

IN THE MATTER OF  
NATIONAL DAIRY PRODUCTS CORPORATION  
MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 2 (a)  
OF THE CLAYTON ACT

*Docket 8548. Final Order, Oct. 2, 1969—Modifying Order, July 27, 1982*

This order reopens the proceeding and modifies the Commission's Final Order issued on October 2, 1969 (76 F.T.C. 392), to ease restrictions on pricing for jams, jellies and preserves, so that only those price differences that injure competition would violate the order. The Commission declined Kraft's request to rescind the order or have it expire in 1987.

ORDER MODIFYING FINAL ORDER

*Whereas*, a "Petition of Kraft, Inc. to Reopen And Modify Cease And Desist Order" was filed on March 10, 1982 by Kraft, Inc. the successor to National Dairy Products Corporation, pursuant to Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, wherein Kraft, Inc. seeks to have the order that was issued on October 2, 1969 rescinded or modified;

*Whereas*, the matter was thereafter placed on the public record for thirty (30) days pursuant to Section 2.51(c) of the Commission's Rules of Practice, 16 C.F.R. 2.51(c), during which time comments from the public were received; and

*Whereas*, the Commission thereafter considered the petition presented by Kraft, Inc. and all of the information submitted as comments on the petition and has determined that the petition makes a satisfactory showing that changed conditions of fact or law or that the public interest requires that the order be reopened for the purpose of modification.

Accordingly, *It is ordered*, that the matter be reopened and that the order be modified so that it will read:

*It is ordered*, That respondent Kraft, Inc. a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporate device, in connection with the sale or offering for sale of jam, jelly or preserve products of its Retail Foods Group, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly in price between different purchasers of such products of like grade and quality for resale at the same level of distribution where the effect of such discrimination may be substantially to lessen competition or tend to create a

monopoly in the manufacture of jam, jelly or preserve products; *Provided, however,* that it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish any affirmative defense set forth in Sections 2(a) or 2(b) of the Clayton Act or Section 8 of the Motor Carrier Act of 1980.

*It is further ordered,* That respondent's request to rescind the order or to have the order expire in 1987 is denied.

## IN THE MATTER OF

## ASH GROVE CEMENT COMPANY

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

*Docket 8785. Order, June 24, 1975—Modifying Order, July 29, 1982*

This order reopens the proceeding and modifies the Commission's Order issued of June 24, 1975, (85 F.T.C. 1123) by deleting Paragraph IV from the Order, so as to allow respondent to retain the assets of its divested subsidiary, which it reacquired when the purchaser of the divested plant defaulted on its payments to respondent.

## ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JUNE 24, 1975

The Federal Trade Commission having considered the June 2, 1982 petition of Ash Grove Cement Company to reopen this matter and to modify the order to cease and desist issued by the Commission on June 24, 1975, and having determined that changed conditions of fact and the public interest warrant reopening and modification of the order,

*It is ordered,* That this matter be, and it hereby is, reopened and that Paragraph IV of the Commission's order be, and it hereby is, deleted.

Complaint

100 F.T.C.

IN THE MATTER OF

EXXON CORPORATION, ET AL.

DISMISSAL ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE  
CLAYTON ACT*Docket 9130. Complaint, Aug. 10, 1979—Dismissal order, July 30, 1982*

The Federal Trade Commission has issued an order dismissing the 1979 complaint challenging Exxon's proposed acquisition of Reliance Electric Company, finding that, ". . . the acquisition would not have had competitive effects of the magnitude of those anticipated by the company and the Commission in 1979." The dismissed complaint alleged that the acquisition would eliminate Exxon as an actual potential entrant into the U.S. electronic variable speed industrial drives market.

*Appearances*For the Commission: *David W. Long.*For the respondents: *Robert M. Saylor, Covington & Burling,*  
Washington, D.C.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have undertaken an acquisition that, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that said undertaking therefore constitutes a violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(a)(1), and having found that a proceeding by it with respect thereof is in the public interest, hereby issues its complaint, charging as follows:

## THE RESPONDENTS

1. Respondent Exxon Corporation (hereinafter "Exxon") is a New Jersey corporation with its principal office at 1251 Avenue of the Americas, New York, New York. Respondent Enco, Incorporated ("Enco") is a Delaware corporation with its principal office at the same address. It is a wholly-owned subsidiary of Exxon.
2. Exxon is the largest industrial corporation in the world in assets, and is the second largest in sales. Its principal business is the production, transportation and refining of crude oil, but it is also a

major producer of plastics, petrochemicals and other petroleum-based products. Exxon is also engaged in non-petroleum extractive industries such as copper, coal and uranium, and has been expanding into electronic communication and data handling, semiconductors, solar energy and other technological industries.

3. At all times relevant herein, Exxon sold and shipped its products throughout the United States, and engaged in or affected interstate commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44. The acquisition described in paragraphs 5 and 6 of this complaint likewise is in or affecting interstate commerce within the meaning of those statutes.

#### THE ACQUISITION

4. Reliance Electric Company (hereinafter "Reliance") is a Delaware corporation with its principal place of business at 29325 Chagrin Blvd., Cleveland, Ohio. Reliance is a leading manufacturer of electrical equipment and related products, as well as scales and balances, and also has a sizeable telecommunications business. In fiscal year 1978, Reliance had sales of \$966.3 million and assets of \$613.2 million, ranking it 262nd and 288th, respectively, on the Fortune 500 lists of American industrial corporations. Reliance's sales for fiscal year 1979, which ends in October 1979, are presently running at an annual rate of \$1.5 billion.

5. On May 25, 1979, Exxon announced its intent to initiate a cash tender offer for the purchase of any and all outstanding shares of the common stock of Reliance for \$72 per share and any and all outstanding shares of Reliance's Series A preferred stock for \$201.60 per share. On the basis of the shares outstanding as of January 31, 1979, the total value of the offer would be \$1.17 billion. The pre-announcement price of Reliance common stock was \$36.50 per share.

6. The tender offer was formally opened on June 28, 1979, by Enco. On July 11, 1979, the initial termination date of the offer, Exxon announced that the offer would be extended to July 13, 1979. On July 13, Exxon announced that over 95 percent of Reliance's common stock had been tendered.

7. On July 27, 1979, the Commission directed its attorneys to seek a preliminary injunction against consummation of the acquisition. On July 28, 1979, the United States District Court for the District of Columbia entered a temporary restraining order enjoining consummation of the acquisition pending a hearing and decision on the Commission's application for a preliminary injunction. By

order dated August 6, 1979, the district court extended the temporary restraining order until August 17, 1979.

#### TRADE AND COMMERCE

8. Electronic variable speed industrial drives ("EVSD") constitute a competitively significant line of commerce, or market.

9. A competitively significant geographic area in which EVSD are marketed is the United States.

10. The EVSD market is concentrated, with the four leading producers in 1977 having in excess of 55% of all sales.

11. Barriers to broad-product-line entry into the EVSD market are high.

12. Reliance is a leading producer of EVSD.

13. Exxon possesses technology that it claims would permit it to manufacture EVSD that are superior in operating characteristics and lower in cost than other EVSD currently available. Exxon has built at least two prototype or demonstration EVSD which have been installed and are operating in Exxon's refineries.

14. But for the acquisition of Reliance, in order to reap the commercial benefits of its technology, Exxon would enter the EVSD market either *de novo* or through the acquisition of a toehold company, *i.e.*, a company with a relatively small share of the EVSD market.

#### EFFECTS OF THE ACQUISITION

15. Exxon's acquisition of Reliance would eliminate Exxon as an actual potential entrant into the United States EVSD market, thereby eliminating the likelihood that entry by Exxon would:

- (a) decrease concentration in the market;
- (b) increase competition in the market; or
- (c) increase competition in the development of EVSD technology and products.

16. Exxon's acquisition of Reliance would likely have anticompetitive effects in the United States EVSD market, including but not limited to:

- (a) increasing the level of concentration in the market;
- (b) elevating barriers to entry into the market; or
- (c) eliminating competition in the development of EVSD technology and products.

## VIOLATIONS CHARGED

17. The effect of the acquisition of Reliance by Exxon may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

18. Acquisition of Reliance by Exxon and Enco would constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

19. By undertaking the acquisition that would give rise to the violations described in paragraphs 17. and 18., Exxon and Enco have violated Section 5(a)(1) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(a)(1).

## ORDER DISMISSING COMPLAINT

On August 10, 1979, the Commission issued an administrative complaint against respondents challenging the intended acquisition of Reliance Electric Company by Exxon Corporation, through its subsidiary Enco, Incorporated. The complaint alleged that the acquisition, which was subsequently consummated pursuant to a hold-separate order<sup>1</sup>, would eliminate Exxon as an actual potential entrant into the United States electronic variable speed industrial drives ("EVSD") market, thereby eliminating the likelihood that entry by Exxon would: (a) decrease concentration in the market; (b) increase competition in the market; or (c) increase competition in the development of EVSD technology and products. The factual premise of the complaint was that Exxon had made a breakthrough in EVSD technology and, but for the acquisition of Reliance, would enter the market either *de novo* or through the acquisition of a toehold company.

After substantial pretrial discovery, complaint counsel moved on May 14, 1982, for a dismissal of the complaint. The motion was certified to the Commission by the ALJ without a recommendation on May 17, 1982. Respondents did not file an answer.

In their motion and accompanying papers<sup>2</sup> complaint counsel have explained in detail how recent discovery has shown that Exxon, and consequently the Commission, misjudged the commercial viability of its new technology, called "alternating current synthesis" ("ACS").

<sup>1</sup> A temporary restraining order was issued on July 28, 1979 by United States District Judge Harold H. Greene. On August 17, 1979, District Judge John H. Pratt entered the hold-separate order. That order was modified on October 26, 1979, to exclude Reliance's "motors unit" from the hold-separate requirement and also on June 25, 1980. Certain aspects of the June 25 modification not relevant here were struck down by the Court of Appeals in December, 1980. *FTC v. Exxon Corp.*, 636 F.2d 1336 (D.C. Cir. 1980).

<sup>2</sup> The motion to dismiss and Attachments A-M were filed on the public record. Complaint counsel also filed *in camera* a lengthy memorandum in support and 68 attachments, consisting of internal Exxon documents and investigational transcripts.

Thus, rather than marketing ACS for Exxon, as Exxon had hoped, Reliance guided the company to the realization that ACS was not the breakthrough it had been thought to be and that, moreover, the prospects even for modest commercial exploitation were questionable: ACS suffered from serious reliability and serviceability problems, and its production costs were vastly greater than originally estimated. Consequently, on March 20, 1981, Exxon announced that it had abandoned its efforts to develop the ACS design. While Reliance's "ACS Group" (the unit not subject to the court's hold-separate order) explored the possibility of another technology, that effort was terminated in August, 1981.

In light of these newly discovered facts, it is now apparent that Exxon never was the significant potential entrant that it was alleged to be in the Commission's complaint. Even if Exxon had attempted to enter the EVSD market by alternative means,<sup>3</sup> the Commission has no reason to believe that such entry, without a new technology, would have offered "a substantial likelihood of ultimately producing deconcentration of that market or other significant procompetitive effects."<sup>4</sup> In any event, it now appears that the acquisition would not have had competitive effects of the magnitude of those anticipated by the company and the Commission in 1979.

The complaint is hereby dismissed.

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<sup>3</sup> Absent the Reliance acquisition, Exxon might have acquired a toehold company or continued internal development of the ACS technology. However, in either case, it would have learned eventually of the failings of ACS. This probably would have ended Exxon's interest in the EVSD market, since the company seems to have been interested in entering that market *only* as a technological innovator.

<sup>4</sup> *United States v. Marine Bancorporation*, 418 U.S. 602, 633 (1974).

IN THE MATTER OF  
NATIONAL ASSOCIATION OF SCUBA DIVING SCHOOLS,  
INC.

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

*Docket C-3094. Complaint, July 30, 1982—Decision, July 30, 1982*

This consent order requires a Long Beach, Ca. corporation in connection with the issuance or authorization of various seals of approval, among other things, to cease representing that any diving equipment or product bearing their seal or insignia meets an objective standard of safety or reliability unless such equipment has been competently and credibly tested. The order bars any misrepresentations concerning the significance of any seal or insignia and requires respondent to provide those who utilize the seals with a copy of the order and a letter explaining its provisions; discontinue doing business with any user of such seals who does not comply with the order's provisions; and institute a program of reasonable surveillance to ensure compliance with the order.

*Appearances*

For the commission: *Dean Hansell* and *Kenneth H. Donney*.

For the respondent: *John Gaffney*, in-house counsel, Long Beach, Ca. and *Richard A. Lesser*, Hermosa Beach, Ca.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that the National Association of Scuba Diving Schools, Inc., ("NASDS"), a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issue its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent NASDS is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, having its principal office and place of business at 641 West Willow Street, Long Beach, California.

PAR. 2. Respondent NASDS is a marketing and management organization, serving over 200 retail diving stores nationally. It is now and for some time last past has been engaged in the develop-

ment, offering for sale and sale of marketing and promotional devices, services, and programs for scuba diving and skin diving retail stores and equipment.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of paragraphs one and two are incorporated by reference herein as if fully set forth verbatim.

PAR. 3. In the ordinary course and conduct of its business, respondent serves retail diving stores located in 40 states and the District of Columbia. It causes and has caused the conduct of business in each of these states and the District of Columbia through the U.S. mail and other facilities of interstate commerce. Respondent maintains and has maintained a substantial course of business, including the acts and practices hereinafter set forth, that is in or affects commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business, respondent has developed, offers for sale and sells to retail diving stores a seal of approval that respondent refers to as its "Seal of Excellence" and its "Seal of Acceptance". Respondent uses its seal of approval as a promotional device. The seal is elliptical in shape and in addition to bearing the name "National Association of Scuba Diving Schools" displays prominently the terms "INTEGRITY", "SAFETY", "INSTRUCTION", "SPORT", "SEAL OF ACCEPTANCE" and "SEAL OF EXCELLENCE". A copy of the seal is attached to this complaint.

PAR. 5. In the ordinary course and conduct of its business, respondent publishes a magazine, *The Diving Retailer & Professional Instructor*, which is distributed to members of the diving industry including those retail diving stores which respondent serves. In many issues of the publication respondent advertises a copy of its seal of approval as follows:

THE  
PRODUCTS  
PRODUCT  
BACKERS  
BACK.

Our customers look for this seal before they buy. It's their guarantee of quality. The NASDS Seal of Excellence is an opportunity for our individual member stores to high-light their best values in equipment systems components.

All our stores service what they sell. And when you service what you sell you learn what equipment holds up and is the best value for the money.

Only our stores stand behind their products in this way. We know our success depends on satisfied customers.

PAR. 6. In the ordinary course and conduct of its business, respondent prepares diving product advertisements that promote the seal. The advertisements depict a diving product to which the seal is attached or affixed. The advertisement copy describes the product in favorable terms and states that because of these features the product has earned the NASDS seal. The advertisements are placed in publications disseminated to the diving industry and to the general public. Respondent disseminates these advertisements, directly or indirectly, to consumers.

PAR. 7. In the ordinary course and conduct of its business, respondent offers for sale or sells sets of display signs to retail diving stores that identify departments within the store. These signs prominently feature the seal and urge consumers to look for the seal before they buy diving equipment. These signs are placed in retail diving stores where they are read by consumers. Respondent disseminates these signs, directly or indirectly, to consumers.

PAR. 8. Respondent sells price tags and decals bearing its seal of approval to retail diving stores. These price tags and decals are sold for the purpose of being and are, in fact, attached or affixed by the stores to scuba and skin diving products offered for sale to consumers.

PAR. 9. Respondent, in promoting the seal in the aforesaid manner, represents directly or by implication to consumers that the seal is attached or affixed to or used in conjunction with scuba and skin diving products only if these products have been approved by respondent either because the products had been tested or certified by respondent for safety, integrity, or excellence, or because they have met some other objective standards of performance, reliability or quality set by respondent.

PAR. 10. In truth and in fact:

a. the seal may be attached or affixed to, or used in conjunction with, products without regard to whether these products have been approved by respondent either because the products have been tested or certified for safety, integrity, or excellence by respondent, or have met some other objective standards of performance, reliability or quality set by respondent; and

b. respondent has not conducted, sponsored, commissioned or relied upon testing or certification for safety, integrity or excellence of products to which the seal has been attached, affixed or used in conjunction with; and

c. respondent has not set objective standards of performance, reliability or quality for products to which the seal has been attached, affixed or used in conjunction with.

Therefore, the aforesaid statements, representations, acts or practices by respondent are false, misleading, deceptive or unfair.

PAR. 11. The use by respondent of the aforesaid false, misleading, deceptive, or unfair statements, representations, acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, representations, acts or practices are true and into the purchase of substantial quantities of diving equipment to which the seal has been attached, affixed or used in conjunction with by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent NASDS, as herein alleged, were and are all to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

#### COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Eight, inclusive, are incorporated by reference herein as if fully set forth verbatim.

PAR. 13. As a result of the acts and practices alleged in Paragraphs Four through Eight, respondent allows, authorizes, or encourages other persons, corporations, partnerships or other entities (hereinafter "users") to attach or affix its seal of approval to scuba and skin diving products as a promotional device in the selling of such products to the public.

PAR. 14. Respondent, by authorizing or encouraging users to attach or affix or use its seal in conjunction with scuba and skin diving products as a promotional device in the selling of such products, represents directly or by implication to consumers that the seal is attached or affixed to or used in conjunction with said products only if these products have been approved by respondent either because the products have been tested or certified by respondent for safety, integrity or excellence, or because they have met some other objective standards of performance, reliability or quality set by respondent.

PAR. 15. In truth and in fact:

a. respondent authorizes or encourages users to attach or affix the seal or use it in conjunction with scuba and skin diving products, without regard to whether these products have been approved by respondent either because the products have been so tested or certified by respondent for safety, integrity or excellence or have met some other objective standards of performance, reliability or quality set by respondent;

b. respondent has not conducted, sponsored, commissioned or relied upon testing or certification for safety, integrity or excellence of products to which the seal has been attached, affixed or used in conjunction with; and

c. respondent has not set objective standards of performance, reliability or quality for products to which the seal has been attached, affixed or used in conjunction with.

Therefore, the aforesaid statements, representations, acts or practices are false, misleading, deceptive or unfair.

PAR. 16. Respondent, by allowing users to attach or affix the seal of approval to scuba and skin diving products, places in the hands of such users of the seal an instrumentality whereby such users are enabled to and do represent, directly or by implication, that the products to which the seal is attached or affixed have been approved by NASDS either because the products have been tested or certified by respondent for safety, integrity, or excellence or because they have met some other objective standards of quality, reliability or performance set by respondent, without regard to whether such products have been so tested or certified or have met such standards.

Therefore, the aforesaid statements, representations acts or practices by respondent are false, misleading, deceptive or unfair.

PAR. 17. The use by respondent of the aforesaid false, misleading, deceptive, or unfair statements, representations, acts or practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements, representations, acts or practices are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 18. The acts and practices of respondent NASDS, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.



## DECISION AND ORDER

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

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

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

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 641 West Willow Street, in the City of Long Beach, State of California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondent National Association of Scuba Diving Schools, Inc., ("NASDS"), a corporation, and its successors and assigns, and respondent's officers, agents, representatives, and employees, jointly or severally, directly or through any corporation, subsidiary, division, or other device, in connection with the issuance or authorization of various seals of approval, emblems, shields, or other insignia in or affecting commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such seal, emblem, shield, or other insignia, is attached to or affixed to or used in conjunction with any scuba diving or skin diving product, or any other product, as an assurance that such product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such assurance and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

2. Using or encouraging, authorizing, or allowing anyone else to use any such seal, emblem, shield, or other insignia that represents, directly or by implication, that any scuba diving or skin diving product or any other product meets an objective standard of safety or reliability or any other objective standard of quality or performance, unless such product has been competently, adequately and thoroughly tested in such a manner as reasonably to substantiate with competent and reliable evidence any such representation and unless any connection between the tester and the product that might materially affect the weight and the credibility of the test and that is not reasonably expected by the public, such as the tester being the product's manufacturer, is fully disclosed on the seal.

3. Misrepresenting, directly or by implication, the significance of any such seal, emblem, shield or other insignia.

## II.

*It is further ordered,* That respondent shall provide all present and future persons, corporations, partnerships, or other entities who use any insignia of respondent with a copy of this Order and a letter informing such users that they can no longer use the respondent's insignia except in a manner consistent with the provisions of this Order. Respondent shall immediately stop doing business with any user of its insignia if that user acts in a manner inconsistent with the provision of this Order; and respondent shall institute a program of reasonable surveillance of all users in order to assure their compliance with this Order.

## III.

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

## IV.

*It is further ordered,* That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which respondent has complied with this Order.

Modifying Order

100 F.T.C.

IN THE MATTER OF

## AMERICAN DENTAL ASSOCIATION

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9093. Decision and Order, Sept. 6, 1979—Modifying Order, Aug. 3, 1982*

The Federal Trade Commission has modified its Decision and Order issued against the American Dental Association (ADA) on September 6, 1979 (94 F.T.C. 403), pursuant to Paragraph I(A) of the order, which provides that upon entry of a final adjudicated order granting relief against the American Medical Association (AMA), the Commission will reissue its order against the ADA, so that the prohibitions dealing with restrictions on advertising conform to those entered against the AMA.

## MODIFICATION OF DECISION AND ORDER

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

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

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, and in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, having entered an order in Docket No. 9093, the Commission now, in accordance with Paragraph I of the order in Docket No. 9093, hereby makes the following jurisdictional findings and enters the following order:

1. Respondent American Dental Association ("ADA") is an Illinois corporation, with its principal place of business at 211 East Chicago Avenue, Chicago, Illinois.

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

#### ORDER

##### *Definitions*

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

*Respondent*: means the American Dental Association ("ADA") and its councils, departments, committees, divisions, subdivisions, trustees, officers, delegates, representatives, agents, employees, successors, and assigns.

*Constituent societies* means those dental societies or dental associations defined as constituent societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate constituent societies differently or to describe a new category of dental societies which replace or are roughly equivalent to constituent societies, *constituent societies* means those dental societies as well.

*Component societies* means those dental societies or dental associations defined as component societies in the January 1, 1978, edition of the American Dental Association's *Constitution and Bylaws* and, in the event that the American Dental Association's *Constitution and Bylaws* is amended to denominate component societies differently or to describe a new category of dental societies which replace or are roughly equivalent to component societies, *component societies* means those dental societies as well.

#### I.

*It is ordered*, That respondent American Dental Association directly or indirectly, or through any corporate or other device, in or in connection with respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply dentists' services, by any dentist or by any organization with which dentists are affiliated; and

C. Inducing, urging, encouraging, or assisting any dentist or any dental association, group of dentists, hospital, insurance carrier or any other non-governmental organization to take any of the actions prohibited by this Part.

Nothing contained in this Part shall prohibit respondent from formulating, adopting, disseminating to its constituent and component dental organizations and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

## II.

*It is further ordered,* That respondent American Dental Association cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

A. Reasonable written notice of the allegations against him or her;

B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and

C. The written findings or conclusions of respondents with respect to such allegations.

## III.

*It is further ordered,* That respondent American Dental Association:

A. Send by first class mail a copy of a letter in the form shown in Appendix A to this Order to each of its present members and to each constituent and component organization of respondent, within sixty (60) days after this Order becomes final.

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B. For a period of ten years, provide each new member of respondent and each constituent and component organization of respondent with a copy of this Order at the time the member is accepted into membership.

C. Within ninety (90) days after this Order becomes final, remove from respondent American Dental Association's *Principles of Ethics*, and *Official Advisory Opinions*, and from the constitution, bylaws, codes, standards of dentist conduct, and any other existing policy statements or guidelines of respondent, any provision, interpretation or policy statement which is inconsistent with the provisions of Part I of this Order and, within one hundred and twenty (120) days after this Order becomes final, publish in the *Journal of the American Dental Association* and in *ADA News* the revised versions of such documents, statements, or guidelines.

D. Require as a condition of affiliation with respondent that any constituent or component organization agree by action taken by the constituent or component organization's governing body to adhere to the provisions of Parts I and II of this Order.

E. Terminate for a period of one year its affiliation with any constituent or component organization within one hundred and twenty (120) days after learning or having reason to believe that said constituent or component organization has engaged, after the date this Order becomes final, in any act or practice that if committed by respondent would be prohibited by Part I or II of this Order.

## IV.

*It is further ordered* That respondent American Dental Association:

A. Within sixty (60) days after the Order becomes final, publish a copy of this Order with such prominence as feature articles are regularly published in the *Journal of the American Dental Association* and in *ADA News* or in any respective successor publications.

B. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order.

C. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part I of this Order, including but not limited to any advice or

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interpretations rendered with respect to advertising or solicitation involving any of its members.

D. Within one year after this Order becomes final, and annually thereafter, for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part I of this Order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any of its members.

## V.

*It is further ordered* That respondent American Dental Association shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

## APPENDIX A

[ADA Regular Letterhead]

Dear Doctor:

As you are probably aware, in January of 1977, the Federal Trade Commission issued a complaint against the ADA, the Indiana Dental Association, the Indianapolis District Dental Society, the Virginia Dental Association, and the Northern Virginia Dental Society. The administrative complaint alleged that certain portions of ADA's Principles of Ethics and advisory opinions regarding advertising and solicitation by dentists were in violation of the Federal Trade Commission Act.

We entered into a consent order with the FTC, without admitting any violation of the law, which provided that we and the FTC would be bound by the final outcome of a similar FTC case (Docket No. 9064) principally as it relates to FTC jurisdiction, ethical restrictions on advertising and solicitation, and relief. That case has been ultimately decided and, as agreed in our consent order, the FTC has issued a final order against ADA based upon the final order in FTC Docket No. 9064. The final order is printed in the [insert issue date] issue of the *Journal of the American Dental Association*, the [insert issue date] issue of *ADA News* and may be obtained from the ADA headquarters or from your state or local dental society.

Among other things, the order forbids any action by ADA that would restrict its members' solicitation of patients by advertising or other means. However, the order does not prohibit the ADA from formulating and enforcing reasonable ethical guidelines governing deceptive advertising and solicitation (including unsubstantiated representations). The ADA may also issue guidelines concerning uninvited, in-person solicitation of patients who, because of their particular circumstances, are vulnerable to undue influence.

Because in Docket No. 9064 the Commission decided in its discretion not to apply the order to local societies, the Commission has also omitted local societies from the final ADA order. However, the order requires ADA to sever all ties for one year with

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any state or local dental society that engages in conduct of the type prohibited under the order, as well as requiring ADA to amend the *ADA Principles of Ethics* and the *ADA Official Advisory Opinions*.

Thank you for your cooperation.

Sincerely

/s/ \_\_\_\_\_

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IN THE MATTER OF

## HAMMERMILL PAPER COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2513. Final Order, April 24, 1974.—Modifying Order, Aug. 6, 1982*

This order reopens the proceeding and modifies the Commission's order issued on April 24, 1974 (83 F.T.C. 1587), by modifying subparagraph 1(a) so as to allow the company to impose conditions on the kind of customers its distributors can serve, so long as such conditions do not unreasonably restrain competition.

## ORDER MODIFYING DECISION AND ORDER

*Whereas*, a "Request To Reopen And Modify Consent Order" was filed by Respondent on April 8, 1982 pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, wherein Hammermill Paper Company seeks modification of the order that issued on April 24, 1974 to allow Hammermill to impose reasonable nonprice vertical restrictions; and

*Whereas*, the matter was thereafter placed on the public record pursuant to Section 2.51(c) of the Commission's Rules of Practice, 16 C.F.R. 2.51(c) during which time comments from the public were received; and

*Whereas*, the Commission thereafter considered the Petition presented by Hammermill Paper Company and all of the materials and information submitted as public comments on the petition and has determined that the request makes a satisfactory showing that changed conditions of fact and law and the public interest require that the order be reopened for the purpose of modification.

Accordingly, *It is ordered*, that the matter is reopened and that subparagraph 1(a) be modified to read:

Limiting, allocating or restricting the persons or classes of persons to whom any dealer or distributor may resell his products, where such limitation, allocation or restriction unreasonably restrains competition.

IN THE MATTER OF  
XEROX CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 8909. Consent Order, July 29, 1975—Modifying Order, Sept. 10, 1982*

This order reopens the proceeding and modifies Paragraph XVII of the Commission's order issued on July 29, 1975 (86 F.T.C. 364) by revising the annual notice that Xerox must print in the Official Gazette of the United States Patent and Trademark Office. The modification eliminates the requirement for repetitious annual printing of domestic and foreign copier patents available for licensing, and requires that only new patents and deletion of expired patents be published.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JULY 29, 1975

The Federal Trade Commission having considered respondent Xerox Corporation's petition filed on July 11, 1982, to reopen this matter and to modify the consent order to cease and desist issued by the Commission on July 29, 1975, and having determined that reopening and modification of the order is warranted:

*It is ordered*, That this matter be, and it hereby is reopened and that Paragraph XVII of the Commission's order be and it is hereby modified to read as follows:

XVII

*It is further ordered*, That annually, until the expiration of all *Future Patents*, Xerox shall submit for publication in the Official Gazette of the United States Patent and Trademark Office a notice

(1) identifying by number, title, date of issue and category of subject matter (to an extent acceptable to the Commission) all United States *patents* which it is empowered to license, together with all *foreign patents* based on the patent application from which each United States *patent* originates, issued since the publication of the last such notice;

(2) stating that Xerox shall grant licenses under (a) its *order patents* to make, have made, use and vend *office copier products* under the terms of this order, and (b) patents required to be licensed pursuant to the terms of Paragraph X of this order, if any;

(3) stating that (a) a copy of this order, (b) a list of patents licensed to Xerox which are subject to the provisions of Paragraph II and IV (C)(9) of this order, if any, and (c) a list of all patents subject to

this order which have been previously published are available from *Xerox* upon written request; and

(4) citing the issues of the Official Gazette since 1981 in which previous notices have been published. Until the expiration of all *Xerox future patents*, *Xerox* shall send a copy of this order and a complete list of patents subject to this order to each person who inquires as to the availability of a license for *office copier products*, or to whom *Xerox* has offered such a license at any time since January 1, 1970.

## IN THE MATTER OF

## LITTON INDUSTRIES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9123. Final Order, Jan. 5, 1981—Modifying Order, Sept. 10, 1982*

The Federal Trade Commission, in accordance with the decision and judgment of the Ninth Circuit Court of Appeals, has deleted references to "test" data from its order issued on January 5, 1981 (97 F.T.C. 1). Among other things, the modified order prohibits respondent from misrepresenting survey results in its advertising of microwave ovens and other consumer products.

## MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Ninth Circuit a petition for review of the Commission's order issued herein on January 5, 1981; and the Court having on May 3, 1982, rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the time for filing a petition for certiorari having expired and no petition having been filed:

*Now, therefore, it is hereby ordered,* That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read:

## ORDER

## I

*It is ordered,* That respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Representing, directly or by implication, that any commercial microwave oven or consumer microwave oven
  - (a) is able to perform in any respect, or has any characteristic, feature, attribute, or benefit; or
  - (b) is superior in any respect to any or all competing products; or

(c) is recommended, used, chosen, or otherwise preferred in any respect more often than any or all competing products,

unless and only to the extent that respondents possess and rely upon a reasonable basis for such representation at the time of its initial and each subsequent dissemination. Such reasonable basis shall consist of competent and reliable surveys and/or other competent and reliable evidence which substantiates the representation. A competent and reliable survey means one in which persons qualified to do so conduct the survey and evaluate its results in an objective manner, using procedures that insure accurate and reliable results.

2. Failing to maintain accurate records

(a) of all materials that were relied upon in disseminating any representation covered by paragraph I(1) of this order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondents, or of any division, subdivision or subsidiary of respondents, or by any advertising agency engaged for such purposes by respondents, or by any of its divisions or subsidiaries;

(b) of all studies, surveys, or demonstrations that contradict any representation made by respondents that is covered by paragraph I(1) of this order.

Such records shall be retained by respondents for three years from the date that the representations to which they pertain are last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

## II

*It is further ordered,* That respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use) and any other product normally sold to members of the general public for their personal or household use in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Misrepresenting in any manner, directly or by implication, the purpose, sample, content, reliability, results or conclusions of any survey.

2. Advertising the results of a survey unless the respondents in such survey are a census or a representative sample of the population referred to in the advertisement, directly or by implication. A representative sample need not be a probability sample so long as when the ad is first disseminated respondents have a reasonable basis to expect the sampling method used would not produce biased results.

3. Representing, directly or by implication, that experts were surveyed, unless reasonable care was taken to insure that the survey respondents possessed sufficient expertise to qualify as respondents for the survey and to answer the survey questions. For the purposes of this order, an "expert" is an individual, group or institution held out as possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

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

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

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

Commissioner Bailey did not participate.

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IN THE MATTER OF

GODFREY COMPANY

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

*Docket C-3066. Final Order, May 14, 1981—Modifying Order, Sept. 28, 1982*

This order reopens the proceeding and modifies the Commission's order issued on May 14, 1981 (97 F.T.C. 456) by modifying Paragraph I(G) of the order to relieve respondent from the obligation of divesting a specified retail grocery store.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED MAY 14, 1981

The Federal Trade Commission having considered respondent Godfrey Company's petition filed on July 8, 1982, to reopen this matter and to modify the consent order to cease and desist issued by the Commission on May 14, 1981, and having determined that reopening and modification of the order is warranted:

*It is ordered* That this matter be, and it hereby is reopened and that Paragraph I(G) of the Commission's order be and it is hereby modified to read as follows:

(G) The "disposition stores" means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G-427 (3045 S. 13th St., Milwaukee, WI.);
2. G-810 (3939 S. 76th St., Milwaukee, WI.);
3. J-1201 (1201 N. 35th St., Milwaukee, WI.); and
4. J-729 (729 S. Layton Blvd., Milwaukee, WI.).

## Complaint

## IN THE MATTER OF

## THOMAS L. BAKER, INC., ET AL.

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

*Docket C-3095. Complaint, Sept. 28, 1982—Decision, Sept. 28, 1982*

This consent order requires two San Diego, Calif. corporations to cease, among other things, misrepresenting or failing to disclose material facts regarding the purchase of gemstones as investments, or their liquidity. The respondents are prohibited from misrepresenting the source of graphs or charts used in promotional literature; failing to disclose the limitations associated with the certificates issued by the firms to accompany their gemstones; or representing that their price increases reflect general market increases. Respondents are required to disclose both orally and in writing, before the execution of any contract for the sale of gemstones, among other things, that gemstones are not as easy to sell as other investments; that there are risks involved in the purchase of colored gemstones; and that diamonds .04 to .60 carats may be difficult to resell. Further, respondents are required to comply with the FTC's Mail Order Merchandise Rule and ensure that all personnel receive a synopsis of the order. Additionally, American Diamond Company is exempted from making these disclosures only when the gemstones are sold as jewelry, but must disclose in writing on the sales agreement that jewelry is not sold for investment purposes.

*Appearances*

For the Commission: *Curtis Yee, David C. Fix and Robert D. Friedman.*

For the respondents: *Jeffrey L. Davidson, Davidson, Holmes and Anderson, Los Angeles, Calif.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Diamond Company, a corporation, Thomas L. Baker, Inc., a corporation also trading and doing business as American Diamond Company, and Thomas L. Baker, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Respondent American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Both of the corporate respondents have their principal offices and places of business at 1205 Prospect St., Room 250, La Jolla, California.

Respondent Thomas L. Baker is an officer and director of each of the corporate respondents named herein. He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of said corporations.

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

PAR. 2. Respondents are now, and for sometime have been, engaged in the purchasing, offering for sale, sale, and distribution of gemstones to the consumer public.

PAR. 3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents disseminate and have disseminated promotional materials through the United States mail and have made oral sales presentations by means of telephone calls.

PAR. 5. By and through the means described in Paragraph Four, respondents have made various statements and representations with respect to the liquidity of gemstones purchased as an investment. Typical and illustrative of these statements and representations, but not all inclusive thereof, are the following:

A. Your money is now in an investment which . . . is highly liquid, can be sold virtually at will and because of international demand can be redeemed in the currency of your choice.

B. Rubies can be redeemed in the currency of your choice virtually at will.

C. Diamonds have always been accepted like cash, and you can exchange them in virtually any country in the world for the currency of your choice. Through the American Diamond Company you can buy and sell diamonds via telephone as easily as you can purchase stocks and bonds through your broker.

D. There are 14 international cash markets where one can liquidate a diamond.

E. These "liquidity diamonds," so called because of their high level of negotiabili-

ty, had long been the "currency" of the diamond world—bought, sold, and used as a medium of exchange for centuries by people of all nations.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set out herein, respondents have represented and are representing, directly or by implication, that:

A. Diamonds and rubies are highly liquid investments which can be easily or quickly sold by an individual investor for a price comparable to what an individual investor would have to pay to purchase such gemstones from respondents or another commercial source.

B. A person can sell diamonds and rubies through respondents as easily as they can sell stocks and bonds through a stock broker.

C. There are numerous outlets available to an individual investor to sell his or her gemstones.

D. There are at anytime established, generally recognized prices for diamonds and other gemstones at which an individual can easily sell or exchange his or her gemstones.

PAR. 7. In truth and in fact:

A. Diamonds and rubies are not highly liquid investments and usually cannot be easily or quickly sold by the individual investor for a price comparable to what the individual investor would have to pay to purchase such gemstones from respondents or another commercial source. In most instances, an individual who wants to sell diamonds or rubies quickly will only be able to effect a sale at a price substantially lower than the price an individual would have to pay to purchase such gemstones from respondents or another commercial source.

B. A person cannot sell diamonds and rubies through respondents as easily as they can sell stocks and bonds through a stock broker.

C. There are only a small number of outlets available to an individual investor to sell his or her gemstones.

D. There are no established and generally recognized prices for diamonds and other gemstones at which an individual can easily sell or exchange his or her gemstones. There is no organized market where prices are established and reported. Prices are established by individual sellers, generally after evaluation and negotiation.

Therefore, the representations set forth in Paragraph Five and

others of similar import and meaning, are false, misleading, and deceptive.

PAR. 8. In making the representations regarding liquidity set forth in Paragraph Five, and others of similar import and meaning, respondents have failed to disclose the material fact that an individual who seeks a quick sale of gemstones will in most instances only be able to obtain a sale at a price substantially lower than the price an individual would have to pay to purchase such gemstones from respondents or another commercial source.

The failure to disclose this fact clearly and conspicuously is an unfair and deceptive practice.

PAR. 9. In the further course and conduct of their aforesaid business, respondents have represented and are representing that, at the buyer's request, respondents will sell a buyer's gemstone for the buyer at respondents' then current selling price. Respondents have failed to disclose the material facts that:

A. An individual who sells his or her gemstones through respondents will be required to pay a fee of approximately 17 percent for such service.

B. An individual who attempts to sell his or her gemstones through respondents may have to wait many months before receiving the proceeds from the sale.

The failure to disclose such facts clearly and conspicuously is an unfair and deceptive practice.

PAR. 10. In the further course and conduct of their aforesaid business, respondents have offered and are offering for sale diamonds ranging in size from .04 carats to .6 carats, which they have denominated "liquidity" and "currency" diamonds. Said diamonds have been and are being sold to individual consumers accompanied by certificates issued by respondents attesting to the quality of the diamonds. In connection with the offering for sale of these diamonds, respondents have represented, and are representing, directly or by implication, that said diamonds are excellent investments, are highly liquid, and that there is little or no financial risk involved in the purchase of said diamonds. Respondents have failed to disclose the material facts that:

A. There is no active investors' market in which many of these diamonds can be sold.

B. There are few outlets for an individual investor to resell many of these diamonds and resale for all of them is made more difficult by

