

## IN THE MATTER OF

## P. LEINER NUTRITIONAL PRODUCTS CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SECS. 5  
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9173. Complaint, Jan. 27, 1984—Decision, May 3, 1985*

This consent order requires two California firms engaged in the advertising, labelling, packaging, sale and distribution of nutritional supplements, among other things, to cease representing falsely or without proper substantiation, that Octacol 4 or any similar product can improve human vigor, endurance or other aspects of physical performance or fitness; or that the Octacosano, Triacontanol, Hexacosanol or tetracosanol contained in their products are related to athletic endurance or physical fitness. The firms are also barred from making claims regarding physical benefits to be derived from using such products unless they are properly substantiated; and from misrepresenting the purpose, reliability, results or conclusions of any test, research, article or scientific opinion. Additionally, the companies are required to maintain for a period of three years all materials that substantiate or contradict representations covered by the order.

*Appearances*

For the Commission: *Cheryl B. Anderson, Teresa A. Hennessy and Brinley H. Williams.*

For respondents: *Henry P. Sailer and Jonathan L. Wiener, Covington & Burling, Washington, D.C.*

## 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 PLNP Holdings, Inc., a corporation, and P. Leiner Nutritional Products, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent PLNP Holdings, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Respondent P. Leiner Nutritional Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent PLNP

Holdings, Inc. dominates or controls, knew of and approved, or benefits from the acts and practices of its only and wholly-owned subsidiary, P. Leiner Nutritional Products, Inc., including the acts and practices hereinafter set forth. Both corporate respondents have their offices and principal places of business at 1805 West 205th Street, Torrance, California.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture, offering for sale, and sale of nutritional supplements, including Octacol 4, and other products for personal or household use by members of the general public (hereinafter "consumer products").

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional material, including, but not limited to, the advertising and labeling referred to herein, to promote the sale of Octacol 4. As advertised, Octacol 4 is a "food" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. PLNP Holdings, Inc., and P. Leiner Nutritional Products, Inc., operate in various States of the United States and in the District of Columbia. Respondents' manufacture, offering for sale, sale, and distribution of nutritional supplements, including Octacol 4, mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their businesses, respondents have disseminated and caused the dissemination of advertisements for nutritional supplements, including Octacol 4, by various means in or affecting commerce, including national magazines, product labels, point of sale brochures, distributed by the mail and across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through D. Specifically, the aforesaid advertisements contain the following statements:

- (a) Octacol 4 Helps Increase Endurance, Stamina and Vigor .
- (b) . . . Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376—including high content octacosanol (Emphasis in Original).
- (c) To help you play stronger, play longer .
- (d) Octacol 4 contains all *four* sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content octacosanol. Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, ~~jumping, weight training, tennis or skiing.~~

(e) . . . [I]n long-term university studies and related research, published results indicate that the four performance factors now available in Octacol 4—including high content Octacosanol—have shown significant effects on several types of human endurance. Result? Athletes participating in these research studies were able to play and perform stronger, longer .

(f) In particular, Octacol 4 may benefit athletes and active people participating in these extra effort sports:

Aerobics	Racquet Sports
Basketball	Running
Dance	Soccer
Football	Swimming
Hockey	Skiing
Jogging	Weight Training

PAR. 7. Through the use, *inter alia*, of the statements referred to in Paragraphs Six (a) through Six (f), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that the use of Octacol 4 will improve consumers' endurance, stamina, vigor, overall athletic performance, or overall physical fitness.

PAR. 8. Through the use, *inter alia*, of the statements referred to in Paragraph Six (b) and Six (d), respondents have represented, and now represent, directly or by implication, that Octacol 4 contains four sports stamina and performance factors—octacosanol, triacontanol, tetracosanol, and hexacosanol—that render Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 9. Through the use, *inter alia*, of the statements referred to in Paragraph Six (a) through Six (f) respondents have represented, and now represent, directly or by implication, that they possessed and relied upon a reasonable basis consisting of competent and reliable evidence that substantiated the representations referred to in Paragraphs Seven through Eight, at the time they first disseminated those representations and at each subsequent dissemination. Through the use, *inter alia*, of the statements referred to in Paragraph Six (e), respondents further represented:

(a) that, at the time they made the representations referred to in Paragraphs Seven and Eight, they possessed and relied upon scientific studies, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) that the scientific studies referred to in Paragraph Nine (a) provided a reasonable basis consisting of competent and reliable

scientific evidence that substantiated the representations in Paragraphs Seven and Eight.

PAR. 10. The representation contained in Paragraph Seven is false, for the reason that the use of Octacol 4 will not improve consumers' athletic endurance, stamina, vigor, overall athletic performance or overall physical fitness.

PAR. 11. The representation contained in Paragraph Eight is false, for the reason that none of the four factors referred to in Paragraph Eight renders Octacol 4 effective in improving consumers' athletic endurance or performance or physical fitness.

PAR. 12. The representations contained in Paragraph Nine are false, for the reasons that respondents did not possess and rely upon a reasonable basis that substantiated the representations referred to in Paragraphs Seven and Eight at the time they made those representations. The representations referred to in Paragraph Nine (a) and (b) are false, for the reasons that the studies referred to:

(a) were not conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results; and

(b) did not provide a reasonable basis consisting of competent and reliable scientific evidence that substantiated the representations referred to in Paragraphs Seven and Eight.

PAR. 13. The use by respondent of the aforesaid acts and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers and to induce such persons to purchase Octacol 4.

PAR. 14. The aforesaid acts and practices of respondents were and are to the prejudice and injury of the public, and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

EXHIBIT A

**IMPORTANT NEWS.  
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,  
STAMINA AND VIGOR.**



**YOUR LIFE**  
**OCTACOL 4**  
1000 mg  
OCTACOSANOL  
COLD PROCESSED  
WHEAT GERM OIL  
60 CAPSULES

**OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.**

Octacol 4 is important news for athletes. And active people.  
Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.  
To help you play stronger, play longer.  
In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376— including high content Octacosanol.  
Result? Octacol 4 can help you get the most from your favorite sport—jogging, swimming, tennis, dancing or weight training.  
New Octacol 4 from Your Life®

**SAVE \$1**

WHEN YOU BUY ANY SIZE BOTTLE OF OCTACOL 4 PRESENT THIS COUPON AND \$1 WILL BE TAKEN OFF THE MARKED RETAIL PRICE!

**74990 100108**  
BRUNNEN OHSN

**YOUR LIFE**

**MORE GOOD NEWS!  
SAVE \$1 ON OCTACOL 4 AT THESE QUALITY STORES.**

**BI-MART  
FRED MEYER  
K MART  
PAY 'N SAVE**

And other fine stores.

STORE COUPON

Complaint

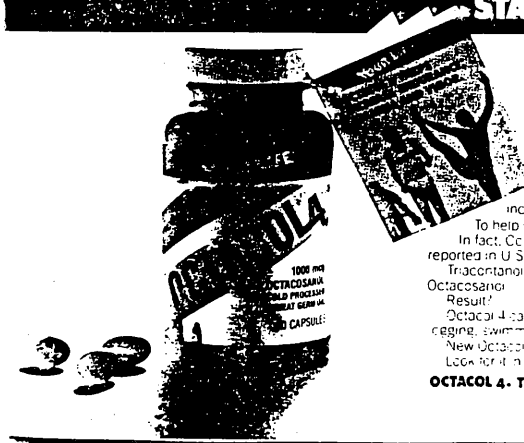
105 F.T.C.

EXHIBIT B

**YOUR LIFE OCTACOL 4.**

AS SEEN IN:  
SPORTS ILLUSTRATED  
PEOPLE  
RUNNER'S WORLD

**IMPORTANT NEWS**  
**NEW OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.**



Octacol 4™ is important news for athletes and active people. Because Octacol 4 is a natural, daily nutritional supplement that can help increase your personal sports stamina and endurance. To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,375: Tricosanol, Tetracosanol, Hexacosanol, and nonyl stearate Octacosanol.

Result? Octacol 4 can help you get the most from your body in sports: cycling, swimming, tennis, weight training, tennis or jogging. New Octacol 4 from 1984-1985.

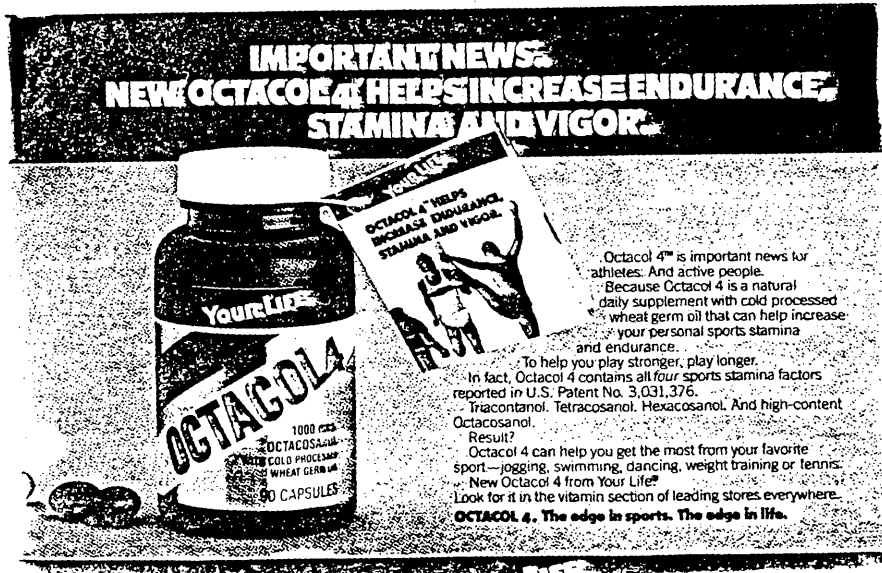
Look for it in the stamina section of leading sports magazines.

**OCTACOL 4. The edge in sports. The edge in life.**

**YOUR LIFE OCTACOL 4.**

AS SEEN IN:  
SPORTS ILLUSTRATED  
PEOPLE  
RUNNER'S WORLD

**IMPORTANT NEWS.  
NEW OCTACOL 4 HELPS INCREASE ENDURANCE,  
STAMINA AND VIGOR.**



The advertisement features a central image of a white plastic bottle of 'Your Life Octacol 4' capsules. The bottle label includes the text 'Your Life', 'OCTACOL 4', '1000 mg', 'OCTACOSANOL', 'WITH COLD PROCESSED WHEAT GERM OIL', and '90 CAPSULES'. To the right of the bottle is a clipping from a magazine, likely 'Your Life', with the headline 'OCTACOL 4 HELPS INCREASE ENDURANCE, STAMINA AND VIGOR.' and an illustration of a person in athletic gear. Below the bottle and clipping is a block of text providing details about the product's benefits and ingredients.

Octacol 4™ is important news for athletes. And active people. Because Octacol 4 is a natural daily supplement with cold processed wheat germ oil that can help increase your personal sports stamina and endurance.

To help you play stronger, play longer.

In fact, Octacol 4 contains all four sports stamina factors reported in U.S. Patent No. 3,031,376. Triacontanol. Tetracosanol. Hexacosanol. And high-content Octacosanol.

Result?

Octacol 4 can help you get the most from your favorite sport—jogging, swimming, dancing, weight training or tennis.

New Octacol 4 from Your Life®.

Look for it in the vitamin section of leading stores everywhere.

**OCTACOL 4. The edge in sports. The edge in life.**



SEPARATE STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK\* ON  
COMPLAINT IN P. LEINER NUTRITIONAL PRODUCTS, INC.

I fully support the Commission's decision to issue a complaint in this matter. At the same time, I am disturbed that the Commission has scrapped its traditional practice of pleading a failure to have a reasonable basis for an advertising claim as both an *unfair* as well as a deceptive practice. The complaint issued today charges only that the respondent's claims (both express and implied) that it had substantiation for its advertising claims were false.

One concern is that this unwarranted change in the Commission's standard pleading will cause confusion and uncertainty. Among others, the administrative law judges will naturally wonder whether the Commission intended in some way to change the standard traditionally used to judge unsubstantiated ads.

Further, while the staff have stated that the changes only reflect what staff in fact intend to prove in this particular case, given Chairman Miller's repeated concerns about the advertising substantiation doctrine, this change may also be a step toward abandonment of unfairness as a basis for the advertising substantiation doctrine. If that is the case, it marks a radical departure for the Commission, which has recently plainly stated in its unfairness policy statement sent to Congress that unfairness is a cornerstone of the advertising substantiation doctrine.

No adequate justification has been given for such a change in our legal theory for requiring advertising substantiation. No analysis has been presented on whether such a change will make it more difficult for the Commission to win its cases. And certainly no rationale has been given for making this decision now, rather than waiting for the Commission's review of the comprehensive comments recently filed concerning the Commission's advertising substantiation program.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for

\* Michael Pertschuk, Commissioner 1977-1984.

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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its 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, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent P. Leiner Nutritional Products Corp., 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 1805 West 205th Street, Torrance, California.

2. Respondent P. Leiner Nutritional Products, Inc., of Delaware, is a corporation existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1805 West 205th Street, Torrance, California.

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

#### ORDER

##### I

*It is ordered,* That respondents P. Leiner Nutritional Products Corp., a corporation, and P. Leiner Nutritional Products, Inc., of Delaware, a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale or distribution of Octacol 4, or any other product of substantially similar composition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that the product can help consumers improve vigor, stamina, endurance, any aspect of athletic performance, or any aspect of physical fitness.

B. Representing, directly or by implication, that the following in-

redients contained in the product are related in any way to athletic endurance or performance or physical fitness—octacosanol, triacosanol, hexacosanol, tetracosanol.

## II

*It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research, or article, or any other scientific opinion or data.

## III

A. *It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning any benefit to be derived from using any such product with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product or from comparing any such products to any product or products of one or more competitors concerning the benefits from using any such products with respect to athletic performance or endurance or any improvement in physical capability to be derived from using such product unless, at the time of such representation, respondents possess and rely upon reliable and competent evidence that substantiates each such representation of the type and quantum appropriate for the representation.

B. For the purposes of Part III (A) to the extent evidence consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and

evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

#### IV

*It is further ordered,* That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, offering for sale, sale, or distribution of any product for personal or household use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurate records:

1. Of all materials that were relied upon by respondents in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation made by respondents that is covered by 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. It is further ordered that any such records shall be retained by respondents and that respondents shall make such documents available to the Commission for inspection and copying upon request.

#### V

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed changes in 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 corporations which may affect compliance obligations arising out of the Order.

#### VI

*It is further ordered,* That respondents shall forthwith distribute a copy of this Order to each of their operating divisions and to all distributors of Octacol 4 or any other product of substantially similar composition.

## VII

*It is further ordered,* That respondents shall, within sixty (60) days after service 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.

## VIII

*It is further ordered,* That no provision of this Order shall be interpreted as precluding respondents from making statements or disclosures on their labels or labeling where those statements or disclosures are required by regulations promulgated by the Food and Drug Administration (FDA) or by statutes the FDA enforces.

Complaint

105 F.T.C.

IN THE MATTER OF  
THE CITY OF MINNEAPOLIS

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

*Docket 9180. Complaint, May 10, 1984—Order Withdrawing Complaint, May 7, 1985*

This order withdraws the complaint alleging that the City of Minneapolis had combined, contracted or agreed with taxicab companies to pursue certain anticompetitive policies in violation of Section 5 of the Federal Trade Commission Act. The Commission held that changes now made in the City's municipal Code, which includes raising the number of taxicab licenses to be made available to operators, "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." Thus, continuing the matter would not be in the public interest. In withdrawing its complaint, the Commission expressed no opinion as to whether the "liability of the City of Minneapolis could have been established at trial."

*Appearances*

For the Commission: *Jerry A. Philpott.*

For the respondent: *John French, French, Faegre & Benson, Minneapolis, Minn. and Robert J. Alfton and Scott Reeves, City of Minneapolis, Minn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the City of Minneapolis, a municipal corporation subject to the jurisdiction of the Commission, hereinafter sometimes referred to as Respondent or the City, has violated the provisions 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 as follows:

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

(A) *Taxicab* means any motor vehicle, except a limousine, regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than ten (10) persons and not operated on a fixed route or schedule.

(B) *License* means the annual taxicab vehicle license issued by the

City of Minneapolis that authorizes the holder thereof to operate a taxicab within the City of Minneapolis.

(C) *Owner-operator* means an individual or company that owns at least one taxicab and taxicab license issued by the City of Minneapolis.

(D) *Leasing* means the practice by taxicab owner-operators of entering into an agreement with a person who is authorized by the City of Minneapolis to drive a taxicab, wherein for a rental fee paid to the owner-operator, said driver is entitled to use a taxicab and its corresponding taxicab license for a specified time and retain all fares collected from passengers.

(E) *CPCN* means the certificate of public convenience and necessity issued by the Minneapolis City Council that is the prerequisite for issuance by the City of Minneapolis of a taxicab license.

(F) *Taxicab company* means any business organization, corporation, partnership, cooperative or person that at present (or sometime in the past) has a trade name and color scheme registered with the City of Minneapolis for the purpose of operating taxicabs or providing services related to the business of owning, operating and/or leasing taxicabs to taxicab owners, operators and/or drivers authorized to do business by the City.

PARAGRAPH 1. Respondent is a municipal corporation organized under the laws of the State of Minnesota and is a person or corporation within the meaning of the Federal Trade Commission Act, as amended (15 U.S.C. 45). The City has passed and enforces certain ordinances that regulate the taxicab business in Minneapolis.

PAR. 2. At all times relevant herein, Respondent's acts and practices have affected the businesses of taxicab companies and taxicab owners, operators, drivers or lessees that maintain, and have maintained, substantial courses 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, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. The acts and practices alleged herein are in or affect commerce by affecting at least the following activities that are in or affect commerce:

(A) Taxicabs and taxicab companies provide a primary method of transportation for interstate travelers between Minneapolis-St. Paul International Airport and destinations in Minneapolis.

(B) Taxicabs and taxicab companies provide transportation for interstate travelers between Minneapolis and nearby cities in Minnesota and Wisconsin.

(C) Taxicabs and taxicab companies provide transportation to inter-

state travelers between train stations, bus terminals and other destinations in Minneapolis.

(D) Taxicabs and taxicab companies provide transportation to interstate travelers between hotels, motels, places of business, convention centers, and tourist attractions and other destinations in and around Minneapolis.

(E) Taxicabs are manufactured in other states and are sold for use in and are transported into Minnesota.

(F) Items and services purchased in substantial quantities such as gasoline, tires, taximeters, two-way radios and various replacement parts for taxicabs originate in other states and have been transported into Minneapolis.

(G) Employment opportunities as a Minneapolis taxicab driver have attracted persons from other states.

PAR. 3. For many years and continuing up to and including the date of the issuance of this complaint, the City has combined, contracted or agreed with taxicab companies, to pursue the following policies and do the following acts, among others:

(A) To permit and encourage taxicab companies to combine and to agree upon proposals to increase fares for taxicabs in Minneapolis.

(B) To adopt uniform fares applicable to all taxicabs upon request by taxicab companies.

(C) To limit the number of taxicab licenses in Minneapolis and to prohibit by other means, new entry of taxicab drivers, owners and operators into Minneapolis.

(D) To raise unreasonable barriers to entry to new taxicab companies in Minneapolis.

(E) To prohibit competition from vehicles-for-hire licensed outside Minneapolis.

PAR. 4. The acts and practices of Respondent, as alleged in Paragraph Three, have been and are now having the effects, among others, of:

(A) eliminating and preventing substantial competition between competitors and potential competitors in the operation of taxicabs in Minneapolis;

(B) strengthening the market power of currently authorized taxicab companies operating in the Minneapolis taxicab market;

(C) raising, fixing, stabilizing, maintaining, or otherwise interfering or tampering with the rates charged for taxicab service in and from Minneapolis; and

(D) depriving interstate and intrastate consumers of taxicab services in and from Minneapolis of the benefits of free and open competition in taxicab services.

PAR. 5. The acts and practices of Respondent, as alleged herein, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

STATEMENT OF CHAIRMAN JAMES C. MILLER III

After extensive consideration of the issue, I have voted today to issue complaints in accordance with my statutory responsibility to act when there is reason to believe that the law has been violated.

The action taken by the Commission today is based upon allegations of monopoly power and alleged violations of the U.S. antitrust laws in the taxi markets of Minneapolis and New Orleans [105 F.T.C. 1]. As a technical matter, the way a case is brought most effectively in such situations is to address regulations enacted by the city governments. I wish to stress that our concern is with allegations of monopoly power in taxi markets, and is not driven by any interest in limiting the lawfully-exercised powers of the cities themselves.

I also wish to stress that our concern is solely with restraints on *competition*; we have no concerns with rules affecting safety, insurance, and other related service standards.

The Commission's decision today comes after a 10-year staff study of taxi markets, after extensive inquiries and discussions with city officials and taxi operators, and after thorough briefing of the Commission by the agency's career staff.

STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK\* DISSENTING  
FROM THE ISSUANCE OF COMPLAINTS AGAINST THE CITIES OF  
MINNEAPOLIS AND NEW ORLEANS

I dissent from the Commission's decision to issue complaints against the cities of Minneapolis and New Orleans [105 F.T.C. 1] charging each city with an illegal combination or conspiracy in violation of the Sherman and FTC Acts. The complaints allege that each city conspired with taxicab owners and drivers to restrain trade in the provision of taxicab services through the enactment of municipal regulations that establish fixed taxi fares and create barriers to entry into the market.

For the Commission to succeed under the theories alleged in these complaints, it must first prove that the challenged regulations were the result of an illegal combination or conspiracy rather than lawful

\* Michael Pertschuk, Commissioner 1977-1984.

actions taken by the cities in the interest of their citizens. I am troubled by the idea that a city's adoption of taxi regulations after consultation with the industry—when consultation is a necessary element of responsible government—transforms the city's regulations into an illegal conspiracy.

Second, when the federal antitrust laws come in apparent conflict with regulations enacted by a governmental entity such as a municipality, the Commission must be especially confident that federal intervention is warranted. Here it is at the very least unclear whether the economic theory of these complaints fits the facts as we know them. Studies commissioned by the Department of Transportation and others of cities where taxi service was deregulated do not demonstrate that the public benefited. Fares often rose and there is considerable doubt whether service improved. Finally, Congress is currently considering legislation which would exempt most municipal regulations from antitrust scrutiny. I note that the Assistant Attorney General in charge of the Antitrust Division has recently testified in support of that legislation. While the Commission need not consider pending legislation when deciding whether to act, the unpredictable effects of the Commission's action on the taxi market and the legitimate regulatory interests of the cities counsel restraint in these cases.

#### ORDER

Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that a new municipal ordinance that the City of Minneapolis recently enacted "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." The Administrative Law Judge has certified that motion to the Commission, with the recommendation that the Commission grant the motion. The complaint alleges that the City of Minneapolis has combined, contracted or agreed with taxicab companies in a number of respects relating to fare increases, fare uniformity, limitations on the number of taxicab licenses issued in Minneapolis, barriers to entry, and competition from vehicles-for-hire licensed outside Minneapolis, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In the Notice of Contemplated Relief that accompanied the complaint, the Commission indicated that as part of any relief it might order, it might prohibit enforcement of three separate groups of Minneapolis Code provisions: (1) Section 341.710 *et seq.* (with some exceptions), which generally regulate fares; (2) portions of Section 341.260 and Section 341.280, which established a variety of criteria for determining whether new

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341.310, which established 248 as the maximum number of taxicab licenses (other than 48 "winter licenses") available to operators in any given year.

The City of Minneapolis has now amended its Code to repeal Section 341.260 and Section 341.280. It has also amended Section 341.300 of the Code to raise the number of taxicab licenses from 248 to 323 by February 1, 1986, and by as many as an additional 25 licenses every year thereafter, beginning on July 1, 1986.<sup>1</sup> These changes offer the prospect of preventing the anticompetitive conduct alleged in the complaint by strongly facilitating new entry into the Minneapolis taxicab market. The Commission has therefore determined that continuing this matter would not presently serve the public interest, and that the complaint should be withdrawn. In taking this action, we express no opinion as to whether the liability of the City of Minneapolis could have been established at trial.

Accordingly, *it is ordered* that the complaint issued against the City of Minneapolis in Docket No. 9180 be, and it hereby is, withdrawn.

Commissioner Azcuenaga did not participate.

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<sup>1</sup> Section 341.290(b) has been amended to require that all license holders must be "a member of a company, cooperative, or association" with at least eight taxicabs licensed by Minneapolis; at least fifteen licensed taxicabs "operated under a common color scheme with common radio dispatching facilities;" and a total of at least fifteen such taxicabs licensed in Minneapolis within one year of issuance of the first eight licenses. Section 341.290(c) exempts taxicabs already holding licenses from this requirement.

Complaint

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IN THE MATTER OF

## ASSOCIATED DRY GOODS CORPORATION

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

*Docket C-3153. Complaint, May 7, 1985—Decision, May 7, 1985*

This consent order requires a New York City merchandise retailer, among other things, to cease failing to disclose to an applicant who has been denied credit on the basis of information contained in a consumer report (including non-derogatory information or no file response), that the adverse action was based wholly or partly on information reported by a credit bureau; and provide rejected applicants with the name and address of the reporting agency. The order additionally requires that a copy of the letter attached to the order as Appendix A be completed to include the name and address of the appropriate consumer reporting agency, and mailed within 90 days to credit applicants who were denied credit by Robinson's of Florida or Hahne and Company, divisions of Associated Dry Goods Corporation, between January 1, 1982, and December 31, 1983, on the basis of information submitted by a consumer reporting company.

*Appearances*

For the Commission: *Paul K. Davis.*

For the respondents: *Joseph J. Schumm, New York City.*

## COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting 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 Associated Dry Goods Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, 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 Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

spondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

PAR. 2. Respondent Associated Dry Goods Corporation, through its aforesaid Hahne's and Robinson's divisions, advertises, sells and distributes retail merchandise to the public.

PAR. 3. At all times relevant hereto, respondent in the course of business did and ordinarily does regularly extend and offer to extend consumer credit. In conjunction with the offer and extension of consumer credit, respondent has obtained and is obtaining "consumer reports" as that term is defined in Section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

PAR. 4. Respondent maintains and has maintained a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

#### DEFINITIONS

For the purposes of this Complaint, the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

#### PART I

Alleging violations of the Fair Credit Reporting Act and of the Federal Trade Commission Act, the allegation of Paragraphs One through Four are incorporated by reference as if fully set forth verbatim.

PAR. 5. Respondent, through its divisions, in the ordinary course

and conduct of its business, obtains and has obtained "consumer reports" from consumer reporting agencies. Respondent uses in whole or in part information contained in these reports to accept or deny applications for credit. In a substantial number of instances subsequent to January 1, 1982, respondent has denied consumers credit for personal, family, or household purposes based in whole or in part on non-derogatory information and "no file response" supplied by a consumer reporting agency. Although Robinson's of Florida and Hahne's advised the consumers that they were denied credit because they had no credit history, insufficient credit history, or insufficient credit file, in many instances, Robinson's of Florida and Hahne's failed to advise the consumer of the name and address of the consumer reporting agency making the report.

PAR. 6. By and through the use of the practices described in Paragraph Five, during the period of January 1, 1982, to December 31, 1983, Robinson's of Florida and Hahne's have denied applications for credit for personal, family or household use either wholly or partly because of information contained in a consumer report without advising the consumer of the name and address of the consumer reporting agency making the report. Therefore, respondent, through its divisions Robinson's of Florida and Hahne's, has violated the provisions of Section 615(a) of the Fair Credit Reporting Act.

PAR. 7. By its aforesaid failure to comply with Section 615(a) of the Fair Credit Reporting Act and pursuant to Section 621(a) thereof, respondent has thereby engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### 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 Atlanta 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 Fair Credit Reporting 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 Acts, 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 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. Proposed respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.

Robinson's of Florida ("Robinson's") is a division of proposed respondent. Robinson's principal office and place of business is located at Tyrone Square, St. Petersburg, Florida.

Hahne and Company ("Hahne's") is also a division of proposed respondent. Hahne's principal office and place of business is located at 609 Broad Street, Newark, New Jersey.

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

#### ORDER

For the purposes of this Order the following definitions are applicable:

A. The terms *consumer*, *consumer report*, and *consumer reporting agency* shall be defined as provided in Sections 603(b), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(b), 1681a(d) and 1681a(f) (1970).

B. The term *no file response* shall be defined as a consumer report consisting of a response by a consumer reporting agency to respondent's request for information on a given applicant indicating that the consumer reporting agency has no credit history information in its files under the name and other identifiers supplied.

C. The term *non-derogatory information* shall be defined as information in a consumer report furnished to respondent by a consumer reporting agency, consisting of the presence of new credit accounts

with credit histories too short to meet the respondent's criteria for granting credit, insufficient credit history, or insufficient credit file.

### I.

*It is ordered,* That respondent Associated Dry Goods Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any application for credit that is primarily for personal, family or household purposes, do forthwith cease and desist from:

1. Failing, whenever credit for personal, family or household purposes involving a consumer is denied wholly or partly because of information contained in a consumer report from a consumer reporting agency (including non-derogatory information or no file response), to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report.

2. Failing, within ninety (90) days after the date of service of this Order, to mail a copy of the letter attached hereto as Appendix A, completed to provide the name and address of the consumer reporting agency supplying the report, to each applicant who was denied credit by Robinson's of Florida or Hahne's between January 1, 1982, and December 31, 1983, based in whole or in part on information contained in a consumer report from a consumer reporting agency (including applicants denied credit based in whole or in part on non-derogatory information or no file response). The letter shall be sent by first class mail to the last known address of the applicant which is reflected in respondent's files. *Provided, however,* if the applicant was later extended credit or given the notice required by Section 615(a) of the Fair Credit Reporting Act, a copy of the letter attached as Appendix A need not be sent. Nothing in this Order shall prohibit respondent from adding to Appendix A a paragraph that resolicits the previously rejected applicants.

### II.

*It is further ordered,* That respondent, its successors, and assigns shall maintain the following:

1. For at least two (2) years, documents that will demonstrate compliance with the requirements of Paragraph I.1. of this Order

2. For at least three (3) years, documents that will demonstrate compliance with the requirements of Paragraph I.2. of this Order.

Upon request, such documents shall be made available to the Federal Trade Commission for inspection and copying. Such documents shall include, but are not limited to, all credit evaluation criteria instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order, and the complete application file to which they relate.

### III.

*It is further ordered,* That Robinson's of Florida and Hahne's shall deliver a copy of this Order to all present employees engaged in reviewing or evaluating consumer reports in connection with applications for credit to be used for personal, family or household purposes. In addition, respondent shall deliver a copy of this Order to all present and future Directors of Credit of each division, at least once per year, for a period of four (4) years from the date of this Order.

### IV.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or divisions or any other change in the corporation which may affect compliance obligations arising out of the Order. This provision shall remain in effect for a period of four (4) years from the date of this Order.

### V.

*It is further ordered,* That respondent, within one hundred fifty (150) days after service upon it of this Order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

### APPENDIX A

Dear Customer:

Our records show that [Division of Associated Dry Goods] denied your application for consumer credit within the last four years. The Fair Credit Reporting Act gives persons

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nied consumer credit the right to know whether the denial was based on information supplied by a consumer reporting agency and, if so, the name and address of such agency. Credit reports provide a variety of information to creditors, including information about how many and what type of credit accounts you have.

Our records show that we may not have informed you that your [Division of Associated Dry Goods] application was denied because of information contained in a credit report. This report showed either no credit history or an insufficient credit record for you. The consumer reporting agency that furnished the report is:

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Name of Consumer Reporting Agency]

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Street Address]

If you want more information about the federal credit laws, write the Federal Trade Commission, Division of Credit Practices, Washington, D.C. 20580.

Thank you.

IN THE MATTER OF  
YOUNG & RUBICAM/ZEMP, INC.

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

*Docket C-3154. Complaint, May 10, 1985—Final Order, May 10, 1985*

This consent order requires a St. Petersburg, Fla. advertising agency, among other things, to cease, in connection with the advertising and sale of the Ecologizer CA/90 Series 2000 Air Treatment, representing falsely through the use of terms such as "eliminates," or by other means, that the portable household air cleaning appliance removes substantially all or most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean the air of formaldehyde gas or tobacco smoke, and from representing the performance characteristics of any air cleaning appliance unless it possesses and relies upon competent and reliable substantiating evidence for such claims. Respondent is additionally required to cease failing to maintain written records of both substantiating materials and materials that contradict or qualify performance claims for a period of three years.

*Appearances*

For the Commission: *Judith Wilkenfeld*

For the respondent: *Sidney S. Rosdeitcher, Paul, Weiss, Rifkind, Wharton & Garrison, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Young & Rubicam/Zemp, Inc., hereinafter 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 issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Young & Rubicam/Zemp, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1213 16th Street North, St. Petersburg, Florida.

PAR. 2. Respondent was at all times relevant to this complaint an advertising agency of Rush-Hampton Industries, Inc.

PAR. 3. Respondent caused to be prepared and placed for publication and caused the dissemination of advertising and promotional material, including but not limited to the advertising referred to herein, to promote the sale of a portable, electric household air cleaning appliance, the Ecologizer CA/90 Series 2000 Air Treatment System (hereinafter referred to in the complaint as "air cleaning appliance").

PAR. 4. Respondent operates in various States of the United States and in the District of Columbia. Respondent's dissemination of advertisements for the air cleaning appliance mentioned herein constituted maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business and for the purpose of promoting the sale and distribution of household air cleaning appliances, respondent disseminated and caused the dissemination of advertising for household air cleaning appliances in national magazines, newspapers and catalogs distributed by the mail and across state lines, and in radio broadcasts transmitted by radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines. Respondent also placed air cleaning appliance advertisements with television stations having sufficient power to broadcast across state lines and into the District of Columbia. In addition, respondent distributed by mail or other means, product brochures and other sales literature directly to consumers or to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A, B, C, D, E, F, G, H and I.

PAR. 7. Through the use of the statements and representations referred to in Paragraph Six, and other representations contained in advertisements and promotional materials not specifically set forth herein, respondent represented, directly or by implication, the following claims:

a. The air cleaning appliance "gets rid of" or eliminates formaldehyde gas and tobacco smoke from the air people breathe under household living conditions.

b. The air cleaning appliance cleans the air of or removes most formaldehyde gas and tobacco smoke from the air people breathe under household living conditions.

PAR. 8. In truth and in fact, the direct or implied representations set forth in Paragraph Seven are false, for reasons including but not limited to the following:

a. The air cleaning appliance does not eliminate and does not remove most formaldehyde gas from the air people breathe under household living conditions. Tests conducted by Rush-Hampton Industries and independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance optimally can remove no more than 5% of formaldehyde gas from the indoor air people breathe.

b. The air cleaning appliance does not eliminate and does not remove most tobacco smoke from the air people breathe under household living conditions. Independent tests, when extrapolated by generally accepted procedures to advertised room conditions, show that the air cleaning appliance optimally can remove no more than 15% of tobacco smoke from the indoor air people breathe.

Therefore, the direct or implied representations set forth in Paragraph Seven are false and misleading.

PAR. 9. As the representations referred to above are false, and respondent knew or should have known that they were false at the time of their dissemination, such representations are deceptive, misleading, and unfair.

PAR. 10. Through the use of the advertisements and promotional materials referred to in Paragraph Six, and other advertisements and promotional materials not specifically set forth herein, respondent represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Seven at the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations, and respondent knew or should have known that it did not possess and rely upon a reasonable basis. Therefore, respondent's representations are false and misleading.

PAR. 11. The use by respondent of the aforesaid false and misleading representations, and the placement in the hands of others of the means and instrumentalities by and through which others may use the aforesaid representations, had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations are true and complete and to induce such persons to purchase air cleaning appliances sold by Rush-Hampton Industries, Inc. by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were all to the prejudice and injury of the public, and con-

stituted unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

## EXHIBIT A

## TRANSCRIPT OF RADIO COMMERCIALS

## 1. "Socks"

A: Hello, this is Good Air Talk, you're on the air.  
B: Good Air Talk.  
A: Go ahead, sir, go ahead.  
B: Listen, I have this great idea I want to talk to you about.  
A: Well, does it have anything to do with good air?  
B: Yes it does.  
A: Okay, go ahead.  
B: Well you know all the tobacco smoke, dust, odors and pollen in your indoor air?  
A: You mean inside your house?  
B: Right. What if somebody invented a thing to get rid of all that stuff?  
A: They have sir. It is called the ECOLOGIZER\*, it's an indoor air treatment system—  
B: You know, something you just plug into the wall, I mean, with all the tobacco smoke—  
A: Sir, it already exists. Its called the ECOLOGIZER\*.  
B: What do I know, maybe this thing could even get rid of unseen harmful gases?  
A: You mean like formaldehyde and ammonia that you're probably breathing right now?  
B: That's the idea.  
A: Look, besides tobacco smoke, dust, odors and pollen, the ECOLOGIZER\* with CA/90\* also gets rid of those harmful gases. It's the only one that does. That's why it's worth more.  
B: I'm no science guy, but I know that that technology has to exist.  
A: Look, it does exist, sir, and its all in the ECOLOGIZER\* CA/90\*.  
B: Now if you don't like this idea, here's another one.  
A: Go ahead.  
B: How come nobody's invented digital socks yet, I'm asking.  
A: Look, you are just going to have to call Digital Socks Talk, okay?  
B: How's that?  
A: And that's it for Good Air Talk.  
B: Hello?

ANNOUNCER:

Now get a bonus CA/90\* filtering system with purchase of an ECOLOGIZER\*

## 2. "Snooze"

A: Hello, this is Good Air Talk.  
B: Is this Good Air Talk?  
A: Good Air Talk—

\* Registered trademark.

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B: Now listen, give me one good reason to buy that ECOLOGIZER\* air treatment system you always talk about.

A: Okay, CA/90\*.

B: CA/90\*?

A: Right, CA/90\* is a powerful, natural odor-absorbing substance that makes the ECOLOGIZER\* better than anything else going.

B: You mean its better than—

A: Right.

B: Well what about—

A: It's much better. It's the only air treatment system that removes harmful gases.

B: Gases?

A: Right. Like formaldehyde and ammonia.

B: Formaldehyde? Hold on.

A: [Sotto voice] He's holding on.

B: I don't see any formaldehyde in here.

A: Of course you don't. But it's there.

B: Where?

A: In just about every indoor environment. You're probably breathing it right now.

B: You mean I'm breathing harmful gases right now?

A: Probably.

B: Boy, how can I get rid of them?

A: Listen to me. Get an ECOLOGIZER\*. It's the only air treatment system with CA/90\*.

B: And that'll get rid of indoor gases?

A: Right. Plus tobacco smoke, dust, odors and pollen.

B: Now listen, what does it cost?

A: Well, an ECOLOGIZER\* costs a little bit more but, believe me, it's worth it.

B: Yeah. I know what you mean. I tried to save a few bucks once on a cheap alarm clock.

A: Uh-huh.

B: But every time I pushed the snooze alarm the clock fell asleep.

A: Yes, and that's it for Good Air Talk.

B: I like your show by the way.

ANNOUNCER:

Now get a bonus CA/90\* filtering system with purchase of an ECOLOGIZER\*.

