational file.

During fiscal year 1972, special reports were also retroactively obtained from all acquired companies or their successors from the date of the inception of the program. Reports are now being routinely required from all firms which are acquired under the program. Not only are the special reports received under the Premerger Notification Program invaluable as a screening tool for discerning possible violations of Section 7 of the Clayton Act, but they are also being processed to yield useful information relating to the economic impact on individual industries of large mergers and in evaluating trends in mergers and acquisition involving large corporations. The information which has been received in the Premerger Notification Program to date has been coded and is being stored in punch cards.

One important new activity of the Division which began to receive increased attention in fiscal year 1971 and continued with an increased commitment in fiscal year 1972 is a review of the FTC's enforcement efforts. Three studies are nearing completion and will be presented to the Commission next year. They are:

- A pilot study of a sample of Robinson-Patman orders to the degree of compliance and of effectiveness in maintaining competition
- An investigation of orders in merger actions to determine the consequences of relief; and
- A study of the dairy industry, with a view toward advising the Commission about the continuance of merger orders against some large dairy concerns.

The results of these studies will help the Commission to allocate its enforcement dollars so as to provide the maximum social benefit.

Financial Statistics

The Division of Financial Statistics designs and maintains on a current basis statistical cross sections (probability samples) of corporate enterprises; it collects, analyzes, and summarizes periodically uniform and confidential reports from these enterprises; it estimates national aggregates based on these reports; and it compiles the Quarterly Financial Report for manufacturing Corporations (QFR), in which, for selected industry groups and asset sizes, are published statements of income and retained earnings, balance sheets, profit rates (rates of return), and related financial and operating statistics.

Four issues of the QFR were published in fiscal year 1972. Multi-billion-dollar enterprises accounted for more than half the total assets of all manufacturing corporations. The number of such corporations increased from 113 in the first quarter of 1971 to 115 in the first quarter of 1972. These corporate manufacturers, each with assets exceeding \$1 billion, had an average of \$3.2 billion in total assets and accounted for 52 percent of the total

assets of all 200,000 manufacturing ¹ corporations in the United States. These figures compare with 102 corporate manufacturers, each with assets exceeding \$1 billion, which accounted for 48 percent of the total assets of all manufacturing corporations two years earlier and whose total assets average \$2.6 billion. (See FTC Annual Report 1970, Table 2, p. 48.)

Profit rates (rates of return) slipped from levels reached in the second quarter of 1971, but remained above the low point reached in the fourth quarter of 1970. Profit rates of all manufacturing corporations on stockholders' equity and sales, both before and after taxes, for each quarter in the 1961-1971 period, are given in Appendix IV-4, page 47. This appendix shows the quarter-by-quarter profit rates from the first quarter 1961 through to the second quarter 1966 peak to the fourth quarter 1970 through, and the profit rates for 1971 and the first quarter in 1972.

¹ The total asset figure in Appendix IV-3, page 46, arises from an estimate based on a sample of 10,229 corporations. For all asset-size classes except the below \$10 Million, the sample corresponds to the population.

APPENDIX IV-2

MANUFACTURING AND MINING FIRMS ACQUIRED
1948-1971

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APPENDIX IV-1

Distribution of Manufacturing Industries by 4-Firm Concentration - Ratio Quartiles, 1966

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Note: The manufacturing sector is composed of 417 industry categories. Excluded from the above tabulation are: 15 industry categories composed of products "not elsewhere classified" within major industry groups; 18 local or small regional market industries; and the newspaper and periodical industries. The Census did not publish 1966 concentration ratios for 29 industries. For these 29 industries, 1963 concentration ratios were used.

Source: Annual Survey of Manufacturers: 1966, Value-of Shipment Concentration Ratios by Industry, U.S. Bureau of the Census. See also, Studies by the Staff of the Cabinet Committee on Price Stability, January 1969, p. 57.

APPENDIX IV-2

MANUFACTURING AND MINING FIRMS ACQUIRED

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APPENDIX IV-3

EXHIBIT - TEXT NOT AVAILABLE - SEE IMAGE

APPENDIX IV-4
Profit Rates of All Manufacturing Corporations 1961 - 1972

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REGIONAL OPERATIONS

As a Federal law enforcement agency with responsibility for regulating many types of business activities throughout the Nation, the Commission maintains, in addition to its central headquarters in Washington, D.C., Regional Offices in various major metropolitan areas. The Commission has 12 Regional Offices, which operate under the general supervision of the FTC Executive Director. These Offices are located in Atlanta, Boston, Cleveland, Chicago, Dallas-New Orleans, Kansas City, Los Angeles, New York, San Francisco, Seattle and Washington, D.C. The Commission also maintains 12 smaller subordinate offices in cities located within the above regions. (See pages iii-iv.)

Responsibility for carrying out the Commission's mandate to preserve free and fair competition is shared by the Regional Offices and headquarters. To facilitate coordination of their respective activities, the Commission in fiscal year 1972 established the Office of the Assistant Executive Director for Legal Coordination. This office is responsible for planning, coordinating and reviewing all consumer protection and antitrust functions of the Regional Offices.

At present, about one-third of the Commission's staff is located in Regional Offices, including approximately 145 lawyers, 100 consumer protection specialists, and 135 clerical personnel. Consumer protection specialists, first used on a large scale in fiscal 1971, have increasingly handled the bulk of the work involved in business and consumer education, textile and fur, flammability, and Truth-in-Lending investigations, and Federal-state coordination activities. Perhaps most importantly, they actively participate with regional attorneys in the conduct of investigations and litigation.

Casework and Investigations

A major goal of the Commission is to achieve more effective participation of Regional Offices in Commission law enforcement activities. Regional Offices have been delegated authority to initiate preliminary investigations; to conduct investigational hearings; to issue subpoenas and accept returns; to negotiate consent settlement agreements for the Commission's approval; to draft proposed complaints for administrative litigation; and to serve as trial counsel in litigation proceedings.

Regional Offices also continue to perform investigations at the request of the Commission's Bureau of Competition and the Bureau of Consumer Protection.

The number of cases handled in Regional Offices rose dramatically during the past year, as evidenced by Appendix V-1 on page 52.

Significantly, in fiscal year 1972, Regional Office attorneys assumed the duty of handling trials of cases, either on their own or in conjunction with attorneys from headquarters. A prime example is the favorable initial decision obtained by regional attorneys in a case involving the first Irrigated order requiring respondent to make restitution of the money of defrauded consumers. Favorable trial results have been obtained in other cases involving unfair and deceptive practices and representations in connection with shipments of unordered greeting cards, and misrepresentations regarding the effectiveness of an automotive safety device.

In addition to casework, Regional Offices devoted major efforts during the past year to uncovering problem areas that might need corrective action by the Commission. Investigations, sometimes accompanied by public hearings, were undertaken into such diverse matters as the practices of traders on the Navajo and Hopi Indian Reservations; restrictive practices on the part of hospital supply companies; vocational and correspondence schools

and employment placement services; talent agencies; retail gasoline marketing; contracts for future consumer services; debt collection practices; marketing abuses in the ghetto; price fixing by title insurance companies; new and used-car dealer practices; retail merchandising of carpets; and restrictive leasing practices of shopping centers.

In addition to their law enforcement activities, Regional Offices in fiscal year 1972 continued to be heavily involved in other functions essential to the work of the agency. These included coordination and liaison activities with Federal, state and local authorities and groups active in consumer protection; implementing business and consumer education programs; and processing literally thousands of individual complaints from aggrieved consumers and businessmen.

APPENDIX V-1

FTC REGIONAL OFFICE CASELOAD
FOR FISCAL YEAR 1972

	FY 1971	FY 1972
Cases approved in FY 1971 and carried over to FY 1972		49
Cases submitted to the FTC Headquarters by Regional Offices	59	126
Cases transferred to Regional Offices from Headquarters or within the Regional Offices	30	18
Cases withdrawn	0	4
Total	89	189*
Cases settled by Cease and Desist Orders	35	151
Cases pending negotiation by Consent Settlement	49	26
Cases in litigation	5	11
Total	89	188*

*There were seven investigation files which resulted in four consent complaints and two contest complaints.

HEARING EXAMINERS

Hearing examiners try cases in which respondents contest allegations that they have violated one or more of the laws administered by the Commission. Sitting as independent administrative trial judges, examiners initially handle all adjudicative matters for the agency, presiding over hearings and receiving testimony and documentary evidence.

The Commission's antitrust and consumer protection cases typically raise complex legal, economic, and scientific issues, and frequently involve practices by major firms which are nationwide in scope. Conducting the trial of such cases is a substantial undertaking that requires legal research, extensive pretrial procedures and rulings, and formal hearings to receive evidence and resolve contested issues of fact and of law. At the conclusion of trial, the examiner prepares a comprehensive initial decision containing findings of fact and legal analyses disposing of all points in dispute. The initial decision becomes the decision of the Commission unless appealed or docketed for review on the Commission's own motion.

During fiscal year 1972 there were 90 cases in the course of adjudication by the Commission's staff of 11 hearing examiners, an increase of 12 over fiscal year 1971. This was an average of about 8 per examiner. In addition to handling adjudicative matters for the Commission, 4 examiners spent considerable time conducting cases for other Federal agencies. Appendix VI-I on page 54 gives a statistical breakdown and comparison of the past 2 fiscal years.

APPENDIX VI-I

WORKLOAD OF FTC HEARING EXAMINERS¹
Fiscal Years 1971 & 1972

	Fiscal Year 1971	Fiscal Year 1972
<u>Complaints</u>		
On Hand at Beginning of Year	38	47
Received	34	42
Remanded	6	17
Total	78	90
<u>Dispositions</u>		
Initial Decisions	19	21
Other ²	12	17
Total	31	38
On Hand at End of Year	47	52

¹ Includes only FTC cases; does not reflect work for other agencies.

² Includes cases in which litigation before hearing Examiners was concluded before entry of initial decisions - for example, cases settled by consent order and cases in which examiners filed reports and recommendations.

GENERAL COUNSEL

The General Counsel's Office advises the Commission and its operating bureaus on legal, policy and procedural matters that cover the spectrum of consumer protection, antitrust and administrative law. The majority of the General Counsel's assignments relate to Commission requests for advice on a broad range of questions of law or policy.

The Office also handles requests for advisory opinions, requests for access to documents in the agency's files, and motions to limit or quash subpoenas. During fiscal year 1972, the staff processed and sent to the Commission some 28 advisory opinion matters. In addition, the Office handled over 161 requests for staff level advice.

In addition to its advisory responsibilities, the General Counsel also represents the Commission on review of cease and desist orders in the courts of appeals, and assists the Department of Justice in preparing and arguing collateral cases in the United States District Courts and Courts of Appeals.

Because of the complexity of FTC cases, the Solicitor General uses the General Counsel's assistance in Commission matters before the United States Supreme Court.

During fiscal year 1972, the Office handled 93 cases. Litigation was completed in 38 of these - 3 involving deceptive practices, 8 involving restraint of trade, 4 concerning proceedings for enforcement of Commission subpoenas, 1 involving a contempt proceeding and 22 concerning collateral matters such as suits against the Commission for declaratory judgment and injunctive relief. As of June 30, 1972, 55 cases were pending in the

various courts of appeals and district courts. (See Appendix VII-I on page 59.)

In response to requests from Congressional Committees and the Office of Management and Budget, the General Counsel's Office prepared reports which were submitted to the Commission on 120 bills pending in Congress. The Office also helped draft statements for the Chairman and various members of the staff who testified before Congressional Committees.

During the past year, the Office worked very closely with those Congressmen and Congressional Committees dealing with legislation which would have a direct impact on the Commission's law enforcement program. Legislation presently pending in this area clarifies the Commission's substantive rulemaking power; provides authority to obtain injunctions pending final disposition of the case on its merits, authorizes the Commission to be represented by its own attorneys in all litigation before the courts, grants an increase in civil penalties from \$5,000 to \$10,000 for each violation, and broadens the Commission's jurisdiction to proceed in those cases which "affect" commerce as well as those which take place in interstate commerce.

While the 120 formal reports prepared by the General Counsel's Office, either favoring or opposing the bills in question, covered a wide variety of subjects, the principal area of concern was consumer legislation.

Included were reports on consumer-oriented bills which, if enacted, would provide for:

- A separate consumer protection agency;
- Consumer restitution;
- The right of class actions;
- Consumer education;
- Product safety;
- Unit pricing;
- Nutritional labeling of food products;

- Ingredient labeling of food products;
- A uniform system of quality grades of food products;
- Taxing of cigarettes based upon tar and nicotine content;
- A health warning in all cigarette advertising;
- Improved automobile safety; and
- Ad substantiation

The second largest category of legislation on which the Commission submitted reports either favoring or opposing the bills in question, covered legislation designed to maintain competition. Included in this category were bills which would:

- Make sales below cost for the purpose of eliminating competition or destroying a competitor unlawful and a violation of the Clayton Act;
- Prohibit states from barring retail pharmacists from advertising the prices of prescription drugs;
- Prohibit the dispensing of drugs or devices by medical practitioners and their participation in profits therefrom under certain circumstances;
- Bring all professional sports under the antitrust laws;
- Permit the Secretary of Commerce to engage in certain export expansion activity and provide limited antitrust exemptions to domestic companies engaging in export activity;
- Authorize the Secretary of Agriculture to slaughter fowl in certain cases for the purpose of stabilizing the price of eggs;
- Curb natural gas companies from providing electricity in certain areas, and vice versa; and
- Legalize exclusive territorial arrangements under certain limited circumstances.

On April 20, 1972, the Commission announced the creation of a task force on industry self-regulation chaired by the Assistant General Counsel for Legal Services. The task force was created in response to recommendations contained in a preliminary staff study of industry self-regulation through product standards, certifications and seals of approval. Its membership includes representatives from the Bureaus of Competition, Consumer Protection, Economics, and the Office of General Counsel.

A precis of the preliminary staff study was made available to the public for the purpose of eliciting comments which would aid the task force in accomplishing its mission of exploring more fully the implications of industry standardization and certification programs.

Ultimately, the task force is to submit recommendations to the Commission concerning the procedures that standards-making bodies and certifiers of consumer products should follow in developing, maintaining and administering their programs; the Commission's ultimate role in the area of self-regulation; product categories in which the availability of additional performance information would benefit consumers in making rational choices in the marketplace; and the importance to consumers in their purchasing practices of certification and seals of approval.

APPENDIX VII-I

FTC CASES IN THE COURTS

This Appendix summarizes the significant Federal Trade Commission cases handled by the Office of the General Counsel in the courts during fiscal year 1972, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

The most significant court decision in fiscal year 1972 was the Supreme Court's decision in *Federal Trade Commission v. The Sperry & Hutchinson Co.*, 405 U.S. 233 (1972), a case that involved, inter alia, restraint of trade matters. Reversing the Fifth Circuit (New Orleans), the Supreme Court held that the Commission's power under Section 5 of its enabling Act reached beyond violations of the letter or spirit of the antitrust laws, and that the Commission had broad powers to prevent practices which were unfair to the consumer, as well as those which constitute unfair methods of competition. The Court held in substance that the Commission, in prescribing unfair practices could, like a court of equity, consider public values other than "those enshrined in the letter or encompassed in the spirit of the antitrust laws." The Commission had challenged certain restrictive practices in the trading stamp industry which the Commission found had suppressed and limited the business of redeeming and exchange trading stamps for consumers. The case has been remanded to the Commission for further consideration in light of the Supreme Court's opinion.

Two important Section 5 restraint of trade cases were pending in courts of appeals at the close of the fiscal year: Golden Grain Macaroni Co. (D. 8737), in the Ninth Circuit (San Francisco), involves a Commission determination that a series of acquisitions of stock and assets of competitors violated Section 5 (although such practices were found not to constitute an attempt to monopolize as charged in the complaint). The Commission has ordered divestiture of the acquired stock and assets.

In National Association of Women's and Children's Apparel Salesmen (D. 8691), in the Fifth Circuit (New Orleans), review is sought of the Commission's finding that respondents violated Section 5 by using certain restrictive practices in connection with the conduct and operation of trade shows.

In the area of discriminatory pricing practices under the Robinson-Patman Act the Fifth Circuit (New Orleans) in Colonial Stores, Inc. (D. 8768) held that a chainstore buyer that induces and receives discriminatory advertising allowances prohibited by Section 2(d), may not, in order to avoid violating Section 5 of the FTC Act, rely upon a supplier's representation that it makes proportionally equal allowances to all the buyer's competitors, when the buyer did not otherwise inquire into the matter.

In Nabisco, Inc. (D. 5013), the Fifth Circuit (New Orleans) agreed with the Commission's determination that a 1944 cease and desist order was a consent order, set aside an order issued in 1954 modifying the consent order, and vacated the court's stay of enforcement proceedings, thus freeing the Commission to consider what future action, if any, might be appropriate.

In the field of illegal mergers (Section 7 of the Clayton Act), the most significant court action in fiscal year 1972 was the Eighth Circuit's (St. Louis) decision in Mississippi River (D. 8657). The court affirmed and enforced the Commission's order which requires divestiture of a number of ready-mixed concrete companies. The case presented a unique challenge to vertical mergers in that the respondent first acquired the ready-mixed concrete

producers and then built facilities for supplying them with cement.

In OKC (D. 8802) the Tenth Circuit (Denver) affirmed and enforced the Commission's order of divestiture of all three divisions of the acquired company in order to preserve its viability, although the violation of Section 7 found by the Commission related only to the one division.

In Bendix Corp. (D. 8739) the Sixth Circuit (Cincinnati) reversed the Commission's divestiture order relating to the acquisition of the Fram Corporation, remanding the matter to the Commission to permit counsel to adduce evidence relating to the "toehold theory" as applied to potential competition in this conglomerate merger case.

Other pending merger cases in which the Commission's briefs were filed in fiscal year 1972 include: Kennecott Copper Corp. (D. 8765) in the Tenth Circuit (Denver) involving a conglomerate merger in the coal industry; the Stanley Works (D. 8760) in the Second Circuit (New York) involving an acquisition in the cabinet hardware market; and Papercraft Corporation (D. 8779) in the Seventh Circuit (Chicago) involving a horizontal merger in the gift-wrap products market.

DECEPTIVE PRACTICE CASES

In fiscal year 1972, decisions in two significant deceptive practice cases in courts of appeals upheld the Commission. In Arthur Murray Studio of Washington, Inc., et al Bethesda, Inc., and Silver Spring, Inc. I (D. 8776) the Fifth Circuit (New Orleans) affirmed and enforced a Commission order to cease and desist from numerous deceptive practices. The order also prevented these dance studios from entering into agreements for dance instructions that would obligate any individual to pay a total amount which at any one time exceeded \$1,500. In Star Office Supply Co. (D. 8749) the Second Circuit (New York) summarily affirmed and

enforced a Commission cease and desist order which required a seller of office supplies to furnish the buyer with a copy of the order before shipment. The Supreme Court denied certiorari in the Star Office Supply case.

In Marco Sales Co. (D. 8770) the Second Circuit (New York) set aside a Commission order to cease and desist from a lottery punchboard scheme and remanded the case to the Commission, affording the Commission the opportunity, to explain the difference between that punchboard scheme and the schemes approved in the Commission's Trade Regulation Rule on Games of Chance in the Food Retailing and Gasoline Industries.

Pending deceptive practice cases in courts of appeals at the close of the fiscal year included: Eastern Detective Agency, Inc. (D. 8793) in the District of Columbia Circuit involving misrepresentations about a training school; LaSalle Extension University (D. 5907) in the Seventh Circuit (Chicago) involving misrepresentation about a correspondence school; Standard Educators, Inc. (D. 8807) in the District of Columbia Circuit involving misrepresentations in the sale of encyclopedias; Zale Corporation (D. 8810) in the Fifth Circuit (New Orleans) involving violation of the Truth In Lending Act, and Skylark Originals (D. 8771) in the Third Circuit (Philadelphia) involving certain deceptive practices in connection with a mail-order business.

SUITS FOR ENFORCEMENT BROUGHT BY THE COMMISSION

During fiscal year 1972, the Commission filed a petition for temporary injunction, temporary restraining order, and other equitable relief under the Flammable Fabrics Act against a manufacturer of carpets, James Carpet, Inc. and James O. Smith, (D. 8876). The United States Court for the Northern District of Georgia issued a temporary restraining order, which is now in

effect pending the completion of administrative proceedings before the Commission.

Several courts of appeals upheld the Commission in requiring the filing of special reports pursuant to Section 6(b) of the Federal Trade Commission Act.

In Litton Industries (File 691 0629), the Ninth Circuit (San Francisco) affirmed an order of the United States District Court for the Central District of California, granting in part the Commission's application for enforcement. The Ninth Circuit held that Litton, a conglomerate, must respond to the Commission's request for a special report in connection with a general investigation of conglomerates, notwithstanding that Litton was involved in a case before the Commission challenging one of its acquisitions. The court held that the overlapping investigation and prosecution did not constitute a denial of constitutional due process.

In Genuine Parts Company (File 671 0673) the Fifth Circuit (New Orleans) affirmed an order of the United States District Court for the Northern District of Georgia (in an action brought by Genuine Parts on complaint for declaratory judgment) requiring the filing of special reports, but refused to overrule the district court's order to stay the running of civil penalties pending resolution of the lawsuit.

Other matters involving Section 6(b) reports were: Ozark Dairy Co. (File 40-44-170), pending in the United States District Court for the Eastern District of Missouri; Techbestos, Inc. (File 33-66-431) in the United States District Court for New Jersey, in which case settlement of penalties was \$400; and Triple A Specialty Co. (File 99-103) in the United States District Court for the Northern District of Illinois, in which case the court entered a consent judgment requiring the defendant to pay \$4,500 in civil penalties.

In addition, in fiscal year 1972, the Commission requested the Department of Justice to initiate judicial proceedings to enforce seven subpoenas. Other court activity involved subpoena cases that were pending at the start of the year.

In Gibson Products Co. (File 691 0058) the Fifth Circuit (New Orleans) affirmed an order of the United States District Court for the Northern District of Texas enforcing a subpoena. The court held that the Commission had properly delegated to the Assistant Attorneys in charge of its various field offices the authority to issue investigative subpoenas duces tecum, and that determination of the jurisdictional question of whether respondents were engaged in interstate commerce was premature at the investigational stage of the proceeding.

Final orders enforcing Commission subpoenas were issued by the United States District Court for the Eastern District of Michigan in E. Fink Co. (File 712 3364) and by the United States District Court for the District of Massachusetts in General Mills, Inc. (D. 8836). In Ash Grove Cement Company (D. 8785) the United States District Court for the Western District of Missouri has issued an order permitting respondent to take depositions of Commission employees.

In Southern Cross Discount Co., Inc. (Emmanuel Gladstone) (File 682 3401) the Fifth Circuit (New Orleans) affirmed the order of the United States District Court for the Northern District of Georgia holding respondent Gladstone in criminal contempt for failure to obey the district court's order enforcing a Commission subpoena.

In Federal Trade Commission v. Approximately 500 Dozen Flammable Chenille Berets, (File 99-102) the Third Circuit (Philadelphia) affirmed the determination of the United States District Court for the District of New Jersey that the berets in question were exempt from coverage under the Flammable Fabrics Act of 1953 because they did not cover a sufficient portion of the ears, neck or face. The court of appeals observed, however, that such products could at any time be subject to the Flammable Fabrics Act of 1970 whenever the Secretary of Commerce establishes an appropriate flammability standard in accordance with Section 3 of the amended Act.

In Approximately 1499 Dozen Flammable sheer Nylon Scarves, More or Less (Berkshire Handkerchief Co., Inc.) (File 99-101), wherein the goods in question were seized in fiscal year 1971, such goods remained seized throughout fiscal year 1972, and further proceedings were still pending at the close of this fiscal year in the United States District Court for the Southern District of New York.

COLLATERAL SUITS AGAINST THE COMMISSION
FOR INJUNCTIVE AND OTHER RELIEF

The trend toward collateral suits against the Commission in Federal courts for injunctive, declaratory and for other relief continued in fiscal year 1972. During this period the Commission was involved in defending approximately 28 such actions.

In National Petroleum Refiners Association (Trade Reg. Rule 215-21) the United States District Court for the District of Columbia held that the Commission did not have authority to issue substantive Trade Regulation Rules and that, accordingly, the Commission's Octane Posting Rule was null and void. The Commission has appealed this decision to the Court of Appeals for the District of Columbia and has filed its brief along with a motion to advance the case for oral argument.

Three national soft drink companies have sought collateral injunctive and declaratory relief in connection with administrative proceedings on complaints challenging their franchising arrangements, the companies contending that the local bottlers are indispensable parties to the administrative cases. In Coca Cola Company et al (D. 8855) the United States District Court for the Northern District of Georgia dismissed the court action for lack of jurisdiction and plaintiffs' failure to exhaust administrative remedies.

In Pepsi Co. (D. 8856) the United States District Court for the Southern District of New York dismissed the court action on similar grounds. In Seven-Up Company (D. 8857) the case is still pending in the United States District Court for the Eastern District of Missouri.

The United States District Court for the District of Columbia has dismissed several suits seeking injunctive and declaratory relief. In Eaton Corp. (D. 8826) the court refused to enjoin the Commission's administrative proceeding because a hearing examiner had denied defendants access to all underlying materials constituting a Commission survey of the automotive parts industry. Defendants have appealed to the District of Columbia Circuit.

In Warner-Lambert Co. (D. 8850, File 711 0618) the court refused to enjoin the Commission's administrative proceeding because of an alleged failure of complaint counsel to abide by the Commission's rules in connection with pre-complaint consent negotiations.

In Periodical Publishers' Service Bureau, Inc, and the Hearst Corporation, (D. 8832) the court refused to enjoin the Commission's administrative proceedings because of an alleged conflict between those proceedings and a previously outstanding agreement as to certain industry-wide conduct in the door-to-door magazine subscription business.

In Holiday Magic, Inc. (D. 8834), the United States District Court for the Northern District of California denied defendant's motion for temporary injunction against the Commission's administrative proceeding challenging certain franchising practices. The matter is pending further proceedings.

In William H. Rodgers, Jr., (File 99-112) the United States District Court for the Western District of Washington dismissed the complaint for declaratory judgment and injunctive relief on jurisdictional grounds. This case is now pending on appeal to the Ninth Circuit (San Francisco), briefs having been filed.

In Jewel Companies, Inc., et al. (D. Nos. 8786-8790), after the Commission reconsidered its decision to issue the administra-

tive complaints, the United States District Court for the Northern District of Illinois, Eastern Division, entered judgment for the Commission in part and dismissed the complaint in all other respects. The case has been appealed to the Seventh Circuit (Chicago).

In *Sydney N. Floersheim* (D. 8721), the United States District Court for the District of Columbia, in denying the Commission's motion to dismiss, ruled that the Commission's rejection of certain "debt collection" forms was a final agency action subject to court review, although the court upheld the Commission on the merits. The court also ruled that judicial review of the rejected compliance report must be taken at petitioner's risk and denied to stay of the penalty provisions of Section 5(l) of the Federal Trade Commission Act. Plaintiff has appealed to the District of Columbia Circuit.

In *Coca Cola Company, et al.* (D. 8824) the United States District Court for the Northern District of Georgia denied the Commission's motion to dismiss a complaint for injunctive relief and declaratory judgment, challenging the Commission administrative proceeding to require Coca Cola to award prizes to all winners of its contests.

Several recent actions have been initiated against the Commission. In *Tyson's Corner Regional Shopping Center, et al.* (D. 8886), in the United States District Court for the District of Columbia, plaintiffs are seeking declaratory judgment and a preliminary injunction challenging the Commission's administrative proceedings against certain restrictive leasing practices in the operation of a large shopping center. In *John Spector*, plaintiff is seeking declaratory judgment and injunctive relief challenging the Commission's investigation of his business.

Several other actions instituted against the Commission (and the Board of Governors of the Federal Reserve System) challenged the validity of various portions of Regulation Z promulgated under the Truth In Lending Act. In *N.C. Freed Co. and International Roofing Corp.* (File 99-90) the United States District

Court for the Western District of New York held as invalid and null and void section 226.9(a) requiring notice of a "three day rescission" right in transactions where a "security interest" not only is, but may be, acquired by anyone at any time against the property of the obligor. The section was designed to cover certain liens which may come into existence by operation of law. The Board of Governors of the Federal Reserve System and the Commission have appealed the case to the Second Circuit (New York). In Gardner and North Roofing and Siding Corp. and Surfa Shield Corp. (File 99-89), the District of Columbia Circuit has before it an appeal from a district court decision upholding the same section. The latter case has been briefed and argued.

The Commission was involved in several court actions involving application of the exemptions from disclosure contained in the Freedom of Information Act. In Sterling Drug Inc., (D. 8797) the District of Columbia Circuit held that, generally, staff memoranda were exempt from production, although it granted access to certain documents that contained the rationale for a Commission decision and also required the district court to determine whether portions of certain other documents containing statements of fact might be subject to disclosure. Other Freedom of Information Act matters still pending are: Ash Grove Cement Co. (D. 8785) and Missouri Portland Cement Co. (D. 8783), both in the United States District Court for the District of Columbia.

POLICY PLANNING AND EVALUATION

The Office of Policy Planning and Evaluation was established as a result of the Commission's internal reorganization of 1970. The establishment of that Office reflected the Commission's awareness that one of its most important needs was to plan its regulatory activities so as to achieve maximum impact. Accordingly, the Office's basic mandate is to develop recommendations that will help the Commission decide how and where its resources can best be utilized to protect the consumer and preserve a competitive marketplace.

In carrying out its responsibilities, the Office works directly with the Chairman and the individual Commissioners, as well as with the operating Bureaus and the Office of the Executive Director.

During the second year of its operations, the Office completed the development of a number of significant measures designed to establish an ongoing policy planning process for the Commission. Recognizing that systematic resource allocation judgments would require an ongoing "policy planning inventory" of current enforcement efforts, the Office developed and implemented the computerized Case Analysis and Evaluation Summary (CAES) phase of a total Resource Allocation Control System. The CAES facilitates the analysis and consideration of the Commission's current regulatory commitments by grouping and presenting them according to such programmatic characteristics as:

- Relevant statutory provisions;
- Type of business practice or violation involved;

- Nature of industry and product concerned;
- Size and relative market significance and geographic area affected;
- Demographic characteristics of affected consumers;
- Nature and amount of public benefit expected to result from successful enforcement activity.

The CAES was designed also to provide the basic framework for future use as a management tool to track automatically the progress of individual enforcement activities.

The Office also developed a system by which the Commission's actual use of its resources, as shown by quantitative data from the CAES inventory, can be evaluated against the framework of systematic, extrinsic planning factors. These factors, or "benchmarks, provide a basis for establishing antitrust and consumer protection priorities in the various market areas which present themselves for possible resource commitment by the Commission.

The extrinsic planning benchmarks in the antitrust field include information relating to:

- Industry concentration;
- Economics of scale;
- Product diversification;
- Entry and exit;
- Rates of merger activity;
- Reciprocity potential profitability data;
- R & D trends for all major markets and industries.

In the consumer protection area, the criteria include such things as:

- The absolute number of consumer dollars spent in the area;
- Numbers of consumer transactions involved;

- Demographic expenditure data relating to given groups of consumers;
- Number of complaints;
- Health and safety factors;
- Relative importance of advertising and consumer credit.

These quantitative data, when complete, will form the basis of a comprehensive data base or library, providing for Commission planning a basic quantitative information input. By comparing present and proposed courses of action with the competitive and consumer characteristics associated with the area of such activity, recommendations generally reflecting cost/benefit measurements can be formulated to guide Commission enforcement activity. This is essentially what the inventory and benchmark tools have been designed to accomplish.

During the year, the Office of Policy Planning also continued the preparation of selected analytical program guides giving detailed plans for various major areas of Commission activity. These guides state the objectives of actual or proposed enforcement activity in their areas, contain specific information on market structure, the buyer and seller behavior which is relevant to consumer or competitive problems in the area, the extent to which the area is susceptible to treatment under Commission laws, the estimated cost of enforcement, the impact that this type of enforcement could be expected to have on consumers and competitors, the possible relevance of private litigation, and a comparison of various means of attaining enforcement objectives, with a proposed selection of the best means and explanation of criteria for making that choice.

It is anticipated that when complete, the analytical program guides for the major areas of Commission responsibility will provide staff members with specific Commission guidance for standards of case selection and will lay down methods and standards for evaluating progress made toward achieving the objectives of the programs. Analytical program guides have been

prepared by the Office and the Bureaus of Consumer Protection and Competition for several major areas of activity, and additional guides are under way.

During the year, the Office also worked on a number of significant evaluation matters. To illustrate, the Office engaged in follow-up activity resulting from its planning and structuring of the Commission's investigation of possible unlawful activity in the reporting and estimating of natural gas reserves, and from its study of competitive conditions in the energy sector of the Nation's economy. Also, a "reciprocity" program guide, incorporating the computer approach developed by the Office for this area was completed and presented to the Commission. With a limited staff, the Office in less than two years has not only made considerable progress in identifying for the Commission its resource commitments but is also well along in reviewing the specific costs and benefits associated with individual programs. In addition, it has suggested several ongoing enforcement programs carefully structured for maximum effectiveness and efficiency. Planning is, of course, a continuing function. More must and will be done so that the Commission's efforts truly achieve the maximum benefits for consumers and businessmen.

The need for enhanced and vigorous planning to assure Commission involvement in areas of maximum significance is perhaps best demonstrated by a review of Commission resources for the past several years as compared and contrasted with relevant economic and other developments.

The decade of the 1960's was a time of rapid business growth in the United States. During the 10-year period from 1962-1971, for example, corporate pretax profits increased 54 percent; retail sales increased 73 percent; manufacturing and wholesale sales increased 75 percent; personal consumption expenditures increased 86 percent, and consumer credit outstanding increased 114 percent. Each of these statistics relates to areas of FTC responsibility.

During this same period, the FTC budget has not grown commensurately with its increased responsibilities. This may be clearly

seen when the budgets for 1962 and 1971 are compared in terms of 1958 dollars: \$8.8 million and \$11.0 million, respectively, for an increase of only 25 percent over 10 years.

This increase can be compared directly with an increase in GNP (in 1958 dollars) of 40 percent; an increase in total personal consumption expenditures of 45 percent; or an increase in durable goods consumption expenditures of 82 percent. In addition, during the period 1960-1968 (most recent data available), corporations increased from 1,141,000 to 1,542,000, a growth of 35 percent. The amount of advertising expenditures (1960-1970) increased 66 percent. The number of mergers (1960-1969) increased 187 percent. Of these mergers, 446 involving assets of \$10 million or more occurred in 1968-1970 alone. Total assets involved for these three years exceeded \$29.7 billion.

The Department of Commerce has estimated the growth of manufacturing over the period 1969-1980 to be 49 percent; wholesale and retail trade, 63 percent; and the service industries, increasingly the focus of FTC efforts, an average of 78 percent.

Thus, even where it is assumed that the statutory responsibilities of the Commission will not be increased, it is clear that over the past several years the Commission has lost considerable ground in its ability to maintain staff growth commensurate with economic factors. When other factors such as the increasing significance of the consumer movement are taken into account, the importance of a planning effort becomes quite clear. The statistics underscore what is the present and is likely to be the continuing situation at the Commission; namely, that more areas will require enforcement attention than FTC resources can support.

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**FUNDS AVAILABLE
TO THE COMMISSION
DURING FISCAL YEAR 1972**

For fiscal year 1972, funds of \$25,189,000 were authorized for Commission use by Public Law 92-73. The Commission's adjusted budget for fiscal year 1972 was \$25,092,218, which reflects a transfer of \$96,782 to the General Services Administration for space rental.

Obligations by Activities for Fiscal Year 1972

1. Maintaining competition:	
Investigation and Litigation	\$ 5,758,399
Economic and financial reports	1,020,859
Trade Regulation and industry guides	9,145
General activities and special projects	<u>1,253,806</u>
Total - Maintaining competition	8,042,209
2. Consumer protection:	
Investigation and litigation	7,641,290
Consumer credit enforcement	1,127,830
Fair packaging and labeling	117,612
Flammable fabrics, textile, wool, and fur enforcement	1,758,411
Trade regulation rules and industry guides	627,075
General activities and special projects	<u>1,117,930</u>
Total - Consumer protection.....	12,390,148
3. Executive direction and policy planning.....	1,752,003
4. Administrative management.....	2,893,642
Total obligations - Fiscal Year 1972.....	<u>\$25,078,002</u>

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