IN THE MATTER OF

MICHIGAN ASSOCIATION OF OSTEOPATHIC PHYSICIANS & SURGEONS, INC.

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

Docket C-3112. Complaint, July 26, 1983—Decision, July 26, 1983

This consent order requires a Michigan professional association, among other things, to cease inhibiting competition by restricting or advising member physicians against the truthful advertising of fees and services, and by declaring such activities unethical. The association must timely repeal any provision of its Code of Ethics and policy statements which are inconsistent with the prohibitions contained in the order, and publish revised versions of these documents. However, the order does not prohibit the association from enforcing reasonable guidelines governing advertising or solicitation which it reasonably believes to be false or deceptive. The order further requires the association to mail to all present and future members a letter notifying them of the consent agreement and its provisions, and send to each of its component and affiliate societies a copy of the order.

Appearances

For the Commission: *Cynthia E. Smith* and *Eric L. Prahl.*

For the respondent: *Robert L. Weyhing, III, Clark, Klein & Beaumont,* Detroit, Mich.

COMPLAINT

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

PARAGRAPH 1. Respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc. ("MAOP&S") is a corporation formed pursuant to the laws of the State of Michigan, with its mailing address at 33100 Freedom Road, Farmington, Michigan.

PAR. 2. Respondent is a professional association formed to represent the interests of osteopathic physicians and surgeons who practice in Michigan. Respondent has approximately two thousand, one hundred forty-seven (2,147) members, constituting a substantial majority of osteopathic physicians and surgeons in Michigan.

PAR. 3. Respondent is a divisional society of the American Osteopathic Association, Inc.

PAR. 4. Members of respondent are engaged in the business of providing medical health care services for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been, and are now, in competition among themselves and with other physicians and surgeons.

PAR. 5. Respondent is organized for the purpose, among others, of guarding and fostering the interests of its members. Respondent engages in activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 6. In the conduct of their business, members of respondent receive and treat patients from other states and counties, receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines, and prescribe medicines which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect interstate activities of respondent's members, third parties who pay for medical services, other third parties, and some patients of respondent's members, and are in or affect commerce, within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 7. Respondent has acted as a combination of at least some of its members, or has conspired with at least some of its members, to foreclose, frustrate, and eliminate competition among osteopathic physicians and surgeons in the State of Michigan by:

A. prohibiting its members from truthfully advertising their services to the public, from distributing truthful information about their fees and services, and from otherwise soliciting patients' business; and

B. coercing individual members into abandoning their efforts to truthfully advertise their services, to distribute truthful information about their fees and services, and to otherwise solicit patients' business.

PAR. 8. Respondent has engaged in various acts or practices in furtherance of this combination or conspiracy, including, among other things:

A. adopting and implementing written and unwritten codes of ethics that prohibit efforts by its members to truthfully advertise their services in the Yellow Pages or in other media, or to otherwise distribute truthful information to the public about their fees and services; by virtue of such ethical restraints, members are prohibited from advertising, among other things, their fees, whether they accept Medicare assignment of benefits, whether they accept credit cards, their professional training and experience, their business hours and office locations, and their knowledge of languages other than English;

B. publishing statements made by some of MAOP&S' officials advising members that advertising is unethical;

C. sending letters to individual members who truthfully advertise their fees and/or services, or who otherwise solicited patients' business, advising members that advertising is unethical and/or in "poor taste," thereby tending to discourage such advertising and/or solicitation;

D. summoning individual members to meetings of respondent's Bureau of Ethics, and threatening at those meetings to take disciplinary or other action to compel members to cease truthfully advertising their fees or services or otherwise soliciting patients' business; and

E. attempting to prohibit sellers of advertising space from accepting truthful advertisements from MAOP&S members.

PAR. 9. Through the combination or conspiracy and the acts or practices described above, members of respondent have agreed not to, and do not, advertise their services or otherwise solicit patients' business, and certain individual members of respondent have been coerced into abandoning advertising their services or otherwise soliciting patients' business. Such advertising and solicitation enables physicians to compete on the basis of price, quality, and convenience, and enables individual patients to choose among osteopathic physicians and surgeons on the basis of price, quality, or convenience. Consequently:

A. competition among osteopathic physicians and surgeons for patients has been foreclosed, frustrated, and eliminated; and

B. consumers have been deprived of the benefits of competition among osteopathic physicians and surgeons. In particular, patients have been deprived of truthful information about osteopathic physicians' and surgeons' fees and services, including, among other things, whether they accept Medicare assignment of benefits, whether they accept credit cards, their professional training or experience, their business hours and office locations, and their knowledge of languages other than English.

PAR. 10. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices which violate Section 5 of the Federal Trade Commission Act. Such combination or conspiracy is continuing, and will continue, absent the entry against respondent of appropriate relief.

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 Cleveland 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 conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 33100 Freedom Road, in the City of Farmington, State of Michigan.

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

Order

I

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

A. *MAOP&S* means respondent Michigan Association of Osteopathic Physicians & Surgeons, Inc., its component and affiliate societies, its delegates, trustees, councils, committees, Bureau of Ethics, officers, representatives, agents, employees, successors, and assigns.

B. *Physician* means any individual duly licensed to engage in the practice of osteopathic medicine and/or surgery.

II

It is ordered, That MAOP&S shall cease and desist from, directly or indirectly or through any corporate or other device:

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 physicians' services, or of information about physicians' services, facilities, or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; or

C. inducing, urging, encouraging, or assisting any physician or any medical association, group of physicians, hospital, insurance carrier, telephone company, or any other non-governmental organization, to take any of the actions prohibited by this part of the Order.

Nothing contained in this part of the Order shall prohibit MAOP&S from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that MAOP&S 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.

III

It is further ordered, That MAOP&S shall:

A. for a period of three (3) years after this Order becomes final, provide each new member of MAOP&S with a copy of the letter in the form shown in Appendix A at the time the member is accepted into membership;

B. within sixty (60) days after this Order becomes final, send by first-class mail to each of its present members a copy of the letter in the form shown in Appendix B;

C. within sixty (60) days after this Order becomes final, send by first-class mail to the Michigan Bell Telephone Company supervisor in charge of professional advertising a copy of the letter in the form shown in Appendix C;

D. within sixty (60) days after this Order becomes final, publish a copy of the Order, with such prominence as feature articles are regularly published, in the *Michigan Osteopathic Journal* and the MAOP&S *Newsletter,* or in any successor publications;

E. within sixty (60) days after this Order becomes final, send by first-class mail to each of its component and affiliate societies, a copy of this Order;

F. within ninety (90) days after this Order becomes final, remove from its *Code of Ethics,* its *Interpretation of the Code of Ethics,* and any other existing policy statements or guidelines of MAOP&S, any provision, interpretation, or policy statement which is inconsistent with this Order; and, within one hundred twenty (120) days after this Order becomes final, publish in the *Michigan Osteopathic Journal* and the MAOP&S *Newsletter* or in any successor publications, the revised versions of such documents, statements, or guidelines;

G. within one hundred 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 MAOP&S has complied with this Order;

H. for a period of five (5) years after this Order becomes final, maintain records adequate to describe in detail any action taken in connection with the activities covered by Part II and Part III.A of this Order, including, but not limited to, any advice or interpretations rendered with respect to advertising or solicitation involving any of its members;

I. one year after this Order becomes final, and annually thereafter for a period of two (2) 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 II and Part III.A of this Order, including, but not limited to, any advice or interpretations rendered with respect to advertising or solicitation involving any of MAOP&S' members; and

J. include in all compliance reports, as required by Part III.G and I, such information and documentation as may be required to show compliance with this Order.

IV

It is further ordered, That MAOP&S 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

Dear Doctor:

This letter is to inform you of recent developments concerning the issue of physician advertising. In March, 1982, the Supreme Court upheld the Federal Trade Commission's Order prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians & Surgeons, Inc. entered into a Consent Agreement with the Federal Trade Commission on November 1, 1982. This Agreement was entered into as a result of an investigation initiated by the FTC concerning MAOP&S' alleged restraint of competition by means of its ethical restrictions on physician advertising and solicitation. The Agreement is for settlement purposes only and does not constitute an admission by MAOP&S that the law has been violated.

In accordance with this Consent Agreement, MAOP&S revised its Code of Ethics in October, 1982. Under the revised code, MAOP&S does not restrict its members from advertising or soliciting patients. MAOP&S does not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

As a new member, you have received a copy of the revised Code of Ethics.

Thank you for your cooperation.

Sincerely,

____

President

APPENDIX B

Dear Doctor:

This letter is to inform you of the most recent developments concerning the issue of physician advertising. The Supreme Court recently affirmed the Federal Trade Commission's Order, as modified by the U.S. Court of Appeals for the Second Circuit, prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians & Surgeons, Inc. is in the process of revising its Code of Ethics.

Under the new code, MAOP&S will not restrict its members from advertising or soliciting patients. MAOP&S will not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services or information about physicians' services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

The revisions to the Code of Ethics will appear in the *Michigan Osteopathic Journal* and in the MAOP&S *Newsletter.*

Thank you for your cooperation.

Sincerely,

____

President

APPENDIX C

Dear ________:

This letter is to inform you of the most recent developments concerning the issue of physician advertising. The Supreme Court recently affirmed the Federal Trade Commission's Order, as modified by the U.S. Court of Appeals for the Second Circuit, prohibiting the American Medical Association from restricting physician advertising and solicitation.

In recognition of this precedent, the Michigan Association of Osteopathic Physicians and Surgeons, Inc. is in the process of revising its Code of Ethics.

Under the new Code, MAOP&S will not restrict its members from advertising or soliciting patients. MAOP&S will not restrict its members from advertising the prices, terms, or conditions of sale of physicians' services or information about physicians' services, facilities, or equipment. MAOP&S may, however, enforce reasonable guidelines governing advertising or solicitation which MAOP&S reasonably believes to be false or deceptive.

Accordingly, MAOP&S will not seek to restrict truthful advertising in the telephone book. In particular, MAOP&S will not seek to restrict such things as the size, color, or format of such advertising.

Thank you for your cooperation.

Sincerely,

____

Chairman
Department of Judiciary and Ethics

IN THE MATTER OF

SANSUI ELECTRONICS CORPORATION

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

Docket C-2754. Consent Order, Oct. 24, 1975—Modifying Order, Aug. 1, 1983

This order reopens the proceeding and modifies the Commission's order issued on October 24, 1975 (86 F.T.C. 995) by modifying Paragraph I (11), so as to allow the company to impose nondiscriminatory standards on the kind of retailers its distributors and dealers can serve.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED ON OCTOBER 24, 1975

By a petition filed on March 23, 1983, Sansui Electronics Corporation ("Sansui") requests that the Commission reopen the proceeding in Docket No. C-2754 and modify Paragraph I (11) of the order issued by the Commission on October 24, 1975 so that the order would no longer prohibit Sansui from restricting transshipment by sellers of its products. Pursuant to Section 2.51 of the Commission's Rules of Practice, Sansui's request was placed on the public record for comments. One comment was received.

On March 8, 1983, the Commission issued a modified order in *U.S. Pioneer Electronics Corporation,* Docket No. C-2755 [101 F.T.C. 372], allowing Pioneer (one of Sansui's competitors) to prevent transshipment of its products to dealers who do not meet reasonable, nondiscriminatory standards of promotion, service and display. The *Pioneer* and *Sansui* orders contain most favored respondent clauses pursuant to which the Commission may modify the respective orders to bring them into conformity with less stringent restrictions imposed on the respondents' competitors.

In view of the Commission's action in *Pioneer* and upon consideration of Sansui's request and supporting materials, the Commission now finds that Sansui would likely suffer significant competitive injury unless the order is modified to conform to the *Pioneer* order in accordance with Sansui's request. Such modification would be in the public interest.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that Paragraph I (11) of the order in Docket No. C-2754 be modified to read as follows:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any persons or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and nondiscriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability, nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.

IN THE MATTER OF

THE COCA-COLA COMPANY

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

Docket C-3113. Complaint, Aug. 3, 1983—Decision, Aug. 3, 1983

This consent order requires a major soft drink manufacturer to timely divest Doric Foods Corporation to a Commission-approved buyer. Respondent is barred from acquiring any concern engaged in the manufacture of drinks, punches and ades, without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Paul R. Zamolo* and *Bill W. Bourland.*

For the respondent: *Robert A. Keller,* in-house counsel, Atlanta, Ga.

COMPLAINT

Pursuant to the provisions of the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Coca-Cola Company, a corporation subject to the jurisdiction of the Commission, has violated 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 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:

1. For the purposes of this Complaint, *Coca-Cola* means The Coca-Cola Company, a Delaware corporation with its principal offices at 310 North Avenue, Atlanta, Georgia, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, successors and assigns.

2. Respondent Coca-Cola is a Delaware corporation with its principal offices located at 310 North Avenue, N.W., Atlanta, Georgia.

3. Coca-Cola's total net sales for the year ending December 31, 1981, were approximately $5.9 billion.

4. At all times relevant herein, Coca-Cola has engaged in activities in and affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, and Section 4 of the Federal Trade Commission Act, as amended.

5. Doric Foods Corporation ("Doric") is a Florida corporation and wholly owned subsidiary of Associated Coca-Cola Bottling Co., Inc. ("Associated") with its principal offices at Robie Avenue, P.O. Box 986, Mount Dora, Florida.

6. Doric's total sales for the year ending December 31, 1981, amounted to $54.9 million.

7. On May 10, 1982, Coca-Cola, Associated Coca-Cola Enterprises, Inc. ("Associated Coca-Cola"), a wholly owned subsidiary of Coca-Cola; Root Company, a Delaware Corporation; and Chapman S. Root, Chairman and Chief Executive Officer of Associated and the beneficial owner of all of the capital stock of Root Company, entered into a stock purchase agreement pursuant to which Associated Coca-Cola will purchase all of the shares of Associated beneficially owned by Root Company, representing approximately 57.5% of the shares outstanding. On May 28, 1982, Associated Coca-Cola commenced a tender offer to purchase any and all of the outstanding shares of Associated. By the terms of the stock purchase agreement, Root Company is obligated to tender all of the shares of Associated owned by it in response to this offer. On May 27, 1982, Associated Coca-Cola and Coca-Cola Bottling Transactions, Corp., a Delaware corporation ("Transactions Corp.") and a wholly owned subsidiary of Associated Coca-Cola, entered into a merger agreement providing for the merger of Associated and Transactions Corp., or another entity designated by Coca-Cola. Pursuant to the merger agreement, any shares of stock of Associated not acquired by Associated Coca-Cola pursuant to the tender offer, the stock purchase agreement, or otherwise, will be converted into the right to receive $35.93 per share in cash, subject to dissent and appraisal rights.

8. Prior to Coca-Cola's acquisition of Associated, Coca-Cola and Doric were for many years direct and substantial competitors of one another.

9. The acquisition set forth in Paragraph 7 herein may have had the effect of substantially lessening competition or tending to create a monopoly in a line of commerce in a section of the country.

10. The acquisition by Coca-Cola of Doric, for the reasons set forth herein, constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

Chairman Miller dissented.

Decision and Order

The Federal Trade Commission, having initiated an investigation of the acquisition by The Coca-Cola Company of Associated Coca-Cola

Bottling Co., Inc., and its subsidiaries, including Doric Foods Corporation (hereinafter "Doric"), and The Coca-Cola Company having been furnished thereafter with a copy of a draft of the complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge The Coca-Cola Company with violations 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), arising out of the acquisition of Doric; and

The Coca-Cola Company, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by The Coca-Cola Company 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 The Coca-Cola Company 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 Coca-Cola Company has violated the said Acts and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. The Coca-Cola Company is a Delaware corporation with its principal offices located at 310 North Avenue, Atlanta, Georgia.

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

ORDER TO DIVEST AND OTHER RELIEF

I.

It is ordered, That for purposes of this Order the following definitions shall apply:

A. *Coca-Cola* means The Coca-Cola Company, a Delaware corporation with its principal offices located at 310 North Avenue, Atlanta, Georgia, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, controlled affiliates, successors and assigns.

B. *Doric* means Doric Foods Corporation, a Florida corporation and wholly owned subsidiary of Associated Coca-Cola Bottling Co., Inc., with its principal offices at Robie Avenue, P.O. Box 986, Mount Dora, Florida, as well as its directors, officers, agents and employees, and its divisions, subsidiaries, successors and assigns.

C. *Drinks, punches and ades* means non-carbonated, ready to serve, naturally or artificially flavored fruit drinks, fruit punches or fruit ades which contain 50% or less fruit juice and are customarily sold under refrigeration to the consumer.

II.

It is further ordered, That within one year from the date on which this Order becomes final, Coca-Cola shall divest itself absolutely and in good faith of all of its right, title and interest in Doric including any additions to Doric that may have occurred since its acquisition by Coca-Cola. Divestiture shall be made only to an acquiror approved in advance by the Federal Trade Commission. The purpose of the divestiture required by this paragraph is to assure the continued operation of Doric as a drink, punch and ade manufacturer. Pending divestiture, Coca-Cola shall take all measures necessary to maintain Doric in its present condition and prevent any deterioration except for normal wear and tear of any of the assets to be divested which may impair their present operating abilities or market value.

III.

It is further ordered, That for a period of ten (10) years from the date on which this Order becomes final, Coca-Cola shall not acquire, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or assets of, or any other interest in, any individual, firm, partnership, corporation or other legal or business entity which is engaged directly or indirectly in the manufacture and sale of drinks, punches and ades.

IV.

It is further ordered, That within ninety (90) days from the date on which this Order becomes final and every ninety (90) days thereafter until the divestiture required by paragraph II of this Order is completed, Coca-Cola shall submit to the Federal Trade Commission a written report setting forth in detail the manner and form in which Coca-Cola intends to comply, is complying, and has complied with the terms of this Order and such additional information relating thereto as may from time to time be required. All compliance reports shall include, among other things that may be required, a summary of all contacts and negotiations with potential acquirors, the identity of all such potential acquirors, and copies of all documents reflecting communications to and from such potential acquirors. In addition, Coca-Cola shall submit annual reports in writing with respect to the other requirements of this Order.

V.

It is further ordered, That Coca-Cola notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate changes, 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 with the obligations arising out of this Order.

Chairman Miller dissented.

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, Aug. 22, 1983

This order reopens the proceeding and modifies paragraph XVI of the Commission's order issued on July 29, 1975 (86 F.T.C. 364, *modified,* 91 F.T.C. 728, *modified further,* 100 F.T.C. 455), by deleting provisions that prohibited the company from promoting or taking orders for the sale or lease of any new office copier more than 3 months before its commercial availability.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED ON JULY 25, 1975

By a petition filed on April 22, 1983, respondent Xerox Corporation ("Xerox") requests that the Commission reopen the proceeding in Docket No. 8909 and modify Paragraph XVI of the order issued in this case to terminate approximately two years early its prohibition against Xerox promoting new copiers more than three months before their commercial availability. Paragraph XVI presently is scheduled to expire on July 29, 1985. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Xerox's request and supporting materials, and other relevant information, the Commission finds that the public interest warrants reopening and modification of the order.

In view of the changes that have taken place in the United States copier industry over the last decade, including the entry of numerous new competitors and Xerox's diminished market position, the order's prohibition against advance product announcement and promotion by Xerox is no longer needed to assure competition in the United States copier market. Advance new product announcements by Xerox, in light of these industry changes, no longer pose any danger of allowing Xerox to gain or perpetuate a monopoly or otherwise limit competition in the relevant market. Moreover, continuation of the order's prohibition against advance product announcement and promotion by Xerox appears to hamper Xerox's ability to compete and, consequently, reduces interbrand competition and deprives buyers of the opportunity to make informed decisions concerning their copier needs.

Accordingly,

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

XVI

It is further ordered, That during the period ending 10 years after the date of issuance of this Order at the time *Xerox* announces that it will take orders for the lease of an *office copier* in the United States, it shall also announce the selling price of such *office copier.*

IN THE MATTER OF

TRANS UNION CREDIT INFORMATION COMPANY

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS

Docket C-3114. Complaint, Aug. 25, 1983—Decision, Aug. 25, 1983

This consent order requires a Chicago-based computerized consumer credit reporting agency and its credit bureaus, among other things, to review its credit reporting system to detect and remedy, where feasible, significant inaccuracies in information maintained or reported by the system. The company is prohibited from furnishing reports to investigative agencies, government law enforcement agencies and others who are not properly certified, or to those whom respondent has reason to believe would use the information for impermissible purposes. The company must advise users of the reports that anyone obtaining credit information under false pretenses is subject to a fine and/or imprisonment under federal law. In making file disclosures to properly identified consumers, respondent must disclose the nature and substance of all information retained on the consumer, however recorded. The company must also reinvestigate disputed credit information; advise the consumer of the results of its reinvestigation; and record corrected information within a reasonable period of time. Reports must also contain clear and accurate dispute statements or summaries of such statements filed by consumers. Further, when responding to a telephonic request for information, respondent must read the dispute statement prior to disclosing the challenged information. Additionally, respondent is prohibited from purging any consumer file containing credit account information that is solely non-derogatory and whose most recent date of activity is less than five years old, unless it advises users of the reports that such purges are performed periodically.

Appearances

For the Commission: *David Federbush, Marie A. Meyer* and *C. Lee Peeler.*

For the respondent: *Oscar Marquis,* in-house counsel, Chicago, Ill. and *Elroy Wolff, Sidley & Austin,* Washington, D.C.

COMPLAINT

The Federal Trade Commission, hereinafter referred to as the "Commission," pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*, as amended, the Fair Credit Reporting Act, Public Law 91–508, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, having reason to believe that Trans Union Credit Information Company, hereinafter referred to as "respondent," has violated the provisions of said Acts, and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

Definitions

For the purposes of this complaint and Order, the terms *consumer, consumer report, consumer reporting agency,* and *person* are defined as set forth in Section 603 of the Fair Credit Reporting Act, Public Law 91–508, 15 U.S.C. 1681a (1980). The term *consumer file* or *file* refers to a record owned and maintained by respondent in its data base to store information on a designated consumer, and all information contained in that record. The data base may contain no, one, or more than one, consumer file on a given consumer. The information in no, one, or more than one, consumer file may be furnished to a user requesting a consumer report on a designated consumer.

Derogatory information refers to public record information and to credit accounts containing manner of payment ratings of 3 (pays (or paid) in more than 60 days, but not more than 90 days, or two payments past due); 4 (pays (or paid) in more than 90 days, but not more than 120 days, or three or more payments past due); 5 (pays (or paid) in 120 days or more); 7 (making regular payments under wage earner plan or similar arrangement); 08 (repossession); 8A (voluntary repossession); 8D (legal repossession); 09 (bad debt; placed for collection); 9B (collection account); and RJ (rejected).

Display algorithm means the automated matching rule used by respondent's system to compare personal identifiers contained in inquiries with those contained in consumer files in the data base for the purpose of determining whether the files should be reported in response to inquiries.

Merge algorithm means the automated matching rule used by respondent's system to compare personal identifiers contained in account information furnished by subscribers, or files contained in the data base, with identifying information contained in (other) files in the data base for the purpose of determining whether the account information should be merged into, or the other files merged together with, specific files in the data base.

PARAGRAPH 1. Respondent Trans Union Credit Information Company ("Trans Union") is a corporation organized, existing and doing business by virtue of the laws of the State of Delaware, with its principal place of business located at 111 West Jackson Boulevard, Chicago, Illinois. Respondent owns a number of credit bureaus located in a number of states and manages, directs and controls their activities. For the purpose of this complaint and Order, a reference to respondent includes its owned bureaus. This complaint and Order apply only to Trans Union Credit Information Company and its owned bureaus.

PAR. 2. Respondent, Trans Union in the ordinary course and conduct of its business, is and has regularly been engaged in the practice of assembling information bearing on consumers' creditworthiness, credit standing, and credit capacity for the purpose of furnishing, for monetary fees, consumer reports to third parties. These reports contain information including but not limited to credit account payment information obtained from credit grantors, banks, and other consumer reporting agencies, as well as public record information. Credit grantors and others use the information contained in these reports for the purpose of evaluating the consumer's eligibility for credit, employment, insurance, and other transactions entered into by the consumer primarily for personal, family, or household purposes. Respondent is thus a consumer reporting agency, as defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondent, from its owned bureaus located in approximately thirteen states, causes consumer reports to be distributed through the mail, by telephone and by teleprinter machine to its customers located throughout the United States, and in the ordinary course and conduct of its business regularly sends and receives substantial numbers of communications including consumer reports across state lines through the means and facilities of interstate commerce. Respondent thus maintains a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. The Commission therefore has jurisdiction over the subject matter of this proceeding and over respondent, as provided by Section 621 of the Fair Credit Reporting Act and as provided by Section 5 of the Federal Trade Commission Act.

PAR. 4. All of the acts and practices alleged herein took place or are taking place in the ordinary course and conduct of respondent's business and have occurred subsequent to April 25, 1971, the effective date of the Fair Credit Reporting Act. A reference to an act, practice or violation occurring at the present time may include acts, practices or violations which occurred in the past but were discontinued subsequent to the initiation of the Commission's investigation of computerized consumer reporting agencies.

COUNT I

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 5. Respondent has accepted a number of private investigative and detective agencies as subscribers to its consumer reporting services.

PAR. 6. In a number of instances, consumer reports obtained by the subscribers referred to in Paragraph Five have been used for purposes other than those permitted by Section 604(3) of the Fair Credit Reporting Act.

PAR. 7. With respect to a number of subscribers referred to in Paragraph Five, respondent has not had such subscribers identify the nature of their businesses or certify the purposes for which they sought respondent's reports before respondent furnished reports to them.

PAR. 8. By and through the acts and practices alleged in Paragraphs Five, Six, and Seven, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to require prospective users of its reports to identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.

PAR. 9. Respondent has furnished consumer reports to a number of subscribers referred to in Paragraph Five which have identified the nature of their businesses and the purposes for which they sought respondent's reports, without having first made a reasonable effort to verify the nature of their businesses and the purposes certified.

PAR. 10. By and through the acts and practices alleged in Paragraphs Five, Six, and Nine, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report.

PAR. 11. With respect to a number of the subscribers referred to in Paragraph Five, respondent knew that the subscriber was a detective or private investigative agency and thus had reasonable grounds for believing that the nature of the subscriber's detective or private investigative activities provides many instances in which the information in a consumer report could be used by the subscriber for purposes other than those listed in Section 604 of the Fair Credit Reporting Act. Respondent furnished consumer reports to such subscribers without obtaining from them, at the time of each request for a consumer report, a written or oral certification of the specific purpose(s) for which the report was sought and that the report would be used for no other purpose(s).

PAR. 12. By and through the acts and practices alleged in Paragraphs Five, Six, and Eleven, respondent has violated Section 607(a) of the Fair Credit Reporting Act by furnishing consumer reports to persons it had reasonable grounds for believing would not use such reports for purposes listed in Section 604 of the Act.

PAR. 13. By and through the acts and practices alleged in Paragraphs Five, Six, and Eleven, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to follow reasonable procedures designed to limit the furnishing of consumer reports to purposes listed in Section 604 of the Act.

COUNT II

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 14. Respondent has granted membership, as subscribers to its consumer reporting services, to a number of government law enforcement agencies.

PAR. 15. In a number of instances, consumer reports containing more information than each consumer's name, address, former addresses, places of employment and former places of employment have been furnished by respondent to the government law enforcement agencies referred to in Paragraph Fourteen, and have been used by such agencies for law enforcement or other purposes not permitted by Section 604 of the Fair Credit Reporting Act.

PAR. 16. Respondent has furnished consumer reports to a number of the agencies referred to in Paragraph Fourteen without having first made a reasonable effort to verify the nature of their businesses and the purposes they certified for seeking respondent's reports.

PAR. 17. By and through the acts and practices alleged in Paragraphs Fourteen, Fifteen, and Sixteen, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report.

PAR. 18. With respect to a number of the government agencies referred to in Paragraph Fourteen, respondent had reasonable grounds for believing that the nature of the agencies' law enforcement activities provide many instances in which the information in consumer reports could be used by the agencies for purposes other than those permitted by Section 604 of the Fair Credit Reporting Act.

PAR. 19. Despite the circumstances described in Paragraph Eighteen, respondent has furnished consumer reports containing information in excess of a consumer's name, address, former addresses, places of employment and former places of employment to such government law enforcement agencies without obtaining from the agencies, at the time of each request for a consumer report, a written or oral certification of the specific purpose(s) for which the report is being sought and that the report will be used for no other purpose(s).

PAR. 20. By and through the acts and practices alleged in Paragraphs Fourteen, Fifteen, Eighteen and Nineteen, respondent has violated Section 607(a) of the Fair Credit Reporting Act by furnishing consumer reports to persons it had reasonable grounds for believing would not use such reports for purposes listed in Section 604 of the Act.

PAR. 21. By and through the acts and practices alleged in Paragraphs Fourteen, Fifteen, Eighteen and Nineteen, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to follow reasonable procedures designed to limit the furnishing of consumer reports to purposes listed under Section 604 of the Act.

PAR. 22. In several instances, respondent has furnished consumer reports containing information in excess of a consumer's name, address, former addresses, places of employment and former places of employment to government investigative agencies which have certified to respondent that the purposes for which they would use such reports would be investigative.

PAR. 23. By and through the acts and practices alleged in Paragraphs Fourteen, Fifteen, Eighteen, and Twenty-Two, respondent has failed to comply with Section 607(a) of the Fair Credit Reporting Act by furnishing consumer reports to persons whom it had reasonable grounds for believing would not use the reports for a purpose listed in Section 604.

PAR. 24. By and through the acts and practices alleged in Paragraphs Fourteen, Fifteen, Sixteen, and Twenty-Two, respondent has failed to comply with Section 604 of the Fair Credit Reporting Act by furnishing consumer reports to persons which it does not have reason to believe intend to use the information for a purpose listed in Section 604(3) of the Act.

COUNT III

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 25. Respondent has purged derogatory credit account information, concerning accounts placed for collection or accounts charged to profit and loss, from its data base within seven years from the date the account was indicated closed by the credit grantor or the date the account's status was last verified, whichever is earlier. Certain credit grantors have not indicated the dates such accounts were actually closed but have periodically submitted to respondent information verifying the status of such accounts as charged to profit and loss or placed for collection.

PAR. 26. Prior to September, 1978, respondent took no independent action to fix in consumer files the dates such accounts were first reported to respondent as placed for collection or charged to profit and loss or to otherwise ensure that the dates used by its system as purge dates for such accounts were not advanced to later dates each time such credit grantors submitted information verifying the status of such accounts. As a result, in a number of instances, respondent failed to purge items from consumer files either within seven years from the dates such accounts were actually charged to profit and loss or placed for collection, or within seven years from the date that credit grantors first submitted to respondent information indicating such accounts had reached the indicated derogatory status.

PAR. 27. By and through the acts and practices described in Paragraphs Twenty-Five and Twenty-Six, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to avoid violations of Section 605.

PAR. 28. Subsequent to September, 1978, respondent modified its procedures to assign in consumer files, as the purge date for newly submitted accounts charged to profit and loss or placed for collection but bearing no date closed supplied by the credit grantor, the first date information indicating that such accounts were charged to profit and loss or placed for collection is submitted to respondent. With respect to information concerning such accounts already contained in the data base but bearing no date closed supplied by the credit grantor, respondent in the latter half of 1978 or early 1979 assigned as a purge date the most recent date verified reflected in the file. Respondent thus assigned purge dates for information concerning a number of accounts charged to profit and loss or placed for collection which were subsequent to either the actual dates such accounts were charged to profit and loss or placed for collection or the dates that credit grantors first submitted to respondent information indicating that such accounts had reached the indicated derogatory status.

PAR. 29. By and through respondent's assignment of purge dates to accounts placed for collection or charged to profit and loss which respondent knew or reasonably should have known were incorrect, respondent failed to follow reasonable procedures to avoid violations of Section 605 of the Fair Credit Reporting Act and therefore violated Section 607(a) of the Fair Credit Reporting Act.

PAR. 30. Respondent has reported accounts charged to profit and loss or placed for collection, through the circumstances referred to in Paragraph Twenty-Six, more than seven years from the dates the accounts were actually placed for collection or charged to profit and loss or from the dates the information that the accounts were placed for collection or charged to profit and loss were first submitted to respondent.

PAR. 31. By and through the acts and practices referred to in Paragraph Thirty, respondent has violated Section 605 of the Fair Credit

Reporting Act by reporting accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

COUNT IV

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 32. Respondent, in some of its owned bureaus, uses teleprinter terminals to provide consumers disclosures of the contents of files maintained in respondent's data base concerning them in response to requests made pursuant to Section 609 of the Fair Credit Reporting Act. These same bureaus also furnish a substantial number of consumer reports to subscribers by use of cathode ray tube ("CRT") terminals operated by employees of respondent. The display algorithm point score threshold for making consumer disclosures by teleprinter terminal is a number of points higher than the threshold for display of files accessed through a CRT terminal. Furthermore, for individual inquiries, a teleprinter will display only the two highest scoring files at or above the threshold while a CRT operator can choose to report to the inquiror zero, one, or two of the six highest scoring files at or above the threshold. Thus, when making disclosure to consumers by teleprinter terminal respondent does not disclose to the consumer information on the consumer contained in: (a) files which score at or above the threshold for display on a CRT terminal but below the threshold for display on a teleprinter terminal; and (b) files which score at or above the threshold for display on a teleprinter terminal but which are not among the two highest scoring files retrieved in response to the inquiry.

PAR. 33. By and through the acts and practices described in Paragraph Thirty-Two, respondent has violated Section 609 of the Fair Credit Reporting Act by failing to disclose to any consumer upon request and proper identification the nature and substance of all information recorded and retained on that consumer regardless of how the information is stored.

COUNT V

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 34. Respondent has issued to inquirors teleprinter reports containing information on a consumer for which a dispute statement has been filed by the consumer pursuant to Section 611(b) of the Fair Credit Reporting Act, but which do not contain that statement but rather an instruction to the inquiror to contact the bureau to obtain the statement. If the inquiror does not on its own initiative contact the bureau and request the dispute statement, respondent does not supply it to the inquiror.

PAR. 35. By and through the acts and practices alleged in Paragraph Thirty-Four respondent, in a number of instances in which it has furnished consumer reports containing information for which the consumer has filed a dispute statement, has violated Section 611(c) of the Fair Credit Reporting Act by failing to clearly note that such information is disputed by the consumer and provide either the consumer's dispute statement or a clear and accurate codification or summary thereof.

PAR. 36. In a number of instances in which respondent has codified or summarized the consumer's dispute statement, the codification or summary is not clear and accurate.

PAR. 37. By and through the acts and practices described in Paragraph Thirty-Six, respondent has violated Section 611(c) of the Fair Credit Reporting Act by failing, when a dispute statement is filed, to clearly note in any subsequent consumer report containing the information in question, that the information is disputed by the consumer and provide either the consumer's dispute statement or a clear and accurate codification or summary thereof.

COUNT VI

Alleging violations of the Fair Credit Reporting Act and Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 38. Respondent represents in its contracts with credit grantors who supply consumer information on computer tapes that, with respect to maintenance of the data base, respondent will cause its owned bureaus to maintain the credit information supplied by said bureaus in the data base.

PAR. 39. Respondent from time to time, at the request of its owned bureaus, purges significant numbers of entire consumer files meeting criteria specified by the bureau from that portion of respondent's data base pertaining to that bureau. Pursuant to this procedure, respondent has in the past purged from portions of its data base consumer files which contain only identifying information on the consumer, non-derogatory credit account information with most recent date of verification exceeding a specified age (frequently no greater than one year), and no inquiries recorded within a recent specified time period. The effect of such purges is to remove from respondent's data base substantial numbers of consumer files containing credit account information that is non-derogatory but which pertain to accounts which have been inactive during a recent time period, frequently no greater than one year.

PAR. 40. Respondent fails to disclose to actual or prospective users either that it purges the categories of consumer files described in Paragraph Thirty-Nine from its data base or the criteria used in making such deletions from the data base.

PAR. 41. Credit grantors normally give positive consideration to non-derogatory accounts reported on a consumer. Respondent's practice of intentionally deleting from the data base a substantial number of consumer files containing non-derogatory information is material to: a) credit grantors' decisions to purchase respondent's reports; and b) the manner in which credit grantors interpret respondent's reports in making credit evaluation decisions on consumers.

PAR. 42. The acts or practices discussed in Paragraphs Thirty-Eight, Thirty-Nine, Forty, and Forty-One have the tendency to mislead such users and therefore constitute unfair or deceptive acts or practices in or affecting commerce and therefore violate Section 5 of the Federal Trade Commission Act.

PAR. 43. Respondent, by purging from its data base non-derogatory information it receives from its subscribers on consumers without notifying its users that it follows the acts and practices described in Paragraph Thirty-Nine, issues consumer reports that misrepresent the extent of the non-derogatory account information on consumers submitted to it by its subscribers. Respondent thereby violates Section 607(b) of the Fair Credit Reporting Act by failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

COUNT VII

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 44. Numerous consumers have communicated directly to respondent, pursuant to Section 611 of the Fair Credit Reporting Act, disputes which were not frivolous or irrelevant concerning the accuracy or completeness of information contained in consumer files. In a number of instances, respondent's bureaus have failed to reinvestigate the disputed information and record its current status within a reasonable period of time from receipt of the consumer's dispute or, when finding such information to be inaccurate or no longer verifiable, have failed to delete the information within a reasonable period of time from receipt of the consumer's dispute.

PAR. 45. By and through the acts or practices alleged in Paragraph Forty-Four respondent has violated Section 611(a) of the Fair Credit Reporting Act.

COUNT VIII

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 46. Respondent has issued to subscribers significant numbers of consumer reports containing one or more files on individuals other than the individual on whom the subscriber inquired.

PAR. 47. Respondent has been made aware by its owned bureaus, or its own research, of certain types of instances of files being issued on the wrong person or of information which gave it reason to believe that significant numbers of files were being issued on the wrong person. The types of errors include: reporting files on parents in response to inquiries on their children living at the same address; reporting files on seniors in response to inquiries on juniors and vice versa; reporting files on consumers living in different cities or at addresses bearing different zip codes from the consumers inquired on; reporting files on consumers with different social security numbers from the ones inquired upon; and issuing reports containing two files that pertain to different individuals.

PAR. 48. Respondent knew or reasonably should have known that there were measures it could take, such as modifying elements of its display algorithm, that might reduce the occurrence of the types of errors described in Paragraph Forty-Seven.

PAR. 49. Respondent has failed to take reasonable steps to attempt to reduce the number of errors of the types described in Paragraph Forty-Seven.

PAR. 50. By and through the acts and practices described in Paragraphs Forty-Seven, Forty-Eight, and Forty-Nine, respondent has violated Section 607(b) of the Fair Credit Reporting Act by failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

PAR. 51. By and through the acts and practices described in Paragraphs Forty-Seven, Forty-Eight, and Forty-Nine, respondent has violated Section 607(a) of the Fair Credit Reporting Act by failing to follow reasonable procedures designed to limit the furnishing of consumer reports to purposes listed under Section 604 of the Act.

PAR. 52. Respondent has issued to subscribers significant numbers of consumer files containing information about an individual other than the one the subscriber inquired on as well as information about the consumer inquired on.

PAR. 53. Respondent is aware that consumers have communicated to respondent's owned bureaus, in the exercise of their disclosure, reinvestigation and dispute rights under Section 611(a)(c) of the Fair

Credit Reporting Act, allegations that files maintained on them by respondent or furnished to subscribers making inquiries on them contained, in addition to information about them, information that was not about them. Respondent has also been made aware by its own research of significant numbers of instances in which it has reported a file containing mixed information about two consumers.

PAR. 54. Respondent knew or reasonably should have known of measures it could take, such as modifying elements of its merge algorithms, that might reduce the occurrence of the type of error described in Paragraph Fifty-Three.

PAR. 55. Respondent has failed to take reasonable steps to attempt to reduce the number of errors of the type described in Paragraph Fifty-Three.

PAR. 56. By and through the acts and practices described in Paragraphs Fifty-Two, Fifty-Three, Fifty-Four and Fifty-Five, respondent has violated Section 607(b) of the Fair Credit Reporting Act by failing to follow reasonable procedures to assure maximum possible accuracy of information concerning the individual about whom the report relates.

COUNT IX

Alleging violations of the Fair Credit Reporting Act, the allegations of Paragraphs One through Four are incorporated by reference.

PAR. 57. Respondent obtains most of its information on consumers on computer tapes supplied by credit grantors. Respondent processes the information on those tapes into its data base by means of a special computer program designed for the individual credit grantor. As a result of processing the credit grantor tapes through such programs, respondent's system prints out separate sets of statistics for the credit grantors. For most credit grantors, these statistics include an itemization of the number of accounts supplied bearing each of the manner of payment codes used by the credit grantor to rate the consumer's timeliness in making payments on his or her credit account.

PAR. 58. Respondent has been made aware that a significant amount of consumer account information containing erroneous or possibly erroneous manner of payment codes has been supplied by credit grantors or processed into respondent's data base.

PAR. 59. Respondent knew or reasonably should have known that regular review by respondent of the manner of payment code statistics described in Paragraph Fifty-Seven could identify actual or possible systematic errors in manner of payment codes as submitted to respondent by credit grantors or as generated by respondent's procedures for processing the information contained in credit grantors' computer tapes into the data base, thereby permitting respondent to